

**UNITED  
NATIONS**



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

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

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. John Hocking

**Judgement of:** 10 June 2010

**PROSECUTOR**

v.

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

***PUBLIC REDACTED***

**JUDGEMENT  
Volume I**

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A handwritten signature in black ink, appearing to be 'P. McCloskey'.

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## I. INTRODUCTION

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

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

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

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<sup>1</sup> For the definition of the term "Bosnian Serb Forces", see para. 102.



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

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

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

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

## II. CONSIDERATIONS REGARDING THE EVIDENCE

### A. General Evidentiary Principles

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

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

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

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

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

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

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

<sup>4</sup> *Vasiljević* Appeal Judgement, para. 120.

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

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

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

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

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

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

<sup>6</sup> *Čelebići* Appeal Judgement, para. 458.

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

<sup>8</sup> *Orić* Trial Judgement, para. 21; *Brdanin* Trial Judgement, para. 35.

<sup>9</sup> *Stakić* Appeal Judgement, para. 219.

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

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

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

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

## **B. Specific Evidentiary Considerations**

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

### (a) Testimony and Statements of Accused

#### (i) Preliminary Issues

##### a. Borovčanin Statement

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

<sup>12</sup> See *Kvočka et al.* Appeal Judgement, para. 23.

<sup>13</sup> See *ibid.*; *Krajišnik* Appeal Judgement, para. 141.

<sup>14</sup> T. 2425–2431 (16 Oct 2006).

<sup>15</sup> See T. 2426 (16 Oct 2006).

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

<sup>17</sup> Borovčanin Statement Decision, paras. 29–39.

<sup>18</sup> *Ibid.*, paras. 54–80.

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

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

b. Evidence given by Pandurević

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

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

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

<sup>20</sup> T. 19992–19993 (18 Jan 2008).

<sup>21</sup> Rule 90 (H)(ii).

<sup>22</sup> **Pandurević** Closing Arguments, T. 34883–34884 (15 Sept 2009).

<sup>23</sup> *Ibid.*

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

<sup>25</sup> *See Krajišnik* Appeal Judgement, para. 370.

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

<sup>27</sup> *Ibid.*, para. 368.

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

<sup>29</sup> *See Karera* Appeal Judgement, paras. 19, 27–29,

(ii) Credibility of Pandurević

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

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

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

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

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

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

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

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

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

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

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

<sup>34</sup> *Ibid.*

<sup>35</sup> See also *Ibid.*, para. 28.

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

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

a. [REDACTED]

28. [REDACTED]<sup>37</sup>

29. [REDACTED]<sup>38 39</sup>

30. [REDACTED]<sup>40 41 42 43</sup>

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

<sup>37</sup> [REDACTED]

<sup>38</sup> [REDACTED]

<sup>39</sup> [REDACTED]

<sup>40</sup> [REDACTED]

<sup>41</sup> [REDACTED]

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

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- 42 [REDACTED]
  - 43 [REDACTED]
  - 44 [REDACTED]
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  - 59 [REDACTED]
  - 60 [REDACTED]
  - 61 [REDACTED]



42. [REDACTED]

43. [REDACTED]

44. [REDACTED]<sup>64 65</sup>

45. [REDACTED]<sup>66</sup>

46. [REDACTED]

47. [REDACTED]

b. Momir Nikolić

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

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

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<sup>62</sup> [REDACTED]

<sup>63</sup> [REDACTED]

<sup>64</sup> [REDACTED]

<sup>65</sup> [REDACTED]

<sup>66</sup> [REDACTED]

<sup>67</sup> *Nikolić Sentencing Judgement.*

<sup>68</sup> *Nikolić Sentencing Appeal Judgement.*

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

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

<sup>71</sup> Prosecution Final Brief, para. 502.

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

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

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

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

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

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

<sup>75</sup> Ex. C00002, “Supplementary Statement by Momir Nikolić, 16 April 2009”.

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

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

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

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

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

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

(c) Identification Evidence

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

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

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

(d) Alibi Evidence

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

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

<sup>79</sup> *Limaj et al.* Trial Judgement, para. 20, *Limaj et al.* Appeals Judgement, para. 153.

<sup>80</sup> *Kunarac* Trial Judgement, para. 561; *Vasiljević* Trial Judgement, para. 16.

<sup>81</sup> *See Vasiljević* Trial Judgement, para. 16.

<sup>82</sup> *Popović* Final Brief, paras. 483–528; *Beara* Final Brief, paras. 105–257.

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

<sup>84</sup> *Musema* Appeal Judgement, para. 202.

<sup>85</sup> *Vasiljević* Trial Judgement, para. 15; *Limaj et al.* Appeal Judgement, para. 64.

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

58. In assessing whether the alibis pleaded by the Accused in this case were “reasonably possibly true”, the Trial Chamber has taken into account the cumulative effect of all relevant evidence adduced by both the Prosecution and the Defence. As with all issues bearing on the identity of an accused, it is the “totality” of the relevant evidence<sup>88</sup>—including considerations of the honesty and reliability of witnesses and the quality of any identifications—which must be weighed when determining whether the Prosecution has eliminated any reasonable possibility that the alibi is true.

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

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

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

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

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

<sup>88</sup> See *Limaj et al.* Trial Judgement, para. 20.

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

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

(i) Use of Rule 92 *bis* Statements

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

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

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

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

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

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

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

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

<sup>94</sup> ECHR, Art. 6(3)(d)

<sup>95</sup> *Isgrò v. Italy*, Judgement, 19 Feb 1991.

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

cross-examination, the convictions for the crimes could not stand<sup>97</sup> unless the evidence had been corroborated.<sup>98</sup>

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

(f) Intercepted Communications

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

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

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

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

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

<sup>101</sup> Intercept Decision, para. 29.

<sup>102</sup> *Ibid.*, para. 37.

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

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

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

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

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

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

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

(h) Agreed Facts, Adjudicated Facts and Stipulations

(i) Agreed Facts and Stipulations

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

<sup>105</sup> Intercept Decision, paras. 38–78.

<sup>106</sup> *Ibid.*, paras. 74–78.

<sup>107</sup> See Intercept Decision, para. 65.

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

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



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

(ii) Judicial Notice of Adjudicated Facts

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

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

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

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

<sup>111</sup> See Annex II (Procedural History), Section B.7.

<sup>112</sup> See *Babić* Sentencing Appeal Judgement, para. 18.

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

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

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

(i) Aerial Images

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

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

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

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

<sup>116</sup> See, e.g., T. 21171–21172 (6 Feb 2008).

<sup>117</sup> Richard Butler, T. 20182 (22 Jan 2008).

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

<sup>119</sup> T. 21175–21176 (6 Feb 2008).

<sup>120</sup> T. 21187–21188 (7 Feb 2008).

<sup>121</sup> Popović Final Brief, paras 737–742.

<sup>122</sup> *Ibid.*, para. 741.

(j) The Zvornik Brigade Notebook

76. The Zvornik Brigade Notebook<sup>123</sup> was used by the Brigade's Duty Officer to record information and messages, official or personal, that he received from the superior command, the subordinate units, and the Chief of Staff.<sup>124</sup> The Zvornik Brigade Notebook was a contemporaneous document of the Brigade.<sup>125</sup>

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

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

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

<sup>124</sup> Miodrag Dragutinović, T. 12623–12624 (14 June 2007).

<sup>125</sup> *Ibid.*, T. 12624 (14 June 2007).

<sup>126</sup> Prosecution Final Brief, paras. 1183–1195.

<sup>127</sup> Prosecution Final Brief, para. 1184.

<sup>128</sup> *Ibid.*, para. 1185.

<sup>129</sup> *Ibid.*, para. 1186.

<sup>130</sup> *Ibid.*, paras. 1191–1193.

<sup>131</sup> *Ibid.*, para. 1191.

<sup>132</sup> *Ibid.*, para. 1194.

<sup>133</sup> Beara Final Brief, paras. 339–354.

<sup>134</sup> *Ibid.*, paras. 339–354.

<sup>135</sup> Beara Final Brief, paras. 339–340, 353–354.

<sup>136</sup> *Ibid.*, para. 354.

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

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

<sup>137</sup> Beara Final Brief, para. 342. These are pages ERN 02935744–02935753.

<sup>138</sup> *Ibid.*, para. 345.

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

<sup>140</sup> Beara Final Brief, para. 347.

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

<sup>142</sup> *Ibid.*, para. 351.

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

<sup>144</sup> *Ibid.*, paras. 351–352.

<sup>145</sup> Popović Final Brief, para. 564.

<sup>146</sup> *Ibid.*, paras. 563–566.

<sup>147</sup> *Ibid.*, para. 563.

<sup>148</sup> Pandurević Final Brief, paras. 13–16.

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

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

<sup>149</sup> Nikolić Final Brief, paras. 440, 456–461, 468–472.

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

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

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

<sup>153</sup> [REDACTED]

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

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

(k) The Zvornik Brigade IKM Kitovnice Logbook

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

84. **Nikolić** challenges the reliability of the Zvornik Brigade IKM Kitovnice Logbook, specifically the entries for the period from 13 to 22 July 1995.<sup>157</sup> He argues that there are serious issues with its chain of custody and evidence of tampering such that it has no probative value and should not be used to corroborate the testimony of Mihajlo Galić and PW-168.<sup>158</sup> On the face of it, it appears that only two officers made entries in the Zvornik Brigade IKM Kitovnice Logbook from 13 July to 22 July: Mihajlo Galić and an unknown officer.<sup>159</sup> **Nikolić** submits, amongst others, that entries for 12 July appear to have been made by two different persons, suggesting that pages had been removed in between.<sup>160</sup> **Nikolić** argues that his own entries for 13 July, made when he was IKM Duty Officer, were on these missing pages.<sup>161</sup> **Nikolić** also submits that Galić made entries containing information which would “normally” not have been forwarded to the IKM or have been accessible to the IKM Duty Officer.<sup>162</sup> The entries made by Galić between 13 and 15 July seem to have been drawn from combat reports of the Zvornik Brigade, whereas the opposite was the norm.<sup>163</sup> Further, **Nikolić** argues that the “format of the IKM logbook” was also “changed” between 13 and 22 July, which is a further indication that the Zvornik Brigade IKM Kitovnice Logbook was tampered with.<sup>164</sup> Lastly, he argues that although the Zvornik Brigade IKM Kitovnice Logbook appears to be coming apart, it is “perfect, in that not a single page is missing”, which is unusual in

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

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

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

<sup>157</sup> Nikolić Final Brief, para. 681.

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

<sup>159</sup> Nikolić Final Brief, paras. 686–687.

<sup>160</sup> *Ibid.*, para. 690.

<sup>161</sup> *Ibid.*, para. 690.

<sup>162</sup> *Ibid.*, para. 693.

<sup>163</sup> *Ibid.*, para. 693.

<sup>164</sup> Nikolić Final Brief, paras. 688–689.

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

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

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<sup>165</sup> Nikolić Final Brief, para. 694.

<sup>166</sup> *Ibid.*, para. 695.

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

<sup>168</sup> Mihajlo Galić, T. 10500–10501 (25 April 2007).

<sup>169</sup> *See supra*, para. 84.

<sup>170</sup> *See supra*, para. 84.

### III. THE FACTS

#### A. Background (1991–1994)

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

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

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

88. On 15 October 1991, BiH began its journey to independence with a parliamentary declaration of sovereignty,<sup>177</sup> which was followed, on 3 March 1992, by a declaration of independence.<sup>178</sup> The Assembly of the Serbian People in BiH<sup>179</sup> did not favour this development and as a reaction, on 27 March 1992 it unanimously proclaimed the Serbian Republic of BiH (later “Republika Srpska”).<sup>180</sup> A struggle for territorial control ensued among the three major groups: Bosnian Muslims, Bosnian Serbs and Bosnian Croats. In the eastern part of BiH, the conflict was particularly fierce between the Bosnian Serbs and the Bosnian Muslims.<sup>181</sup> The international community came up with a proposal for negotiation, suggesting a “cantonalised” BiH “based on national principles and taking into account economic, geographic and other criteria”.<sup>182</sup> These

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

<sup>172</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 12; Popović Adjudicated Facts Decision, Annex, Fact 19.

<sup>173</sup> Popović Adjudicated Facts Decision, Annex, Fact 19.

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

<sup>175</sup> Esmā Palić, T. 6909, 6928 (6 Feb 2007).

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

<sup>177</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 7.

<sup>178</sup> Popović Adjudicated Facts Decision, Annex, Fact 18.

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

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

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

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



principles were presented by the EU negotiator Cutileiro—the so-called Cutileiro plan—at the opening of the Lisbon conference on BiH, in early May 1992.<sup>183</sup>

## 2. “Strategic Objectives”

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

## 3. Establishment of the VRS

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

## 4. Operational Directive 4

91. On 19 November 1992, Mladić issued Operational Directive 4.<sup>191</sup> Operational Directive 4 stated that enemy forces were still carrying out intensive combat operations and were planning to

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

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

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

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

<sup>187</sup> *Ibid.*

<sup>188</sup> Manojlo Milovanović, T. 12319 (31 May 2007).

<sup>189</sup> *See infra*, para. 104.

<sup>190</sup> Popović Adjudicated Facts Decision, Annex, Fact 21.

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

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

## 5. Creation of “Safe Areas”

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

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

<sup>193</sup> *Ibid.*, p. 3.

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

<sup>195</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 20.

<sup>196</sup> *Ibid.*, Fact 21.

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

<sup>198</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 22.

<sup>199</sup> *Ibid.*

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

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

<sup>202</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 26.

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

94. Pursuant to the Security Council Resolution, UNPROFOR negotiated a cease-fire agreement between the ABiH and the VRS, which was signed on 18 April 1993.<sup>206</sup> It called for the Srebrenica enclave to be disarmed under the supervision of UNPROFOR.<sup>207</sup> On the same day, the first UNPROFOR troops arrived in Srebrenica.<sup>208</sup>

95. On 6 May 1993, Žepa and Goražde were also declared protected areas by the UN Security Council, with Resolution 824.<sup>209</sup> UNPROFOR set up a presence in Žepa, represented by a Ukrainian Company of about 80 soldiers ("UKRCoy").<sup>210</sup> UKRCoy established its base in the centre of Žepa and checkpoints at all access points.<sup>211</sup> The main checkpoint at the south entrance to Žepa was set up at Bokšanica in the direction of Rogatica.<sup>212</sup>

#### 6. Agreements on Demilitarisation and Cessation of Hostilities

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

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

<sup>204</sup> Prosecution Adjudicated Facts Decision, Annex, Facts 29 and 30.

<sup>205</sup> *Ibid.*, Fact 33.

<sup>206</sup> *Ibid.*, Fact 34.

<sup>207</sup> *Ibid.*

<sup>208</sup> *Ibid.*, Fact 36.

<sup>209</sup> *Ibid.*, Fact 29.

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

<sup>211</sup> Hamdija Torlak, T. 9718–9719 (29 Mar 2007).

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

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

<sup>214</sup> *Ibid.*, p. 2.

be completed and announced by 10 May, and the demilitarisation of Žepa by 12 May, 1993.<sup>215</sup> The parties further agreed that once the demilitarisation had been declared completed, “all heavy weapons and units that constitute a menace to the demilitarized zones [...] will be withdrawn. Heavy weapons and tanks will be concentrated in limited areas that will be monitored by UNPROFOR and in principle out of range of the demilitarized zone”.<sup>216</sup>

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

98. A period of relative stability followed the establishment of the “safe areas” with the shelling subsiding<sup>219</sup> and the humanitarian situation improving.<sup>220</sup> Nevertheless, the prevailing conditions for the inhabitants were far from being ideal.<sup>221</sup> Both sides violated the “safe area” agreement.<sup>222</sup> Neither Žepa nor Srebrenica was ever fully demilitarized; goods and weapons were moved between the enclaves.<sup>223</sup> Bosnian Muslim helicopters flew in violation of the no-fly zone;<sup>224</sup> the ABiH opened fire toward VRS lines and moved through the “safe area”; the 28th Division was continuously arming itself; and at least some humanitarian aid coming into the enclave was appropriated by the ABiH.<sup>225</sup> In Srebrenica, the 28th Division of the ABiH carried out reconnaissance and sabotage activities against VRS forces deployed in that area.<sup>226</sup> In Žepa, the ABiH formed the 1st Žepa Brigade (“Žepa Brigade”) on 27 January 1994, from units of the 1st and

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

<sup>216</sup> *Ibid.*, p. 3.

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

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

<sup>219</sup> *Ibid.*, T. 9833–9834 (2 Apr 2007).

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

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

<sup>222</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 47.

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

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

<sup>225</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 50.

<sup>226</sup> *Ibid.*, Fact 46.

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

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

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

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

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

<sup>228</sup> *Ibid.*, p. 4.

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

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

<sup>231</sup> *Ibid.*

<sup>232</sup> *Ibid.*

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

<sup>234</sup> *See infra*, Chapter III, Sections C and D.

## **B. Military and Civilian Structures**

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

### **1. The Army of Republika Srpska (VRS)**

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

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

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

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

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

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

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

(a) The Main Staff

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

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

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

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

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

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

<sup>245</sup> Manojlo Milovanović, T. 12178 (29 May 2007).

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

(i) The Command

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

106. The Chief of Staff was at the same level as the Assistant Commanders, but was considered to be the first among equals<sup>252</sup> since, in the Commander's absence, the Chief of Staff assumed command at the Command Post and could issue orders to the Assistant Commanders who then

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

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

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

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

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

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

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



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

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

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

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

<sup>253</sup> Manojlo Milovanović, T. 12159 (29 May 2007), T. 12307 (31 May 2007).

<sup>254</sup> *Ibid.*, T. 12305 (31 May 2007); Ljubomir Obradović, T. 28368–28369 (18 Nov 2008) (19 Nov 2008). See also Ex. 7DPO0417, “Provisional Service Regulations of the VRS, August 1992”, Art. 17 (stating that “[m]embers of the Army shall carry out the orders of the most senior officer present when the superior officer is absent”); Richard Butler, T. 20826 (31 Jan 2008) (also stating that the Provisional Service Regulations were in force in 1995).

<sup>255</sup> Ljubomir Obradović, T. 28455 (19 Nov 2008).

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

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

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

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

<sup>260</sup> Manojlo Milovanović, T. 12246–12247 (30 May 2007).

<sup>261</sup> *Ibid.*

a. The Staff Sector

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

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

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

<sup>262</sup> Petar Skrbić, T. 15467–15468 (17 Sept 2007).

<sup>263</sup> Manojlo Milovanović, T. 12162–12164 (29 May 2007).

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

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

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

<sup>267</sup> Mirko Trivić, T. 11936 (22 May 2007).

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

<sup>269</sup> *Ibid.*, 12174–12175 (29 May 2007).

<sup>270</sup> *Ibid.*, T. 12159–12161 (29 May 2007).

documents were submitted in time, it would review the orders prepared by the Corps and advise the Commander through the Chief of Staff.<sup>271</sup>

b. Reporting and Decision-Making Process

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

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

<sup>271</sup> Ljubomir Obradović, T. 28287, 28295–28296 (17 Nov 2008).

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

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

<sup>274</sup> *Ibid.*, T. 12189 (29 May 2007).

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

c. Directives

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

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

d. Inspections

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

<sup>276</sup> Slobodan Kosovac, T. 30055, 30461 (13 Jan 2009).

<sup>277</sup> Novica Simić, T. 28659 (21 Nov 2008).

<sup>278</sup> Manojlo Milovanović, T. 12192 (29 May 2007).

<sup>279</sup> *Ibid.*, T. 12193 (29 May 2007).

<sup>280</sup> *Ibid.*, T. 12193 (29 May 2007).

<sup>281</sup> *Ibid.*, T. 12194 (29 May 2007).

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

<sup>283</sup> Ljubomir Obradović, T. 28472 (19 Nov 2008).

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

<sup>285</sup> Ljubomir Obradović, T. 28474 (19 Nov 2008).

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

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

e. The Sector for Intelligence and Security

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

i. Functions of the Security Organ

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

<sup>286</sup> Manojlo Milovanović, T. 12327–12328 (31 May 2007).

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

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

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

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

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

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

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

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

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

<sup>293</sup> Milomir Savčić, T. 15241 (12 Sept 2007).

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

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

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

<sup>297</sup> Richard Butler, T. 19636 (14 Jan 2008).

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

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

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

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

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

<sup>298</sup> Peter Vuga, T. 23109 (1 July 2008).

<sup>299</sup> Spiro Pereula, T. 24154–24155 (28 July 2008).

<sup>300</sup> Richard Butler, T. 19636 (14 Jan 2008).

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

<sup>302</sup> Milomir Savčić, T. 15241, 15271–15272 (12 Sept 2007).

<sup>303</sup> *Ibid.*, T. 15271–15272 (12 Sept 2007).

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

ii. The 10th Sabotage Detachment

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

iii. The Military Police

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

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

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

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

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

<sup>307</sup> *Ibid.*, T. 10939 (4 May 2007).

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

<sup>309</sup> *See infra*, paras. 131–133.

<sup>310</sup> Mikajlo Mitrović, T. 25054 (2 Sept 2008).

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



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

(ii) The 65th Protection Regiment

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

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

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

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

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

<sup>314</sup> Manojlo Milovanović, T. 12164 (29 May 2007).

<sup>315</sup> *Ibid.*

<sup>316</sup> *Ibid.*, T. 12165 (29 May 2007).

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

<sup>318</sup> Milomir Savčić, T. 15235–15237 (12 Sept 2007).

<sup>319</sup> *Ibid.*, T. 15239–15240 (12 Sept 2007).

<sup>320</sup> *Ibid.*, T. 15240 (12 Sept 2007).

(b) The Drina Corps

134. The Drina Corps headquarters was established first in Han Pijesak and was later moved to Vlasenica, where it was located during July 1995.<sup>321</sup> The Drina Corps IKM in July 1995 was established initially at Pribićeovac and later moved to Krivače, which was located between Han Pijesak and Žepa.<sup>322</sup>

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

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

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

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

<sup>324</sup> Also called Višegrad Brigade. *Ibid.*

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

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

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

(i) The Command

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

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

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

(ii) The Security Organ

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

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

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

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

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

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

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

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

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

<sup>335</sup> Nedo Blagojević, T. 22264 (17 June 2008).

<sup>336</sup> Svetozar Kosorić, T. 33786 (30 June 2009).

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

(iii) The Military Police

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

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

(c) The Zvornik Brigade

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

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

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

<sup>339</sup> See *supra*, paras. 120–126.

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

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

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

hamlet of Delići (“Kitovnice IKM”), 15 kilometres from the Standard Barracks, in the direction of the village of Orahovac.<sup>343</sup>

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

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

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

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

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

<sup>345</sup> Ex. 7D00622, “Diagram of Zvornik Brigade Structure”.

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

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

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

<sup>349</sup> Miodrag Dragutinović, T. 12567–12568 (13 June 2007).

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

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

(i) The Command

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

148. Directly subordinated to **Pandurević** as the Brigade Commander were also Captain Sreten Milošević, the Assistant Commander for Logistics<sup>353</sup>; Major Nenad Simić, the Assistant Commander for Morale, Religious and Legal Affairs; and **Drago Nikolić**, the Assistant Commander for Security, with the position sometimes referred to as Chief of Security.<sup>354</sup>

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

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

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

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

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

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

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

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

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

152. The Staff of the Zvornik Brigade, which accounted for roughly 50 or 60 percent of the Brigade Command, consisted of an organ for operations and training, an intelligence organ, an organ for recruitment and personnel, organs for combat arms, including the Chief of Engineering, and the office.<sup>361</sup> Obrenović as the Chief of Staff headed the Organs of the Staff. Members of the Staff directly subordinated to the Chief of Staff were Duško Vukotić, the Chief of Intelligence; Major Miodrag Dragutinović, the Chief of Operations and Training<sup>362</sup>; Mihajlo Galić, the Chief for Personnel Affairs; Dragan Jokić, the Chief of Engineering; and Milosav Petrović, the Chief of Communications.<sup>363</sup>

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

<sup>357</sup> *Ibid.*

<sup>358</sup> *Ibid.*

<sup>359</sup> PW-168, T. 15747 (closed session) (25 Sept 2007).

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

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

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

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

(ii) The Security Organ

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

154. **Nikolić** was assisted by Lieutenant Milorad Trbić.<sup>367</sup> **Nikolić**’s tasks as Security Organ of the Brigade were: as Command Organ of the Brigade he was in charge of staff security tasks, specialist’s control of the Military Police, and criminal proceedings<sup>368</sup>; while his second field of tasks, related to his specialty, was counter-intelligence.<sup>369</sup>

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

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

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

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

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

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

<sup>369</sup> Petar Vuga, T. 23284 (4 July 2008).

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

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



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

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

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

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

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

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

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

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

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

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

(iii) The Military Police

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

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

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

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

<sup>378</sup> PW-168, T. 15759 (closed session) (25 Sept 2007).

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

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

<sup>381</sup> Nebojša Jeremić, T. 10422–10443 (24 Apr 2007)

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

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

<sup>384</sup> Nebojša Jeremić, T. 10418–10419 (24 Apr 2007).

<sup>385</sup> *Ibid.*, T. 10421 (24 Apr 2007).

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

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

(iv) The Engineering Company

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

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

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

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

<sup>387</sup> *Ibid.*, T. 10419–10420 (24 Apr 2007).

<sup>388</sup> *Ibid.*, T. 10420 (24 Apr 2007).

<sup>389</sup> *Ibid.*, T. 10420, 10444–10445 (24 Apr 2007).

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

<sup>391</sup> Damjan Lazarević, T. 14434–14435 (29 Aug 2007).

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

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

<sup>394</sup> Damjan Lazarević, T. 14434 (29 Aug 2007).

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

(v) The Podrinje Detachment a.k.a. Drina Wolves<sup>397</sup>

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

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

(vi) The Duty Operations Officer and the Reporting Process

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

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

<sup>396</sup> *Ibid.*, T. 14438 (29 Aug 2007).

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

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

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

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

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

<sup>402</sup> Miodrag Dragutinović, T. 12620–12621 (14 June 2007).

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

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

<sup>405</sup> Vinko Pandurević, T. 32397 (3 Mar 2009).

<sup>406</sup> Sreten Milošević, T. 33963 (15 July 2009).

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

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

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

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

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

<sup>408</sup> PW-168, T. 16165 (closed session) (10 Oct 2007).

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

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

<sup>411</sup> Miodrag Dragutinović, T. 12763–12766 (18 June 2007).

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

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

<sup>414</sup> Miodrag Dragutinović, T. 12624 (14 June 2007).

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

<sup>416</sup> Miodrag Dragutinović, T. 12626 (14 June 2007).

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

<sup>418</sup> PW-168, T. 16167 (closed session) (10 Oct 2007).

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

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

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

## 2. The Civilian Police (MUP Forces)

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

<sup>419</sup> PW-168, T. 16167 (closed session) (10 Oct 2007).

<sup>420</sup> *Ibid.*, T. 16169 (closed session) (10 Oct 2007).

<sup>421</sup> *Ibid.*, T. 16168 (closed session) (10 Oct 2007).

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

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

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

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

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

(a) The Special Police Brigade (SBP)

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

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

<sup>427</sup> Dragan Nesković, T. 27450–27451 (28 Oct 2008).

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

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

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

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

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

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

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

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

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

(b) The 2nd Šekovići Detachment

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

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

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

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

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

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

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

<sup>440</sup> Predrag Čelić, T. 13458 (28 June 2007).

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

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

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

<sup>444</sup> Predrag Čelić, T. 13461 (28 June 2007).

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



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

(c) The Jahorina Recruits

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

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

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

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

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

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

<sup>450</sup> PW-160, T. 8569 (private session) (9 March 2007).

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

<sup>452</sup> Mendeljev Đurić, T. 10797 (1 May 2007).

<sup>453</sup> PW-160, T. 8572–8573 (9 Mar 2007).

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

<sup>455</sup> PW-160, T. 8578 (9 Mar 2007).

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

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

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

<sup>456</sup> Dragan Nesković, T. 27415 (27 Oct 2008), T. 27451 (28 Oct 2008).

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

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

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

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

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

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

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

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

<sup>465</sup> Nenad Filipović, T. 26984 (10 Oct 2008).

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

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

(e) Re-subordination of MUP Units to VRS

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

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

### 3. The Civilian Protection

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

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

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

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

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

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

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

<sup>474</sup> *Ibid.*, BT. 7862 (20 Apr 2004).

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

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

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

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

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

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

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

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

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

<sup>479</sup> *Ibid.*, BT. 7864–7866 (20 Apr 2004).

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

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

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

<sup>483</sup> *Ibid.*

<sup>484</sup> *Ibid.*, BT. 7867 (20 Apr 2004).

<sup>485</sup> *Ibid.*

<sup>486</sup> *Ibid.*, BT. 7875 (20 Apr 2004).

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

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

#### **1. Relation between UNPROFOR and the Parties to the Conflict**

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

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

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

<sup>488</sup> *Ibid.*, BT. 7891 (20 Apr 2004).

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

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

<sup>491</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 40.

<sup>492</sup> Joseph Kingori, T. 19156 (12 Dec 2007).

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

<sup>494</sup> Pieter Boering, T. 1881 (19 Sept 2006), T. 2029 (22 Sept 2006).

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

<sup>496</sup> Pieter Boering, T. 1882 (19 Sept 2006).

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

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

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

194. On 31 December 1994, a new Agreement on Cessation of Hostilities was signed between the VRS and the ABiH.<sup>504</sup> The agreement set out the principles of free movement for UNPROFOR and other international organisations, particularly the UNHCR.<sup>505</sup> The practical details of these principles were further negotiated between UNPROFOR and the VRS, resulting in the Agreement on the Principles of Freedom of Movement on 31 January 1995.<sup>506</sup>

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

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

<sup>499</sup> Pieter Boering, T. 1874 (19 Sept 2006).

<sup>500</sup> *Ibid.*, T. 1869, 1873–1874 (19 Sept 2006).

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

<sup>502</sup> Pieter Boering, T. 1875 (19 Sept 2006).

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

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

<sup>505</sup> *Ibid.*, para. 5.

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

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

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

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

196. An UNPROFOR report to the UN Headquarters in New York covering the first two months of 1995 reveals that UNPROFOR was also frustrated with the behaviour of the Bosnian Government and the ABiH, which it considered to be acting with increasing intransigence towards the peace process despite their acceptance of the Agreement on Cessation of Hostilities of 31 December 1994.<sup>510</sup> The ABiH had imposed restrictions on UNPROFOR’s movements, particularly west of the Srebrenica enclave and the area around Tuzla Air Base, and an unprecedented number of ABiH fuel and supply convoys had been observed in the region.<sup>511</sup> Judging from the build-up of troops and logistics, UNPROFOR assessed that the ABiH was preparing an offensive.<sup>512</sup> UNPROFOR also considered the actions of the Bosnian Muslims to be “designed in part to convince the international community that the [Agreement on Cessation of Hostilities of 31 December 1994 was] not working, with the aim of discrediting Bosnian Serbs”.<sup>513</sup> The same report also observed that the “Serb restrictions, on the other hand, have eased considerably, although tight controls are still imposed on fuel deliveries to the enclaves. It must, however, be kept in mind that UNPROFOR has no access to Serb-controlled areas.”<sup>514</sup>

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

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

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

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

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

<sup>513</sup> *Ibid.*

<sup>514</sup> *Ibid.*, p. 5.

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

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

198. On 5 March 1995, a meeting took place between General Rupert Smith, Commander of UNPROFOR Bosnia-Herzegovina,<sup>522</sup> and General Ratko Mladić, General Zdravko Tolimir, and Nikola Koljević, Vice-President of RS.<sup>523</sup> Koljević and Mladić expected that the BiH would re-engage in war<sup>524</sup> and opined that the UN was contributing to the problem because UNPROFOR was supplying the enclaves and permitting the ABiH to conduct operations against the Bosnian Serbs.<sup>525</sup> Mladić also discussed the effect of international sanctions on the Bosnian Serbs and threatened a blockade of all the enclaves if sanctions were not lifted.<sup>526</sup> After visiting Srebrenica, Smith met with

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

<sup>516</sup> Vincent Egbers, T. 2859–2860 (20 Oct 2006).

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

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

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

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

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

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

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

<sup>524</sup> Rupert Smith, T. 17474 (5 Nov 2007).

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

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



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

## 2. Directive 7 and 7/1

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

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

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

<sup>528</sup> Rupert Smith, T. 17482 (5 Nov 2007).

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

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

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

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

<sup>533</sup> *Ibid.*

<sup>534</sup> *Ibid.*

<sup>535</sup> *Ibid.*

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

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

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

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

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

[...]

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

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

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

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

<sup>540</sup> *Ibid.*, p. 7.

<sup>541</sup> *Ibid.*, pp. 7–8.

<sup>542</sup> *Ibid.*, pp. 8–14.

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

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

<sup>545</sup> *Ibid.*, p. 14.

<sup>546</sup> *Ibid.*, p. 14.

200. Directive 7 was qualified as a state secret.<sup>547</sup> According to VRS rules, such documents were to be kept in a special safe.<sup>548</sup> Directive 7 was kept in **Miletić**'s "strong box" at the Main Staff.<sup>549</sup> Pursuant to the decision of the Supreme Commander,<sup>550</sup> the Directive was forwarded to the corps by the Chief of Staff of the Main Staff, Manojlo Milovanović, by letter dated 17 March 1995.<sup>551</sup>

201. On 20 March 1995, the Drina Corps brigades received the Drina Corps Order for defence and active combat operations, Operative No. 7, signed by **Živanović**,<sup>552</sup> informing the brigade commands<sup>553</sup> about the upcoming tasks, strategic objectives, and long-term goals that were included and described in Directive 7.<sup>554</sup> It was effectively the Drina Corps taking Directive 7 and adapting it to its own operations.<sup>555</sup> In its introductory part, the order reiterates the wording that appears in Directive 7: "By planned and well-thought-out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and **Žepa**."<sup>556</sup> The order refers to liberating the Drina Valley region and tasks the Drina Corps to carry out "complete physical separation of Srebrenica from **Žepa** [...] as soon as possible, preventing even communication between individuals in the two enclaves".<sup>557</sup>

<sup>547</sup> *Ibid.*, p. 2.

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

<sup>549</sup> Ljubomir Obradović, T. 28343 (17 Nov 2008).

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

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

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

<sup>553</sup> Milenko Lazić, T. 21819 (5 June 2008).

<sup>554</sup> *Ibid.*, T. 21818–21822 (5 June 2008).

<sup>555</sup> Vinko Pandurević, T. 31430–31431 (13 Feb 2009).

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

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

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

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

### 3. Build-up to Military Offensive

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

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

<sup>559</sup> *Ibid.*, pp. 1–2.

<sup>560</sup> *Ibid.*, p. 2.

<sup>561</sup> *Ibid.*, pp. 3–4.

<sup>562</sup> *Ibid.*

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

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

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

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

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

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

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

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

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

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

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

<sup>571</sup> Slavko Kralj, T. 29309–29311 (5 Dec 2008).

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

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

208. At the end of May 1995, Živanović, the Drina Corps Commander, ordered the Zvornik, Bratunac, and Skelani Brigades to prevent the ABiH from entering the area of Zeleni Jadar “after the UNPROFOR leaves their outpost at Zeleni Jadar”.<sup>581</sup> On 2 June 1995, Živanović issued a further order to the Command of the Bratunac Brigade and the Commander of the Drina Wolves<sup>582</sup>

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

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

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

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

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

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

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

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

<sup>580</sup> Indictment, para. 52.

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

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

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

209. From the end of May or the beginning of June 1995, the number of Bosnian Muslims carrying weapons increased.<sup>589</sup> DutchBat observed that the ABiH had new uniforms and better weapons<sup>590</sup> but “sort of turned a blind eye and allowed for it, if Muslim fighters, armed Muslim fighters walked around with Kalashnikovs”.<sup>591</sup> Around the end of May and in June, the ABiH carried out several attacks and sabotage operations.<sup>592</sup> There was also a build-up of VRS forces, especially in the southern part of the Srebrenica enclave.<sup>593</sup>

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

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

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

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

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

<sup>588</sup> Robert Franken, T. 2455 (16 Oct 2006).

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

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

<sup>591</sup> Pieter Boering, T. 2116 (25 Sept 2006).

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

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

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

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

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

<sup>595</sup> Cornelis Nicolai, T. 18461 (29 Nov 2007).

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

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

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

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

<sup>600</sup> Momir Nikolić, T. 32965 (21 Apr 2009).

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

<sup>602</sup> *Ibid.*



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

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

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

#### 4. Regulation of Convoys in the RS

##### (a) Procedures in 1993 and 1994

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

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

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

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

<sup>606</sup> Drazen Erdemović, T. 10937 (4 May 2007).

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

<sup>608</sup> Drazen Erdemović, T. 10937 (4 May 2007).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Regulation of UNPROFOR Convoys in 1995

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

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

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

<sup>621</sup> *Ibid.*, p. 1.

<sup>622</sup> Slavko Kralj, T. 29258 (4 Dec 2008).

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

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

<sup>625</sup> Slavko Kralj, T. 29273, 29287 (4 Dec 2008).

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

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

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

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

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

<sup>631</sup> Slavko Kralj, T. 29259 (4 Dec 2008).

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

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

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

<sup>633</sup> See *supra*, paras. 214–215.

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

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

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

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

(c) Regulation of Humanitarian Convoys in 1995

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

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

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

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

<sup>638</sup> See *supra*, paras. 214–215.

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

<sup>640</sup> Slavko Kralj, T. 29295 (4 Dec 2008).

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

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

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

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

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

<sup>644</sup> *Ibid.*, Art. 6.

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

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

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

<sup>648</sup> Slavko Kralj, T. 29299 (4 Dec 2008).

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

<sup>650</sup> See *supra*, paras. 214–215.

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

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

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

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

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

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

<sup>654</sup> Slobodan Kosovac, T. 30418 (20 Jan 2009).

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

<sup>656</sup> *See supra*, para. 222.

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

(d) Regulation of Medical Convoys in 1995

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

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

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

<sup>659</sup> Slavko Kralj, T. 29288 (4 Dec 2008).

<sup>660</sup> *Ibid.*, T. 29287–29288, 29293 (4 Dec 2008).

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

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



(e) Checking of Convoys

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

5. Restrictions of Convoys and Humanitarian Situation in the Enclaves

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

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

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

<sup>665</sup> PW-138, T. 3797–3798 (8 Nov 2006).

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

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

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

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

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

228. According to DutchBat officers, in early March 1995 the humanitarian situation worsened in the Srebrenica enclave when convoys were increasingly denied clearance. Food and medical supplies were significantly reduced and occasionally refused and the stocks in their warehouse in Srebrenica became depleted.<sup>671</sup> Even if permission for passage had been granted, convoys were regularly blocked by the VRS along the route and sent back<sup>672</sup> and fewer and fewer supply convoys arrived.<sup>673</sup> The UNPROFOR report on the implementation of the Agreement on the Cessation of the Hostilities noted that freedom of movement for UNPROFOR convoys through VRS-held territory was restricted, with all fuel and some fresh-food convoys blocked, and that the stock levels in all the eastern enclaves, including Srebrenica, was “critical”.<sup>674</sup> UNHCR reported that the amount of food aid delivered to Srebrenica in March was practically the same as it had been in February.<sup>675</sup> In March 1995, UNHCR also managed to get medical supplies into Srebrenica for the first time since November 1994.<sup>676</sup> The Srebrenica hospital also received medical equipment and some other items

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

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

<sup>672</sup> Cornelis Nicolai, T. 18456–18457 (29 Nov 2007). Franken testified he knew of one UNHCR convoy “that was sent back by UNHCR because they had to give the Bosnian Serb check-point diesel fuel or something, and they refused that and returned.” Robert Franken, T. 2446 (16 Oct 2006). *See also* Momir Nikolić, T. 33294 (27 Apr 2009).

<sup>673</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 52. *See also* Johannes Rutten, T. 5230–5232 (7 Dec 2006), (Rutten estimated that in Srebrenica two UNHCR convoys arrived in January, one or two in February, one in late March, none in April, one in May, and none in June).

<sup>674</sup> Ex. 5D00728, “Report on the implementation of the Cessation of Hostilities Agreement during March 1995”, paras. 6, 12. *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 53. For details on convoys approved in March 1995, *see, e.g.*, Ex. 5D01312, “VRS Main Staff - Information on approved and non-approved convoys, signed by Miletić, 10 March 1995”; Ex. 5D00909, “Bratunac Brigade regular combat report to the Drina Corps, signed by Slavko Ognjenović, 21 March 1995”; Ex. 5D00911, “Bratunac Brigade regular combat report to the Drina Corps, signed by Slavko Ognjenović, 25 March 1995”; Ex. 5D01314, “VRS Main Staff notification to the UNPROFOR Command regarding UNPROFOR convoys, signed by Milovanović, 29 March 1995”. For details of refused convoys, *see, e.g.*, Ex. P02531 “VRS Main Staff document to the notification to Drina Corps regarding UNPROFOR convoys, type-signed Miletić, 10 March 1995”; Ex. P03924, “Document from VRS Main Staff to the UNPROFOR Command, signed by Milovanović, 31 March 1995”. *See also* Ex. 5D01447, “Stipulations concerning convoy-related documents, 2 June 2009”, Table 3.

<sup>675</sup> Ex. P04145, “UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995”, p. 21 (reflecting 479 MT in February and 482 MT in March, out of the 678 MT monthly target); Ex. 5D01411, “Review of humanitarian aid delivered to Bosnian enclaves”. According to the UNPROFOR report on the implementation of the Agreement on the Cessation of the Hostilities, in March 1995, UNHCR met 93% of its food-aid target for Srebrenica. Ex. 5D00728, “Report on the implementation of the Cessation of Hostilities Agreement during March 1995”, para. 7.

<sup>676</sup> Ex. P04125, “UN outgoing code cable from Akashi to Annan, 22 March 1995”.

through air drops and from DutchBat, but nevertheless faced a shortage of essential medical supplies.<sup>677</sup>

229. DutchBat received supplies through convoys, but from March or April, fewer and fewer convoys were approved.<sup>678</sup> The VRS categorically denied communication equipment, weapons, ammunition, and spare parts from even being placed on the requested re-supply list.<sup>679</sup> Re-supply convoys of fuel became more restricted from mid-February, with only one fuel convoy allowed until June.<sup>680</sup> Due to a fuel shortage, DutchBat had to discontinue motor patrols and could only do patrols by foot.<sup>681</sup> The fuel shortage, in combination with a shortage of medical supplies, also caused DutchBat to stop providing medical care through its mobile Red Cross points to the civilian population in several villages in the Srebrenica enclave.<sup>682</sup> DutchBat had a catering contract with Hotel Fontana<sup>683</sup> but nevertheless faced shortages of fresh food and water, which caused to diminish the health conditions of DutchBat troops.<sup>684</sup> The situation for UNPROFOR in the Srebrenica enclave and the other enclaves became such that UNPROFOR had to develop a detailed military plan for re-supply by air.<sup>685</sup> DutchBat troops became progressively depleted, as officers who left the enclave were denied re-entry by the Bosnian Serbian authorities.<sup>686</sup> The number of DutchBat troops

<sup>677</sup> PW-106, T. 3941–3942 (15 Nov 2006), T. 4004–4005 (closed session), 4048 (closed session) (16 Nov 2006).

<sup>678</sup> Cornelis Nicolai, T. 18457 (29 Nov 2007); Eelco Koster, T. 3034–3035 (26 Oct 2006).

<sup>679</sup> Eelco Koster, T. 3034–3035 (26 Oct 2006); Robert Franken, T. 2443–2444, 2447–2448 (16 Oct 2006); Leendert van Duijn, T. 2262–2263 (27 Sept 2006). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 48.

<sup>680</sup> Eelco Koster, T. 3034–3035, 3097 (26 Oct 2006); Robert Franken, T. 2445 (16 Oct 2006). *See also* Cornelis Nicolai, T. 18456 (29 Nov 2007) (noting that one convoy carrying fuel was able to enter the enclave in March; however, all subsequent fuel convoys were refused).

<sup>681</sup> Cornelis Nicolai, T. 18459 (29 Nov 2007); Robert Franken, T. 2446–2447 (16 Oct 2006); Leendert van Duijn, T. 2261 (27 Sept 2006). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 55. DutchBat's daily fuel requirement was between 8,000 and 9,000 litres. By July, DutchBat minimised usage to no more than 250 litres a day. Robert Franken, T. 2447 (16 Oct 2006), T. 2656–2658 (18 Oct 2006). During March and April, DutchBat was forced to use UNHCR's fuel. Robert Franken, T. 2638–2639, 2658 (18 Oct 2006); Eelco Koster, T. 3097 (26 Oct 2006).

<sup>682</sup> Robert Franken, T. 2643–2644 (18 Oct 2006).

<sup>683</sup> Pieter Boering, T. 2108 (25 Sept 2006); Ex. 5D00525, "Catering Contract between Hotel Fontana and DutchBat, 18 March 1995"; Nedeljko Ilić, T. 29391–29394 (9 Dec 2008) (testifying that he supplied DutchBat with food and drinks once or twice a week, pursuant to the Hotel Fontana catering contract); Ex. 5D01173, "Hotel Fontana Invoice for DutchBat, 5 May 1995"; Ex. P04074, "Hotel Fontana Invoice for DutchBat, 2 May 1995"; P04073, "Hotel Fontana Invoice for DutchBat, signed by Nedeljko Ilić, 17 February 1995". The invoices concern mainly drinks.

<sup>684</sup> Leendert van Duijn, T. 2260–2262 (27 Sept 2006). Water purification required fuel. *Ibid.*; Vincent Egbers, T. 2919 (20 Oct 2006); Robert Franken, T. 2447 (16 Oct 2006).

<sup>685</sup> Cornelis Nicolai, T. 18454–18456 (29 Nov 2007). Preparations for the plan started in March. The plan was ready at the end of April. *Ibid.*

<sup>686</sup> Pieter Boering, T. 1872 (19 Sept 2006); Leendert van Duijn, T. 2261 (27 Sept 2006), T. 2407 (29 Sept 2006); Cornelis Nicolai, T. 18457–18458 (29 Nov 2007); Robert Franken, T. 2449–2450 (16 Oct 2006); Johannes Rutten, T. 4960 (4 Dec 2006); Vincent Egbers, T. 2708 (18 Oct 2006). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 48. However, in January and February, some UNPROFOR requests for movement of UN personnel were approved: Ex. P03999, "From the VRS Main Staff to the UNPROFOR Command regarding convoys, signed by Milovanović, 22 February 1995"; Ex. P04001, "From the VRS Main Staff to the UNPROFOR Command regarding convoys, signed by Milovanović, 25 February 1995". *But see, e.g.*, Ex. 5D01310, "Information on non-approved convoys, addressed to the UNPROFOR Command, type-signed Milovanović, 20 February 1995", which refused the passage of convoys of some goods and the movement of an individual from Srebrenica to Sarajevo and back.

decreased significantly during the first part of 1995 to a level where DutchBat was unable to perform its tasks satisfactorily.<sup>687</sup>

230. From the beginning of April, Momir Nikolić, Chief of Security and Intelligence of the Bratunac Brigade, required some humanitarian convoys to enter Srebrenica only in his presence and with his permission.<sup>688</sup> Particularly in the period preceding the attack on Srebrenica, Momir Nikolić often received oral orders by telephone relating to convoys according to which he was to deny passage of convoys contrary to prior written Main Staff notifications.<sup>689</sup>

231. According to UNHCR reports, slightly more food aid was delivered to Srebrenica in April than in March.<sup>690</sup> UNPROFOR reported that UNHCR aid deliveries were “generally good” with about 80% of the target being met.<sup>691</sup> However, several fuel convoys for UNPROFOR were

<sup>687</sup> Robert Franken, T. 2449–2450 (16 Oct 2006) (testifying that DutchBat troops in Srebrenica decreased from 318 in January 1995 to 147 in July); Cornelis Nicolai, T. 18458 (29 Nov 2007) (testifying that the number of UNPROFOR soldiers in the enclave ultimately decreased from about 600 to about 350); Pieter Boering, T. 1872 (19 Sept 2006) (testifying that the number of DutchBat troops from January to July 1995 decreased from 400 or 450 to 300 or fewer). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 48.

<sup>688</sup> Ex. P02678, “VRS Main Staff document to the Drina, Sarajevo Romanija and East Bosnia Corps, signed by Milovanović, 2 April 1995”. This notification is signed by Milovanović, but contains a hand-written note signed by Momir Nikolić, stating that no convoy from the ICRC or from MSF could enter Srebrenica without both his permission and presence; Momir Nikolić, T. 33291, 33293–33294 (27 Apr 2009). Nikolić testified that he was either ordered or told to do so as he “most definitely” did not decide on the instruction on his own initiative. *Ibid.*, T. 33293 (27 Apr 2009).

<sup>689</sup> Momir Nikolić, T. 33291, 33294 (27 Apr 2009).

<sup>690</sup> Ex. P04145, “UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995”, p. 21; Ex. 5D01411, “Review of humanitarian aid delivered to Bosnian enclaves”.

<sup>691</sup> Ex. 6D00200, “UN Daily Report, 6 July 1995”, para. 4; Ex. P04126, “UN outgoing code from Akashi to Annan, 18 April 1995”. *See also, e.g.*, Ex. P02678, “VRS Main Staff document to the Drina, Sarajevo-Romanija and East Bosnia Corps, signed by Milovanović, 2 April 1995” (which consented to the passage of various vehicles, including those of MSF and the ICRC, carrying a cargo including school/office supplies, soap, toothpaste, toothbrushes, shampoo, coffee, matches, personal luggage, medicines, and cigarettes); Ex. 5D00914, “Bratunac Brigade regular combat report, 4 April 1995” (which notes that the ICRC was granted passage with a cargo of mail and seed potatoes); Ex. 5D00915, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 5 April 1995” and Ex. 5D00916, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 8 April 1995” (both noting that convoy movements took place without difficulties as per the defined plan); Ex. 5D00918, “Regular Combat Report from the Bratunac Brigade to Drina Corps, signed by Slavko Ognjenović, 11 April 1995”; Ex. 5D00917, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 15 April 1995” (noting that two military observers left Srebrenica and that the ICRC entered with a cargo of mail and that a Russian UNHCR convoy entered with a cargo of food and hygiene items); Ex. 5D00921, “Report from Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 22 April 1995” (noting that a Russian convoy entered Srebrenica carrying flour); Ex. P02651a, “VRS Main Staff document to Military Post 7111, signed by Miletić, 14 April 1995” (notifying the Zvornik Military Post of approved UNPROFOR convoys, including for Srebrenica a convoy on 15 April carrying, *inter alia*, 9.5 tonnes of dry/canned food, 4 tonnes of frozen food, and 8.7 tonnes of cold/canned food and 16 personnel. Not approved for 15 April were one convoy to Žepa consisting of three jeeps and eight trucks, another convoy to Žepa with the purpose of relieving UN military observers, and three convoys to Srebrenica carrying personnel, diesel fuel, technical and medical goods, kerosene, and machine oil.); Ex. P03987 “VRS Main Staff document to the UNPROFOR Command, signed by Miletić, 18 April 1995” (approving the passage of convoys to Srebrenica on 19 April carrying personal equipment, equipment for vehicles, daily meals for the drivers, mail and other material, food, a water trailer, a container with medical supplies, wood to improve living conditions in the base, nails, a Xerox machine, one satellite telephone system, cables and connectors for signalling equipment, roofing material, office supplies, cleaning material, toilet paper, television sets, and video recorders); Ex. P02689, “VRS Main Staff document to the Drina Corps, signed by Milovanović, 7 April 1995” (which approved the passage of several

refused<sup>692</sup> and at least four convoys carrying food, construction materials, humanitarian aid, and medical equipment were refused passage to Srebrenica.<sup>693</sup> Two regular combat reports from the Zvornik Brigade, dated 2 and 4 April respectively, show the VRS confiscated items from convoys.<sup>694</sup> The confiscated items comprised a field sterilizer, laundry detergent, floor cleaner, shampoo, towels, beer, wine, vodka, coffee, cigarettes, lighters, and rolling papers.<sup>695</sup> It is not clear whether the confiscated items had previously been approved for passage.<sup>696</sup>

232. Following a letter from Akashi to Karadžić, on 10 April the transport of medical supplies to DutchBat was resumed, after which the situation regarding medical stock improved and DutchBat resumed its medical aid to the local population at full capacity.<sup>697</sup> However, the re-supply was discontinued again at the end of April.<sup>698</sup>

233. In early May, UNHCR enjoyed “fairly regular access” to the eastern enclaves.<sup>699</sup> Following the NATO air strikes on 25 May 1995, UNHCR was forced to cancel some convoys for Goražde

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convoys carrying food, clothing, heating oil, pads, and matches but did not approve, *inter alia*, material for the Swedish construction project, clapboards, and certain food items ).

<sup>692</sup> Ex. P02687, “Document from the VRS Main Staff, signed by Milovanović, 7 April 1995” (listing refused UNPROFOR convoys and teams, including several vehicles and personnel who were supposed to transport diesel fuel on 8 April to Srebrenica because “they had 79 tonnes of fuel with [Naser] Orić”); Ex. P02651a, “VRS Main Staff document to military post 7111, signed by Miletić, 14 April 1995”, p. 3 (providing a list of refused UNPROFOR convoys, including the transport of diesel fuel to Srebrenica); Ex. P03989, “VRS Main Staff document to the Command of the military posts 7111 and 7598, signed by Miletić, 18 April 1995” (refusing passage of two convoys that were meant to carry diesel, kerosene, and machine oil to Srebrenica).

<sup>693</sup> Ex. P02687, “VRS Main Staff document to the Sarajevo-Romanija and Drina Corps, signed by Milovanović, 7 April 1995” (refusing the movement of UNPROFOR convoys that were to contain fuel, kerosene, gas, humanitarian aid (beds, food, clothing, medicine, school supplies), oil, solvents and other vehicle maintenance supplies, dry rations, people, hospital beds, an x-ray machine, signalling equipment, office supplies and cleaning goods); Ex. P02651a, “Document from the VRS Main Staff to military post 7111, signed by Miletić, 14 April 1995”, pp. 3–4 (which refused passage for convoys with cargoes of technical and medical goods as well as kerosene and machine oil); Ex. P02689, “VRS Main Staff document to the Drina Corps, signed by Milovanović, 7 April 1995” (in which the VRS “concur[red] with the implementation of the permits of the Coordinating Body” pertaining to UNHCR’s weekly plan, for delivery to Srebrenica, of 72 MT of flour, beans, and pads on 8 April; 72 MT of flour, baby milk, yeast, pads, clothes, and matches for 11 April; 72 MT of flour and 5,600 litres of heating oil for 12 April; and for Žepa, 40 MT of flour, beans, and two barrels of oil on 12 April. Not approved was material for the Swedish construction project for Srebrenica on 9, 11, and 13 April until receipt of the position on this request of the Committee for Cooperation. Also not approved were beef, salt, oil, and clapboards for Srebrenica enclave on 8–9 April and 11–13 April).

<sup>694</sup> Ex. 5D00320, “Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 2 April 1995”, para. 10; Ex. 5D00321, “Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 4 April 1995”, para. 10.

<sup>695</sup> *Ibid.*

<sup>696</sup> See Ex. 5D00320, “Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 2 April 1995”; Ex. 5D00321, “Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 4 April 1995”; Ex. 5D00605, “VRS Main Staff Order regarding movement of humanitarian aid, signed by Milovanović, 31 August 1994”. The Drina Corps combat report of 4 April does not report the confiscated goods to the Main Staff. Ex. 5D00722, “Drina Corps Regular Combat Report, signed by Milenko Živanović, 4 April 1995”.

<sup>697</sup> Ex. 5D00053, “NIOD Report Chapter 4. The emergency stock”, p. 4. According to the report, upon the resumption of the transport of medical supplies there were hardly any shortages. Supplies of some articles were even “much too high”. *Ibid.*

<sup>698</sup> Ex. P00510, “UNMO daily sitrep, 11 July 1995”, p. 4. According to the report, DutchBat was not able to offer much help to the wounded “because their supplies ha[d] not been coming in since the end of April”. *Ibid.*

<sup>699</sup> Ex. 6D00200, “UN Daily Report, 6 July 1995”, para. 4.

due to security reasons and VRS restrictions, however, access to Srebrenica and Žepa was “unhindered”.<sup>700</sup>

234. In June the humanitarian aid access to Srebrenica was “sporadic”, with UNHCR only meeting about 30% of its aid target to the enclave.<sup>701</sup> On 2 June 1995, the Main Staff informed the relevant command of the Military Police of the weekly convoy plan of UNHCR.<sup>702</sup> The approved convoys for the Srebrenica enclave included nine trucks carrying mostly flour and oil for 3 June and 6 June, and ten trucks also carrying flour, oil, and other foodstuff for 7 June.<sup>703</sup> The Main Staff did not approve one truck of school supplies and the Swedish construction project for Srebrenica.<sup>704</sup> On 12 June, the Main Staff sent a notification to the Drina Corps and the Eastern Bosnia Corps concerning the approved UNHCR convoys for that week. For Srebrenica, the approved convoys included for 13 June, eight trucks with flour, fish, oil, sugar, and soap; for 14 June, ten trucks with mostly flour, and to a lesser extent beans, powdered milk and biscuits; and for 15 June, two trucks for the Swedish construction project.<sup>705</sup>

235. On 1 July, the Main Staff informed the Zvornik Brigade that the passage of two convoys into Srebrenica had been approved conditionally following an agreement that the trucks would

<sup>700</sup> Ex. 6D00200, “UN Daily Report, 6 July 1995”, para. 4. For information on access of convoys to Srebrenica in the weeks prior to the NATO air strikes, *see, e.g.*, Ex. 5D00924, “Regular Combat Report from the Bratunac Brigade to Drina Corps Command, signed by Slavko Ognjenović, 6 May 1995”, para. 8, which noted that a UNHCR convoy entered Srebrenica carrying 72 tonnes of flour; Ex. 5D00925 “Regular Combat Report from the Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 9 May 1995” para. 7, which noted that a Russian UNHCR convoy entered carrying a cargo of tinned beef, vegetable oil, salt and rat poison; Ex. 5D00926, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, 10 May 1995”, para. 7, which noted that a Russian UNHCR convoy entered Srebrenica carrying a cargo of 74 tonnes of flour and 22 tonnes of beans; Ex. 5D00927, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 16 May 1995”, para. 6, reporting the passage of a convoy carrying a cargo of flour, dry yeast, soap and sanitary towels; Ex. 5D00928 “Regular Combat Report from the Bratunac Brigade to the Drina Corps, type-signed Novica Pajić, 20 May 1995”, para. 8, noting that a Russian UNHCR convoy entered Srebrenica carrying flour; Ex. 5D00929, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 21 May 1995”, para. 8, noting that a UNHCR convoy entered carrying construction material and 200 litres of diesel for the Swedish construction project; Ex. 5D00930, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, 23 May 1995”, para. 7, which noted that a UNHCR convoy entered Srebrenica carrying food.

<sup>701</sup> Ex. P04145, “UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995”, p. 21. In June 1995, Srebrenica received 230 tonnes of food out of a monthly target of 678 tonnes. *Ibid.* *See also* Ex. P04138, “UN daily report from Akashi to Annan, 20 June 1995”, pp. 2, 4 (stating that problems with convoys, both logistics re-supply and UNHCR, continued in many parts of the UNPROFOR area of responsibility. For the eastern enclaves, the VRS cut the number of approved trucks from 56 to 23, the amount of food by 50%, and the amount of fuel by 70%; the VRS rejected passage of two ambulances needed for UN troops and did not allow any troop rotation or reinforcement); Ex. 4D00301, “ABiH 2nd Corps Command Document, signed by Sead Delić, 28 June 1995” (referring to the difficult situation with supplying food to citizens and members of the ABiH).

<sup>702</sup> Ex. P02714, “VRS Main Staff document to Command Military Police, signed by Miletić, 2 June 1995”.

<sup>703</sup> *Ibid.* On 3 June, the trucks were to carry 72 tonnes of which 64 were flour and oil. On 6 June, the nine trucks were to carry 72 tonnes, which included 64 tonnes of flour and 320 boxes of oil. On 7 June, the ten trucks were to carry 72 tonnes, which included 11 tonnes of flour, 769 boxes of oil, 21 tonnes of beans, 1376 boxes of beef, and 18 boxes of bottle nipples.

<sup>704</sup> Ex. P02714, “VRS Main Staff document to Command Military Police, signed by Miletić, 2 June 1995”.

<sup>705</sup> Ex. 5D01429, “VRS Main Staff notification to the Drina Corps and East Bosnia Corps concerning humanitarian convoys, type-signed Miletić, 12 June 1995”, p. 1. One truck of school supplies for Srebrenica for 13 June was not approved. *Ibid.*, p 2.

transport the same amount of humanitarian aid for Zvornik as would be allowed through for the Bosnian Muslims.<sup>706</sup> The Zvornik Brigade was specifically instructed to check the trucks once they arrived in Zvornik to establish that they were carrying humanitarian aid and to inform the Commander of the Main Staff<sup>707</sup> after which instructions regarding the continuation of the convoy would be received.<sup>708</sup> On 3 July, the Main Staff sent a notification to the Drina Corps informing it of the Main Staff's approval of a DutchBat convoy departing from Srebrenica on 4 July. The return of the convoy was not approved.<sup>709</sup>

236. The food stock in the UNHCR warehouse by early July was described in an UNMO report as "almost zero" and "there [was] not even sufficient stock to run the social kitchens to provide one meal a day for the most vulnerable".<sup>710</sup> UNMO, after having visited the markets and small shops around Srebrenica town, reported that the prices of essential commodities were rising and that it was clear that the food situation was very critical since most inhabitants lacked the means to buy the food.<sup>711</sup> UNHCR had three planned convoys per week to Srebrenica, which would cover 65% of the needs of the population, however, the refusal of the VRS to allow into the enclave more than one convoy per week on average meant that less than 25% of the population's needs were met.<sup>712</sup> Medical supplies were low, only estimated to provide for two to four weeks.<sup>713</sup>

237. Humanitarian aid arrived more regularly in Žepa than in Srebrenica<sup>714</sup> and the Bosnian Muslims from Srebrenica went to Žepa for food.<sup>715</sup> A report from the ABiH to the Žepa Municipality reports that UNHCR was providing a "relatively good supply" of humanitarian aid, with an average of 85% of its deliveries reaching Žepa between 1 December 1994 to 15 February

<sup>706</sup> Ex. P02554, "VRS Main Staff Document to the Sarajevo-Romanija and Drina Corps, signed by Miletić, 1 July 1995", p. 3.

<sup>707</sup> See Ljubomir Obradović, T. 28424–28427 (18 Nov 2008).

<sup>708</sup> Ex. P02554, "VRS Main Staff document to the Sarajevo-Romanija and Drina Corps, signed by Miletić, 1 July 1995", p. 3.

<sup>709</sup> Ex. P02556, "VRS Main Staff document to the Drina Corps, signed by Miletić, 3 July 1995".

<sup>710</sup> Ex. P00493, "UNMO Report, 8 July 1995", para. 2(a). While the Bosnian government reported 13 deaths of civilians due to starvation, the UNHCR noted that "although the food situation is precarious, it has not reached a level where the population is facing malnutrition." Ex. 6D00200, "UN Daily Report, 6 July 1995", para. 4. See also Prosecution Adjudicated Facts Decision, Annex, Fact 64 ("By mid-1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the [Srebrenica] enclave was catastrophic").

<sup>711</sup> Ex. P00493, "UNMO Report, 8 July 1995", para. 2(d); Joseph Kingori, T. 19196–19197 (13 Dec 2007). The ABiH reported on 6 July that the first persons dying of starvation had been registered. Ex. P00432, "ABiH 28th Division combat report, signed by Ramiz Bećirović, 6 July 1995", para. 4.

<sup>712</sup> Ex. P00493, "UNMO Report, 8 July 1995", para. 3. See Ex. P04062, "VRS Main Staff notification re humanitarian convoys addressed to Drina Corps, signed by Miletić, 30 June 1995" (concerning the approval of the weekly plan of UNHCR. For Srebrenica, eight trucks were approved with mostly flour and some milk and oil for 4 July. For Žepa, seven trucks were approved for 5 July carrying mostly flour and some milk, beans, and oil. The convoys to Srebrenica on 1 and 5 July were not approved. Also not approved was a truck of school supplies.).

<sup>713</sup> Ex. P00493, "UNMO Report, 8 July 1995", para. 5. Medical evacuations from Srebrenica were granted throughout the first half of 1995. Slavko Kralj, T. 29287–29293 (4 Dec 2008).

<sup>714</sup> PW-155, T. 6829 (5 Feb 2007).

<sup>715</sup> *Ibid.*, T. 6829–6830 (5 Feb 2007); Meho Džebo, Ex. P02486, "92 ter statement" (23 Mar 2007), p. 2, para. 5.

1995.<sup>716</sup> UNPROFOR reported that in March about 80% of UNHCR's food aid target for Žepa was met.<sup>717</sup> According to UNHCR reports, the amount of aid brought into Žepa was 112 tonnes in March; 104 tonnes in April; and 180 tonnes in May (out of a targeted 160 tonnes per month).<sup>718</sup> However, also in Žepa the humanitarian aid eventually decreased.<sup>719</sup>

238. By the end of March, illegal trade in Žepa was so rife and uncontrolled that it was also of concern to the ABiH.<sup>720</sup> It was well-known that UKRCoy members were selling fuel and goods at

<sup>716</sup> Ex. 5D01357, "Supreme Command Staff Report to the Žepa Municipality, type-signed Hasan Muratović, 27 February 1995". The amount of aid achieved (as a percentage) per item is described as follows: leguminous plants 57%; meat/fish/cheese 112%; yeast 40%; rice/flour 109%; powdered milk 62%; oil 114%; salt 120%; and sugar 73%. The Trial Chamber has been presented with evidence of approvals of transfer through VRS held territory. The VRS Main Staff reported at the end of January 1995 that all approved convoys had safely passed through the territory of the Republika Srpska. Ex. 5D01122, "VRS Main Staff Situation Report, signed by Milovanović, 29 January 1995", p. 3; Ex. 5D01123, "VRS Main Staff Document to the RS President and the Corps, signed by Milovanović, 30 January 1995", p. 3; Ex. 5D01124, "VRS Main Staff Document to the 1st and 2nd Krajina, Sarajevo-Romanija and East Bosnia Corps, signed by Milovanović, 31 January 1995". On 2 February, the VRS Main Staff reported that convoys had passed through the Drina Corps area of responsibility pursuant to the plan approved by the Main Staff. Ex. 5D01048, "Drina Corps regular combat report, signed by Milutin Skocajić, 2 February 1995", para. 3. On 22 February, the VRS Main Staff notified three convoys destined for Žepa, which authorised all the food cargo requested by UNPROFOR (with the exception of coffee which was reduced in quantity). Ex. P03999, "VRS Main Staff Document to UNPROFOR, type-signed Milovanović, 22 February 1995". On 25 February, the VRS Main Staff approved a passage of a convoy from Žepa to Sarajevo. Ex. P04001, "VRS Main Staff Document to UNPROFOR, signed by Milovanović, 25 February 1995". On 28 February, the Drina Corps reported to the VRS Main Staff that all planned convoys had passed through the territory of the Republika Srpska without difficulties. Ex. 5D01056, "Drina Corps Regular Combat Report, signed by Milenko Živanović, 28 February 1995", para. 3.

<sup>717</sup> In March 1995, 80% of the aid planned for delivery by the UNHCR to Žepa was delivered and three convoys had been obstructed. Ex. 5D00728, "Report on the Implementation of the Cessation of Hostilities Agreement for March 1995", para. 7. In April, two requests for passage of food (which were coupled with a request for the transportation of UN military police) were refused. On 18 April, two UNPROFOR requests for transportation from Sarajevo to Žepa of UN military policemen for rotation and of technical supplies, food, and drinks, were refused. Ex. P03986, "VRS Main Staff Document to UNPROFOR, signed by Miletić, 17 April 1995"; Ex. P03989, "VRS Main Staff Document to Military Posts 7111 and 7598, signed by Miletić, 18 April 1995". An overview from the Drina Corps Command of allowed quantities of humanitarian aid into Žepa in April showed almost identical quantities of flour, beans, canned beef, cooking oil, and baby milk to those allowed in March, but no deliveries whatsoever of powdered milk, powdered juice, sugar, salt, and dry yeast. Ex. 5D00953, "Drina Corps Report on Breakdown of Humanitarian Aid to the Muslim enclaves for March and April 1995, signed by Slavko Novaković, 3 May 1995". On 4 May, the Drina Corps reported that a UNHCR convoy with nine trucks carrying 72 tonnes of food passed into Žepa. Ex. 5D01070, "Drina Corps regular combat report to the VRS Main Staff, signed by Krsti", 4 May 1995", p. 1. The Main Staff approved a convoy for Žepa for 17 May carrying 26 tonnes of flour, 2.5 tonnes of beans, 156 boxes of beef, 111 boxes of yeast and 3 tonnes of sugar. Ex. 5D00903, VRS Main Staff document, concerning humanitarian convoys, type-signed Manojlo Milovanovic, 12 May 1995". The Rogatica Brigade reported the passage on 17 May of a UNHCR convoy to the Drina Corps. Ex. 5D01257, "Rogatica Brigade Report, signed by Rajko Kušić, 18 May 1995", para. 3. On 19 May, the VRS Main Staff approved a UNHCR convoy to Žepa consisting of 40 tonnes of flour, beans, canned beef, sugar, baby food, and washing powder. Ex. 5D00905, "VRS Main Staff document to the commands of the Drina Corps and East Bosnia Corps, signed by Milovanović, 19 May 1995".

<sup>718</sup> Ex. P04145, "UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995", p. 21; Ex. 5D01411, "Review of humanitarian aid delivered to Bosnian enclaves".

<sup>719</sup> Meho Džebo, Ex. P02486, "92 ter statement" (23 Mar 2007), para. 3; PW-155, T. 6829 (5 Feb 2007); Ex. P04145, "UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995", p. 21; Ex. 5D01411, "Review of humanitarian aid delivered to Bosnian enclaves".

<sup>720</sup> Ex. 5D00223, "Report of ABiH Public Security Service, 4 April 1995". See also Ex. 5D01359, "Letter from ABiH Žepa to the General Staff of the Army requesting instructions re smuggling, signed by Avdo Palić, 31 March 1995".



UKRCoy checkpoints.<sup>721</sup> In order to control the entry of people, vehicles, and goods, the ABiH set up a checkpoint in Brezova Ravan at the entrance of Žepa from the south.<sup>722</sup> The checkpoint was in the vicinity of the UKRCoy checkpoint and was manned by armed Žepa Public Security Station Police (“SJB”).<sup>723</sup> On 30 March, Bosnian Muslim SJB at this checkpoint confiscated illegal goods found during a convoy inspection, which belonged to an UKRCoy major.<sup>724</sup> UNPROFOR exerted enormous pressure on the ABiH to remove the checkpoint.<sup>725</sup>

239. During April, the VRS Main Staff allowed UN staff stationed in Žepa to leave the enclave but not to enter it.<sup>726</sup>

240. Between 7 March and 18 June, the VRS Main staff did not approve any fuel transportation to Žepa.<sup>727</sup> The lack of fuel caused UKRCoy to stop using its generators, which affected its food storage capacity.<sup>728</sup> At the end of May, the food supply situation had reached a “critical point” according to UNPROFOR.<sup>729</sup> On 7 June, the VRS stopped a UNHCR convoy on its way to Žepa for a detailed search after having found ammunition for infantry weapons.<sup>730</sup> When fuel was approved on 18 June, the Rogatica Brigade reported to the Main Staff that it had, with the agreement of

<sup>721</sup> PW-155, T. 6829 (5 Feb 2007); Meho Džebo, T. 9619–9620 (28 Mar 2007), T. 9669 (29 Mar 2007); Louis Fortin, T. 18269–18270 (27 Nov 2007). *See also* Ex. 5D01359, “Letter from ABiH Žepa to the General Staff of the ABiH requesting instructions re smuggling, signed by Avdo Palić, 31 March 1995”.

<sup>722</sup> Ex. 5D00223, “ABiH Public Security Service Report, 4 April 1995”.

<sup>723</sup> *Ibid.*

<sup>724</sup> *Ibid.* The illegal goods included coffee, chocolate, cigarette lighters and cigarette papers.

<sup>725</sup> Ex. 5D00223, “ABiH Public Security Service Report, 4 April 1995”.

<sup>726</sup> In the beginning of April, the VRS Main Staff allowed a UNHCR team to make a working visit to the UKRCoy. Ex. P02678, “VRS Main Staff Document to the Drina, Sarajevo Romanija and East Bosnia Corps, signed by Milovanović, 2 April 1995”, p. 1. On 18 April, passage from Žepa to Sarajevo was approved for one UNMO and a driver. Ex. P03987, “VRS Main Staff document to UNPROFOR, signed by Miletić, 18 April 1995”. At least five requests for transfer to Žepa for rotations were refused in April. On 14 April, the requests for two convoys to Žepa were refused by the VRS Main Staff; one composed of three jeeps and eight trucks, and the other with the purpose of relieving the UNMOs. Ex. P02651a, “VRS Main Staff document to military post 7111, signed by Miletić, 14 April 1995”. On 18 April, two UNPROFOR requests for movement from Sarajevo to Žepa were refused, which would have transported UN military police men for rotation and a certain quantity of technical supplies, food, and drinks. Ex. P03989, VRS Main Staff document to commands of the military posts 7111 and 7598, signed by Miletić, 18 April 1995”. On 22 April, the transfer of UN military personnel into Žepa was refused. Ex. 5D01315, “VRS Main Staff document to the UNPROFOR Command Sarajevo, signed by Milovanović, 22 April 1995”.

<sup>727</sup> Ex. P02956, “Sarajevo Sector Weekly Situation Report, 3 June 1995”, p. 3; Ex. P02497, “VRS Main Staff Report to Military Post 7111, signed by Miletić, 18 June 1995”.

<sup>728</sup> Ex. P02956, “Sarajevo Sector Weekly Situation Report, 3 June 1995”, p. 3. *See also* Rupert Smith, T. 17816 (9 Nov 2007).

<sup>729</sup> Ex. P02956, “Sarajevo Sector Weekly Situation Report, 3 June 1995”, p. 3; Ex. P04132, “Sarajevo Sector Weekly Situation Report, 1 June 1995”, p. 1.

<sup>730</sup> Ex. 5D01259, “Rogatica Brigade Regular Combat Report to the Drina Corps, signed by Rajko Kušić, 8 June 1995”, para. 3. *See also* Ex. 5D01405, “Intercept, 8 June 1995, 17.58 hours”; Ex. P03051, “Order from RS President to Supreme Headquarters of the VRS, signed by Karadžić, 13 June 1995”, para. 2.

UKRCoy, taken five of the ten tonnes of fuel for its own needs.<sup>731</sup> The 18 June convoy also brought long-awaited food and water to UKRCoy.<sup>732</sup>

241. In May, UNHCR delivered 180 tonnes of food aid to Žepa, while the target was 160 tonnes.<sup>733</sup> In June, however, humanitarian aid access to Žepa, like that to Srebrenica, was “sporadic” with UNHCR reaching only about 30% of the aid target. According to the 12 June Main Staff notification to the Drina Corps and the Eastern Bosnia Corps concerning the approved UNHCR convoys for that week, for Žepa, five trucks were approved carrying mostly flour and some beans, fish, soap and sugar.<sup>734</sup> One truck of school supplies and one truck containing oil for saws were not approved.<sup>735</sup> On 21 June, a UNHCR convoy arrived in Žepa, carrying 50 tonnes of mainly food supplies out of the targeted delivery of 160 tonnes for that month.<sup>736</sup>

#### **D. Military Attack on Srebrenica – Krivaja-95**

##### **1. 28 June to 9 July 1995**

242. On 28 June 1995, Radovan Karadžić, President of RS and the Supreme Commander of the VRS, Momčilo Krajišnik, the President of the Bosnian Serb Assembly, and an entourage came to the Drina Corps Command in Vlasenica.<sup>737</sup> General Živanović, the Drina Corps Commander was absent, and Krstić, Chief of Staff of the Drina Corps was summoned to meet Karadžić.<sup>738</sup> Karadžić asked Krstić how much time he needed to set off for Srebrenica.<sup>739</sup> Krstić answered it would take three to five days, depending on the objective.<sup>740</sup> Karadžić said they should try to keep the preparations as short as possible.<sup>741</sup> Krstić told Karadžić that the Drina Corps was short of ammunition, fuel and food, to which Karadžić responded if Krstić put in a request he would be given everything.<sup>742</sup> It was unusual that Karadžić as the Supreme Commander intervened directly

<sup>731</sup> Ex. P02496, “Rogatica Brigade document to the VRS Main Staff, signed by Rajko Kušić, 23 June 1995”.

<sup>732</sup> Ex. P02497, “Main Staff Report to Military Post 7111, signed by Miletić, 18 June 1995”, para. 1. UKRCoy considered the re-supply content which consisted of 525 kg ketchup, 1396 kg potatoes, 150 litres vinegar, and some spicy Malaysian combat rations “unusual”. The convoy reportedly did not carry any meat, sugar, salt, flour, vegetables or fruit. Ex. P02957, “Sarajevo Sector Weekly Situation Report, 24 June 1995”.

<sup>733</sup> Ex. P04145, “UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995”, p. 21.

<sup>734</sup> Ex. 5D01429, “VRS Main Staff notification to the Drina Corps and East Bosnia Corps concerning humanitarian convoys, type-signed Miletić, 12 June 1995”, p. 1.

<sup>735</sup> *Ibid.*, pp. 1–2.

<sup>736</sup> Ex. 6D00200, “UN Daily Report, 6 July 1995”, para. 4; P04145, “UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995”, p. 21.

<sup>737</sup> Milenko Lazić, T. 21727, 21745 (4 June 2008), T. 21861 (5 June 2008).

<sup>738</sup> *Ibid.*, T. 21727 (4 June 2008).

<sup>739</sup> *Ibid.*, T. 21727 (4 June 2008), T. 21862 (5 June 2008).

<sup>740</sup> *Ibid.*, T. 21727 (4 June 2008), T. 21862 (5 June 2008).

<sup>741</sup> *Ibid.*, T. 21727 (4 June 2008), T. 21862 (5 June 2008).

<sup>742</sup> *Ibid.*, T. 21866 (5 June 2008).

with the Corps circumventing the Main Staff.<sup>743</sup> In such cases the Corps had an obligation to inform the Main Staff, which was done by telegram.<sup>744</sup>

243. After Karadžić left, Krstić called Lazić, the Chief of Operations and Training of the Drina Corps, to his office and ordered him to summon “the entire command” to the operations room.<sup>745</sup> About half an hour to an hour after Karadžić’s visit, a meeting was held at which Krstić explained the assignment to the command of the Drina Corps.<sup>746</sup> The Corps command started working to draft a combat plan.<sup>747</sup> Krstić was responsible for the drafting and the wording of the plan, which would later become known as *Krivaja-95*.<sup>748</sup>

244. On 2 July 1995, two orders, “*Krivaja-95*”, were issued in the name of Živanović, the Drina Corps Commander.<sup>749</sup> The first order was a preparatory order addressed to the Zvornik, Birač, Romanija, Vlasenica, Podrinje, Bratunac, Milići and Skelani brigades of the Drina Corps.<sup>750</sup> It stated that the ABiH launched a wide-ranging offensive to divide RS along several axes and that its forces from the enclaves of Srebrenica and Žepa would act in order to cut the Drina Corps area of responsibility in two and connect the enclaves with ABiH held territory.<sup>751</sup> The Command of the Drina Corps ordered, pursuant to directive 7 and 7/1, the respective units to prepare for an attack.<sup>752</sup>

245. The second order was a combat order, according to which, the Drina Corps was to “continue a resolute and active defence and to separate the enclaves of Žepa and Srebrenica as soon as possible”.<sup>753</sup> The order did not include taking Srebrenica town.<sup>754</sup> The combat order envisaged that the Drina Corps had “the task of carrying out offensive activities with free forces [...] in order to

<sup>743</sup> Milenko Lazić, T. 21745–21746 (4 June 2008). The rule was that the chain of command should be followed but there were exceptions allowed like this one. In these exceptional cases, Krstić had the obligation to inform the Main Staff. *Ibid.*, T. 21746 (4 June 2008).

<sup>744</sup> *Ibid.*, T. 21746 (4 June 2008), T. 21865 (5 June 2008).

<sup>745</sup> *Ibid.*, T. 21724, 21728, 21757–21758 (4 June 2008).

<sup>746</sup> *Ibid.*, T. 21728 (4 June 2008).

<sup>747</sup> *Ibid.*, T. 21728 (4 June 2008). Krstić drew reference for the documents from Directives 7 and 7/1. Lazić understood Karadžić’s order to be consistent with the goals of Directives 7 and 7/1. *Ibid.*, T. 21864 (5 June 2008).

<sup>748</sup> *Ibid.*, T. 21731 (4 June 2008); Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”.

<sup>749</sup> Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995”; Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”.

<sup>750</sup> Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995.” This preparatory order was not brought to the notice of the VRS Main Staff as it was not mandatory for the commander to send preparatory orders to the superior command. Mirko Trivić, T. 11913–11914 (22 May 2007).

<sup>751</sup> Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995,” para. 1.

<sup>752</sup> *Ibid.*, para. 2.

<sup>753</sup> Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 4. The task was to reach the Predol–Divljakinja–Banja Guber–Živkova Brdo–Alibegovac–Kak line, and then the Gradac–Boja–Šiljato Brdo line.

<sup>754</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 70; Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 4.

split apart the enclaves of Žepa and Srebrenica, and to reduce them to their urban areas.”<sup>755</sup> The objective of the order was “a surprise attack, to separate and reduce in size the Srebrenica and Žepa enclaves, to improve the tactical position of the forces in the depth of the area, and to create conditions for the elimination of the enclaves”.<sup>756</sup> The order further gave the respective brigades specific tasks along the different axes and stated that the security organs and the military police were responsible for indicating areas for gathering and securing prisoners of war and war booty.<sup>757</sup> In dealing with prisoners of war and the civilian population, the forces were instructed to behave in full accord with the Geneva Conventions.<sup>758</sup>

246. The VRS estimated that there were around 10,000 armed men organized in the ABiH 28th Division in Srebrenica,<sup>759</sup> whereas DutchBat estimated the 28th Division was organised with 3,000 or 4,000 men.<sup>760</sup> The exact location of the headquarters of the 28th Division of the ABiH, was not clear to DutchBat officers as they perceived it kept being moved.<sup>761</sup> The ABiH 28th Division had six subordinate brigades, supported by the brigade firing group, in its area of responsibility.<sup>762</sup> A detailed internal ABiH document shows that ABiH Brigades used private houses, hotels and industrial buildings for housing command and other military purposes, for example in Srebrenica

<sup>755</sup> Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 2.

<sup>756</sup> *Ibid.*, para. 4.

<sup>757</sup> *Ibid.*, paras. 5, 10. B. More specifically, a part of the Bratunac Brigade was given the task to prevent the intervention of the ABiH from Potočari towards Srebrenica, and the Battalion of the Zvornik Brigade was given the task to attack ABiH forces along the axis of three wooded hills (500 metres north of Zeleni Jadar) – Pusmuliči village – Bojna – Srebrenica. *Ibid.*, para. 5.

<sup>758</sup> *Ibid.*, para. 10. B. According to Trivić, they were given assignments to act against members of the 28th Division of the ABiH but to avoid any conflicts with the UN personnel. Trivić confirmed an order from the Main Staff to the Drina Corps which emphasized that they should fully protect members of UNPROFOR and the Bosnian Muslim civilian population, while they demilitarize the Srebrenica area. Mirko Trivić, T. 11884–11886 (21 May 2007), Exs. P00033, P00849, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995”.

<sup>759</sup> Mirko Trivić, T. 11807–11809 (18 May 2007), T. 11881 (21 May 2007). *See also* Milenko Lazić, T. 21735 (4 June 2008).

<sup>760</sup> Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2164 (5 Apr 2000).

<sup>761</sup> Johannes Rutten, T. 4959 (4 Dec 2006). *See also* Robert Franken, T. 2646 (18 Oct 2006) (testifying that the ABiH 28th Division had more or less, two headquarters; they used one classroom in Potočari and some rooms in the former post office of Srebrenica); Pieter Boering, T. 2178–2179 (26 Sept 2006) (testifying that the headquarters of the ABiH 28th Division was in Srebrenica town, not in the centre but in the outskirts of the town).

<sup>762</sup> Ex. 7D00814, “ABiH General Staff No. 4/19-2, Reorganisation of the ABiH”, p. 3; Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 1. The 280th Brigade, which had its Command Post in the village of Budak, was to defend Zonik, the industrial zone in Potočari. The 281st Brigade, which had its Command Post in the area of Sućeska, was to defend Borovac, Žedanjsko village, Sućeska village and Kok. The 282nd Brigade, which had its Command Post in the Bojna village, was to defend the wooded hills 200 metres north of Zeleni Jadar, Prhulja, Živkovo Brdo, the area of Pusmuliči village, the region of Bojna and Vagan. The 283rd Brigade, which had its Command Post in the area of Slapovići village, was to defend Alibegova, Bučje village, Kiprova village, and Viogor. The 284th Brigade, which had its Command Post in Milačevići village, was to defend Jabučno, Jagličići village, and Pale village. The reserve 28th Division consisting of a mountain battalion and police forces were located in Srebrenica, in Potočari and Luka village, ready for action at threatened axes. Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 1. However, DutchBat estimated that ABiH forces in the enclave were organised into four brigades. Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2164 (5 Apr 2000).

town the GRAD UPI, the Agricultural Processing complex was used and in Potočari four family houses were used.<sup>763</sup>

247. On 2 July, pursuant to the preparatory order of *Krivaja-95*, two tactical groups were established (“Tactical Group 1” or “TG-1”, “Tactical Group 2” or “TG-2”, respectively).<sup>764</sup> TG-1 was established to “separate the forces of the 28th Division between the Srebrenica and Žepa enclaves and to reduce the enclaves themselves.”<sup>765</sup> On the same day, **Pandurević** was given an oral order by Krstić to command TG-1,<sup>766</sup> and Milan Jolović, aka “Legenda”, was appointed as Deputy Commander.<sup>767</sup> TG-2 was commanded by Mirko Trivić, Commander of the Romanija Brigade.<sup>768</sup> On 4 July, when TG-1 left the Standard Barracks in Zvornik, it was divided into two segments, one of which was led by **Pandurević** himself, and the other by Major Milutinović.<sup>769</sup>

248. On 5 July 1995, the segment of Tactical Group 1, led by **Pandurević** and Tactical Group 2, led by Trivić arrived in Zeleni Jadar, in the south of the Srebrenica enclave.<sup>770</sup> In the afternoon,

<sup>763</sup> Ex. 4D00135, “BiH Ministry of Defence report on office space used by ABiH, signed by Suljo Hasanović, 22 February 1995”, para. II. The ABiH 280th Brigade which had a command post in Budak was to defend, *inter alia*, the industrial zone in Potočari and the reserve 28th Division was located in the school in Potočari. See Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 1. *But see* Johannes Rutten, T. 4829–4832 (30 Nov 2006) (testifying that there were no real military targets or manned position of BiH soldiers near the Potočari area).

<sup>764</sup> Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995,” paras. 1–2; Miodrag Dragutinović, T. 12573 (13 June 2007); Mirko Trivić, T. 11798 (18 May 2007). A tactical group is a provisional formation set up of a number of combat groups for the purpose of executing a specific task within a certain period of time and in a certain place. The size of a tactical group is usually equivalent to that of a battalion, but it has reinforcements. These reinforcements can be either artillery reinforcements or armoured and mechanized forces. A combat group can be part of the tactical group; therefore, it is smaller in size and strength, but it sometimes can be almost identical to a tactical group. Vinko Pandurević, T. 30813 (29 Jan 2009).

<sup>765</sup> Miodrag Dragutinović, T. 12575–12576 (13 June 2007).

<sup>766</sup> Vinko Pandurević, T. 31441–31443 (13 Feb 2009).

<sup>767</sup> Ex. P00318, “Order from the Zvornik Infantry Brigade to the Chief of Security signed by Pandurević, 2 July 1995”; Vinko Pandurević, T. 30848 (29 Jan 2009). Major Jolović’s unit was called the Drina Wolves. Mirko Trivić, T. 11814 (18 May 2007).

<sup>768</sup> Miodrag Dragutinović, T. 12577–12578 (13 June 2007). TG-2 consisted of a combat group commanded by Major Ljubo Erić, organized with 200 men from the Romanija Brigade. Mirko Trivić, T. 11798–11800 (18 May 2007). Trivić’s original combat group was reinforced by troops that equaled a battalion. The combat group’s artillery was composed of three tanks and two mortars, along with infantry weapons carried by soldiers. Mirko Trivić, T. 11800, 11806 (18 May 2007).

<sup>769</sup> Vinko Pandurević, T. 30852–30853 (29 Jan 2009); Miodrag Dragutinović, T. 12675–12678 (15 June 2007). The Zvornik Brigade contributed a light battalion to the formation of TG-1. Approximately 400 men left the Standard Barracks in Zvornik on 4 July. Miodrag Dragutinović, T. 12671–12672 (15 June 2007); Ex. 7DP00384, “Zvornik Brigade War Diary”, p. 2. **Pandurević** testified that the first segment was 3rd echelon, whereas the second segment was 1st and 2nd echelon, led by himself. The first segment, the armoured mechanised company, went from Zvornik via Bratunac to Pribičevac, whereas the infantry unit, the second segment, went from Zvornik via Bratunac, Skelani to Zeleni Jadar. Vinko Pandurević, T. 30852 (29 Jan 2009); Miodrag Dragutinović, T. 12675–12678 (15 June 2007).

<sup>770</sup> Vinko Pandurević, T. 30853 (29 Jan 2009); Mirko Trivić, T. 11800–11801 (18 May 2007); Ex. P02111, “Map 6 of map book”. On 5 July in the evening, **Pandurević** went to see the other segment of TG-1, the armoured mechanised company, in Pribičevac so as to investigate the situation there and give them specific assignments. Vinko Pandurević, T. 30853 (29 Jan 2009). According to Dragutinović, the segment led by **Pandurević** stayed in Zeleni Jadar until 6 July. Miodrag Dragutinović, T. 12679 (15 June 2007).

commanders, including **Pandurević**, received their instructions and specific orders for the attack on the Srebrenica enclave.<sup>771</sup>

249. Combat readiness had been set for 6 July, at 4 a.m.<sup>772</sup> In the morning of the same day, the Main Staff sent a situation report, type-signed by **Miletić**, to Karadžić, the VRS Supreme Commander, that the forces of the Drina Corps were prepared for active combat in the areas of Srebrenica and Žepa.<sup>773</sup> At approximately 3 a.m., the military attack on Srebrenica started from all positions.<sup>774</sup> The shelling was intense and constant.<sup>775</sup> Six 120mm rockets landed near the DutchBat compound in Potočari around 3:30 a.m., and at least 250 artillery and mortar rounds were recorded in the Srebrenica enclave until 8 p.m.<sup>776</sup> By comparison, the shelling of Srebrenica and Potočari on 7 July was less intense, due to poor weather conditions,<sup>777</sup> though it continued.<sup>778</sup> There was heavy shelling around the DutchBat compound in Potočari and three shells were reported to have landed in Srebrenica.<sup>779</sup> On 8 July, the shelling was heavier with 30 shells landing in Srebrenica and Potočari.<sup>780</sup>

<sup>771</sup> Mirko Trivić, T. 11801, 11809 (18 May 2007).

<sup>772</sup> *Ibid.*, T. 11807–11810 (18 May 2007); Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 4.

<sup>773</sup> Ex. P02895, “Main Staff Situation Report type-signed Miletić”, 6 July 1995”, p. 4.

<sup>774</sup> Vinko Pandurević, T. 30855 (29 Jan 2009) (testifying that in the early morning hours on 6 July, before dawn, all the units of the TG-1 were at their starting positions, and that they launched the attack, all of them together); Joseph Kingori, T. 19173 (13 Dec 2007). *See also* Lazar Ristić, T. 10042 (16 Apr 2007) (testifying that on 6 July, a radio signal was sent out to the VRS units that the attack on Srebrenica had begun); Miodrag Dragutinović, T. 12679 (15 June 2007); PW-121, Ex. 02227, “92 *ter* transcript”, KT. 5748-5749 (26 July 2000); Ex. P00233, “Daily Combat Report from the Bratunac Brigade to the Drina Corps signed by Colonel Blagojević, 6 July 1995”; Ex. P00490, “UNMO report, 6 July 1995”, p. 1.

<sup>775</sup> Leendert van Duijn, T. 2263 (27 Sept 2006).

<sup>776</sup> Ex. P00490, “UNMO report, 6 July 1995”, p. 1; Ex. P00491, “UNPROFOR report, 6 July 1995”, p. 2. (stating that the DutchBat compound in Potočari was targeted and OP Foxtrot was hit by several tank rounds; there was also heavy firing in the southern, eastern and northern parts of the Srebrenica enclave, and 150 detonations were counted although due to bunker alarms, an exact figure could not be given; and a civilian was killed and a child was injured by an artillery impact in Srebrenica enclave); Joseph Kingori, T. 19172–19173, 19177–19181 (13 Dec 2007); Pieter Boering, T. 1920, 1922 (19 Sept 2006); Robert Franken, T. 2456-2457 (16 Oct 2006); Saliha Osmanović, Ex. P03228, “92 *bis* statement” (19 June 2000) p. 2 (testifying that her son was killed from a shell fallen on 6 July).

<sup>777</sup> Cornelis Nicolai, T. 18539 (30 Nov 2007).

<sup>778</sup> Joseph Kingori, T. 19181 (13 Dec 2007); PW-127, T. 3502 (2 Nov 2006). At least 200 shells struck Srebrenica. Joseph Kingori, T. 19188 (13 Dec 2007).

<sup>779</sup> Ex. P00492, “UNMO report, 7 July 1995,” p. 1 (stating that 3 men were injured as a result of shelling around the DutchBat compound and 2 men were injured due to shelling in Srebrenica), p. 2 (stating that “whatever their aims are, they seem to be concentrating more on civilian targets in Srebrenica town and Potočari”). Ex. P00494 “UNPROFOR report, 7 July 1995,” p. 2 (stating that 147 detonations were recorded in Srebrenica enclave; electricity plant 200 metres away from the DutchBat compound in Potočari was targeted; and due to shelling inside the enclave, four civilians were killed and 17 were injured); Ex. P02975, “UNPROFOR Warning to VRS, 9 July 1995”, p. 2 (“The Bosnian Serb Army resumed attacks against the Srebrenica enclave on Friday, 7 July 1995, firing indiscriminately into the safe area and directly targeting UN facilities, causing several civilian deaths.”); Cornelis Nicolai, T. 18477 (29 Nov 2007), T. 18534 (30 Nov 2007).

<sup>780</sup> Ex. P00497, “UNMO report, 8 July 95” p. 4 (stating that UNMO had counted 60 explosions from 1:35 p.m. to 2:06 p.m. in Srebrenica and Potočari); Ex. P00495, “UNMO report, 8 July 1995, 14:30”; Ex. P00496, “UNPROFOR report, 8 July 1995, 21:00” (also stating that the number of detonations in the Srebrenica enclave was not known precisely). The marketplace was hit several times, and the hospital and the PTT building were targeted, although they were not struck. Joseph Kingori, T. 19192 (13 Dec 2007), T. 19354–19356 (10 Jan 2008).

250. The five DutchBat OPs in the southern part of the enclave fell one by one in the face of the VRS advance.<sup>781</sup> Some of the DutchBat soldiers retreated into the enclave after their OPs were attacked, while others surrendered into VRS custody.<sup>782</sup> The ABiH soldiers tried to stop the DutchBat's withdrawal from the OPs.<sup>783</sup> On 8 July, while soldiers of an OP were retreating on a vehicle, a DutchBat Private was killed by a hand grenade thrown by an ABiH soldier, after unsuccessfully trying to stop the vehicle.<sup>784</sup> Once the southern perimeter of the enclave began to collapse, about 4,000 Bosnian Muslims, who had been living in a nearby Swedish housing complex, fled north into Srebrenica town.<sup>785</sup> Lieutenant Colonel Karremans, the DutchBat commander described the attack of the VRS from 7 to 9 July as follows:

[T]hese operations have been executed by all means: attacking ABiH and UN positions, shelling the enclave and suppressing DutchBat through intimidation by using artillery, mortars, and MLRS [the Multi-Launched Rocket System] (M-63 and M-77) overhead compound Potočari with over 200 soldiers. Most of my OPs have been shot by mortars. The VRS does exactly know what they are doing and till how far they can go. They do execute their operations according to a predominated[sic] and well-organised plan.<sup>786</sup>

251. On 9 July, in addition to the shelling, incoming small arms fire was observed.<sup>787</sup> By evening, the VRS had pressed four kilometres deep into the enclave, halting just one kilometre short of Srebrenica town.<sup>788</sup> OP Mike at the northern border of the Srebrenica enclave was under mortar fire and direct firing, and the commander of the OP was permitted to withdraw.<sup>789</sup> The VRS was able to establish a line from which it could fully control the boundaries of the enclave and prevent any communication between Srebrenica and Žepa.<sup>790</sup>

<sup>781</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 93.

<sup>782</sup> *Ibid.*, Facts 95 and 96. The DutchBat soldiers who were detained were taken to Bratunac and Milići. Ten to fifteen DutchBat soldiers were taken prisoner, and eventually held at the Hotel Fontana. Pieter Boering, T. 1923–1924 (19 Sept 2006). OP Foxtrot fell on 8 July, where the defensive wall was blown away by the tank fire, and the OP personnel were overrun by Serb forces, but were allowed to withdraw to Srebrenica town. Robert Franken, T. 2460 (16 Oct 2006).

<sup>783</sup> Cornelis Nicolai, T. 18463 (29 Nov 2007); Ex. P00534, “Dutch Ministry of Defence, Debriefing on Srebrenica,” para. 3.2.

<sup>784</sup> Cornelis Nicolai, T. 18463 (29 Nov 2007); Pieter Boering, T. 1924 (19 Sept 2006); Vincent Egbers, T. 2931 (20 Oct 2006); Ex. P00534, “Dutch Ministry of Defence, Debriefing on Srebrenica,” paras. 3.2., 6.23.

<sup>785</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 99. Bosnian Muslim villages in the south of the enclave were under fire and the population was being driven into the Srebrenica town. Pieter Boering, T. 1923 (19 Sept 2006).

<sup>786</sup> Ex. P02974, “Memorandum from Colonel Karremans to Commander, BiH Command HQ, 9 July 1995”. Nicolai agreed to the last sentence of Karremans' assessment. Cornelis Nicolai, T. 18480 (29 Nov 2007).

<sup>787</sup> Joseph Kingori, T. 19224 (13 Dec 2007). UNMO reported hearing 78 explosions from the Srebrenica town between 2 p.m. and 3:16 p.m. Ex. P00499, “UNMO report, 9 July 95, 17:00”.

<sup>788</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 100; Cornelis Nicolai, T. 18474 (29 Nov 2007).

<sup>789</sup> Robert Franken, T. 2461 (16 Oct 2006).

<sup>790</sup> Vinko Pandurević, T. 30859 (29 Jan 2009). **Pandurević** felt that the TG-1 had completed the task given for *Krivaja-95*. Vinko Pandurević, T. 30860 (29 Jan 2009).

## 2. The Takeover of Srebrenica Town

252. Late on 9 July, Karadžić issued an order authorising the VRS to capture Srebrenica town.<sup>791</sup> This order was sent by Tolimir from the Main Staff to the IKM in Pribićevec, by way of a telegram addressed to **Gvero** and Krstić personally.<sup>792</sup> This changed the objective of the “*Krivaja-95*” operation from reducing the enclave to the urban area to the taking-over of Srebrenica town.<sup>793</sup>

253. At around the same time, DutchBat Bravo Company was ordered to defend Srebrenica town by taking blocking positions on the south edge of town.<sup>794</sup> The DutchBat positions were established at about 6:30 a.m. on 10 July.<sup>795</sup> From one of the blocking positions, DutchBat soldiers observed the shelling of Srebrenica town, and the explosion of houses and smoke could be seen.<sup>796</sup> In the afternoon, the VRS attacked the DutchBat blocking positions.<sup>797</sup> This led DutchBat to request air support from UNPROFOR headquarters in Sarajevo.<sup>798</sup> However, no NATO air support was received on that day.<sup>799</sup>

254. Before dawn on the morning of 10 July, the 28th Division counter-attacked and pushed TG-1 almost back to its starting positions, so that TG-1 lost all the positions it had taken the day before.<sup>800</sup> Sometime before noon on 10 July, **Pandurević** had a radio communication (via RUP-12)

<sup>791</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 101; Exs. P00033, P00849, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995” (stating that *inter alia* that Karadžić had “agreed with the continuation of operations for the takeover of Srebrenica, disarming of Muslim terrorist gangs and complete demilitarisation of the Srebrenica enclave.”). See also Miroslav Deronjić, Ex. P03139a “confidential – 92 *quater* transcript”, BT. 6132 (19 Jan 2004).

<sup>792</sup> Exs. P00033, P00849, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995”.

<sup>793</sup> Vinko Pandurević, T. 31061, 31063 (3 Feb 2009) (explaining that “the aim of the operation was changed” when on 9 July “the document reached the IKM of the corps at Pribićevec saying that the President of the Republic was satisfied with the progress of the operation, and that he approved the continuation of the operation and the VRS to enter Srebrenica”). See also Vinko Pandurević, T. 31332 (12 Feb 2009) (explaining that “the very appearance of General Mladić at the forward command post of the Drina Corps and his order that they should continue in the direction of Srebrenica changed the course of the operation itself and expanded its goals”).

<sup>794</sup> Robert Franken, T. 2462–2464 (16 Oct 2006); Ex. P02263, “Order from Franken to Groen, 9 July 1995”. Franken issued an order to Captain Groen, which is described as “a seriously meant green order”, to use all military means available and to behave as a “normal army” and not under the restrictions of the UN mission. Robert Franken, T. 2464–2465 (16 Oct 2006).

<sup>795</sup> Robert Franken, T. 2471 (16 Oct 2006). See also Cornelis Nicolai, T. 18482 (29 Nov 2007).

<sup>796</sup> Leendert van Duijn, T. 2265–2266 (27 Sept 2006).

<sup>797</sup> Cornelis Nicolai, T. 18482 (29 Nov 2007); Robert Franken, T. 2472–2473 (16 Oct 2006).

<sup>798</sup> Cornelis Nicolai, T. 18482 (29 Nov 2007). Boering testified that at some point in July 1995, Colonel Karremans stated in the meeting with the ABiH leaders of the enclave that UN air support would be provided. Pieter Boering, T. 1923, 1926 (19 Sept 2006). According to Nicolai, the Chief of Staff of UNPROFOR from the end of February until early September 1995, Sarajevo approved the request, but Zagreb headquarters hesitated to give ultimate decision, which delayed the actual deployment of air support. Cornelis Nicolai, T. 18482–18483, 18446–18447 (29 Nov 2007).

<sup>799</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 113.

<sup>800</sup> Vinko Pandurević, T. 30861–30862 (29 Jan 2009); Ex. 7D00474, “Interim Combat Report from the Drina Corps Command signed by Krstić, 10 July 1995”. According to Dragutinović, the VRS was pushed by 28th Division to Biljeg, where a DutchBat OP was located with forces of 28th Division in the immediate vicinity. Miodrag Dragutinović, T. 12572–12573 (13 June 2007), T. 12687 (15 June 2007).



with Mladić at the Drina Corps Pribićeovac IKM,<sup>801</sup> who ordered that the positions lost that day be re-taken urgently.<sup>802</sup> In the afternoon, TG-1 managed to re-take one of the lost features.<sup>803</sup> Ultimately that day, TG-1 was able to recapture the lost positions.<sup>804</sup> Among the VRS, 6 soldiers were killed and 10 were wounded, mainly from the members of TG-1.<sup>805</sup>

255. On 10 July, the situation in Srebrenica town was tense.<sup>806</sup> Villages in the Srebrenica enclave fell and the siege got tighter, which resulted in Bosnian Muslims streaming into Srebrenica town.<sup>807</sup> Numerous rockets were launched into Srebrenica town.<sup>808</sup> There was intense shelling of Srebrenica town with more than 160 or 200 detonations, and DutchBat could count about 32 VRS active artillery or mortar positions.<sup>809</sup> The Bravo Company compound was also shelled.<sup>810</sup> At 11 a.m., two heavy shells, probably 155mm artillery shells, hit the direct surroundings of the hospital where 2,000 civilians had gathered for refuge, and six of them were killed.<sup>811</sup> On 10 July, the ABiH was still present in Srebrenica town but they started leaving the enclave that night.<sup>812</sup>

256. On 10 July, Colonel Salapura, Chief of the Intelligence Department of the Main Staff, ordered members of the 10th Sabotage Detachment to be sent to Srebrenica.<sup>813</sup> On the same day, **Borovčanin** was designated as a commander of a new independent MUP unit, consisting of the 2nd Šekovići Detachment of the RS MUP Special Police Brigade (“SBP 2nd Šekovići Detachment”), the 1st Company of the PJP of the Zvornik SJB (“1st PJP Company”), a mixed company of joint

<sup>801</sup> Vinko Pandurević, T. 30862 (29 Jan 2009).

<sup>802</sup> *Ibid.*, T. 30863 (29 Jan 2009).

<sup>803</sup> *Ibid.*, T. 30863 (29 Jan 2009). It was the Zivko Bojn feature. *Ibid.*

<sup>804</sup> *Ibid.*, T. 30865 (29 Jan 2009).

<sup>805</sup> *Ibid.*, T. 30873-30874 (30 Jan 2009); Ex. 7D00474, “Drina Corps interim combat report signed by Krstić, 10 July 1995”.

<sup>806</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 104.

<sup>807</sup> Osman Salkić, Ex. P02225, “92 *bis* statement” (4 Dec 2004), p. 4. People were streaming into Srebrenica and reporting that the VRS was burning villages. Joseph Kingori, T. 19232 (13 Dec 2007).

<sup>808</sup> Joseph Kingori, T. 19237 (13 Dec 2007); Ex. P00505, “UNMO Report, 10 July 95”, p. 3.

<sup>809</sup> Robert Franken, T. 2473–2474 (16 Oct 2006). UNMO reported that from morning until 12:30 p.m. over 100 detonations were confirmed in Srebrenica. 49 shells were also recorded from 12:50 p.m. to 1:53 p.m.. Ex. P00505, “UNMO Report, 10 July 95”, p. 3.

<sup>810</sup> Robert Franken, T. 2473 (16 Oct 2006), T. 2551 (17 Oct 2006). Not only ABiH positions but also UN positions and civilians were fired at by the VRS. Cornelis Nicolai, T. 18485 (29 Nov 2007). On 10 July, one mortar grenade hit close to Bravo Company and wounded a little boy. Pieter Boering, T. 1932 (19 Sept 2006).

<sup>811</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 106; Joseph Kingori, T. 19229–19230 (13 Dec 2007); Ex. P00501, “UNMO Report, 10 July 95, 10:25”. All the windows of the hospital were smashed and shrapnel had showered the walls and rooms of the hospital, which made the surgery very difficult. Ex. P00501, “UNMO Report, 10 July 95, 10:25”, para. 2. Kingori personally inspected the hospital and stated that it did not appear to be in use as a military facility. Joseph Kingori, T. 19223 (13 Dec 2007). Asked by **Miletić** whether it was possible that the ABiH soldiers and the headquarters of the ABiH 28th Division was the target of the VRS shelling of Srebrenica town on 10 July, Robert Franken responded: “Yes, it is possible, but I have to make one remark: Then they were very poor gunners because they hit the whole city instead of those two locations.” Robert Franken, T. 2646–2647 (18 Oct 2006).

<sup>812</sup> Cornelis Nicolai, T. 18527 (30 Nov 2007); Leendert van Duijn, T. 2267–2268 (27 Sept 2006); Robert Franken, T. 2584 (17 Oct 2006), T. 2646 (18 Oct 2006).

<sup>813</sup> Dragan Todorović, T. 13998 (21 Aug 2007); Ex. P02869, “10th Sabotage Detachment Order, 10 July 1995”. See *supra* paras. 119, 127.

Republic of Serbian Krajina, Serbian and RS MUP forces and a company from Jahorina deserters unit of the Jahorina Training Centre (“1st Company of the Jahorina Recruits”).<sup>814</sup>

257. On the morning of 11 July, DutchBat realised that members of the ABiH 28th Division had disappeared.<sup>815</sup> The Bosnian Muslim population was continuing to move into Srebrenica town from the outer enclave.<sup>816</sup> Thousands of people, desperate for protection, crowded around the DutchBat Bravo Company compound in Srebrenica town, eventually forcing their way inside.<sup>817</sup> The chaotic scene was exacerbated when mortar shells landed inside the compound around noon, wounding several people.<sup>818</sup> There were some people wounded and killed in Srebrenica town.<sup>819</sup> Following the shelling of Bravo Company compound and with the encouragement of the DutchBat troops, Bosnian Muslims began to move north from Srebrenica town towards Potočari.<sup>820</sup> The shelling followed them on the journey to Potočari.<sup>821</sup>

258. DutchBat sent urgent requests for NATO air support to defend Srebrenica town, but no assistance was forthcoming until around 2:30 p.m. on 11 July, when NATO bombed the VRS tanks advancing towards the town.<sup>822</sup> NATO planes also attempted to bomb the VRS artillery positions overlooking the town, but had to abort the operation due to poor visibility.<sup>823</sup> In the afternoon, **Gvero** called the UNPROFOR headquarters in Sarajevo,<sup>824</sup> saying that unless the air support stopped immediately “General Nicolai, in the capacity of the Commander’s deputy, would be held

<sup>814</sup> Ex. P00057, “RS Ministerial Order 64/95 to MUP units, type-signed Tomislav Kovac, 10 July 1995”, paras. 1–4.

<sup>815</sup> Robert Franken, T. 2479 (16 Oct 2006).

<sup>816</sup> *Ibid.*, T. 2479–2480 (16 Oct 2006).

<sup>817</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 108.

<sup>818</sup> *Ibid.*, Fact 109; Joseph Kingori, T.19538–19539 (11 Jan 2008).

<sup>819</sup> Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1944–1945 (3 Apr 2000) (testifying that before her departure from Srebrenica, shells had fallen among a group of people and she was one of those wounded; and that as she left Srebrenica, at the first UNPROFOR base, not far from Srebrenica, shells fell and a number of people including her were wounded); PW-126, T. 3598–3599 (6 Nov 2006) (testifying that on 11 July people were leaving Srebrenica because they saw others being killed and that she heard a woman screaming that her son was killed).

<sup>820</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 110; Robert Franken, T. 2480 (16 Oct 2006), T. 2550–2551 (17 Oct 2006).

<sup>821</sup> Leendert van Duijn, T. 2268–2270 (27 Sept 2006) (testifying that shells fell around him as he was facilitating the withdrawal of refugees from Bravo Company compound to Potočari); Robert Franken, T. 2480–2481 (16 Oct 2006) (testifying that he received reports on the shelling of the column of refugees by mortar and artillery as it left the Bravo Company compound in Srebrenica towards Potočari), T. 2610–2611 (17 Oct 2006) (testifying that according to the reports he received, the people who went in a column from Srebrenica to Potočari were shelled and that wounded people from the column were picked up by DutchBat soldiers and brought in APCs to the DutchBat hospital). *But see* Judge Kwon’s Separate Opinion, *infra*, fn. 849.

<sup>822</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 113.

<sup>823</sup> *Ibid.*, Fact 114. Pieter Boering testified that limited air support was provided. Pieter Boering, T. 1927–1928 (19 Sept 2006). Nicolai testified that the close air support was conducted at a small scale with a limited number of planes. Cornelis Nicolai, T. 18486 (29 Nov 2007).

<sup>824</sup> Cornelis Nicolai, T. 18486–18488, 18512 (29 Nov 2007); Ex. P02906, “Notes of a telephone conversation between Nicolai and Gvero, 11 July 1995 at 16:15 hours”.

responsible for all further developments and the destiny of his men and the civilian population in Srebrenica”.<sup>825</sup>

259. At that point, the DutchBat compound in Potočari was flooded with Bosnian Muslims from Srebrenica town and there were thousands in the open air in the areas surrounding the compound.<sup>826</sup> NATO plans to continue the air strikes were abandoned following the VRS threats to kill DutchBat troops being held by the VRS, as well as threats to shell the DutchBat compound in Potočari and surrounding areas.<sup>827</sup>

260. On 11 July, the VRS took Srebrenica town.<sup>828</sup> In the morning, **Pandurević** received an oral order from Krstić to proceed with TG-1 and to take control of Srebrenica town and the surrounding features.<sup>829</sup> Between 1 and 2 p.m., members of the 10th Sabotage Detachment reached the centre of Srebrenica town.<sup>830</sup> More VRS soldiers then started to descend from the surrounding hills.<sup>831</sup> Approximately between 4 and 5 p.m., a combat group of TG-1 moved east of Srebrenica town and took control of the features closest to the town, while the other combat group went into the town and took control of a feature west of town.<sup>832</sup> TG-2 was to cover the general area more to the west.<sup>833</sup> TG-1 entered Srebrenica town and based its command in the police station.<sup>834</sup> On that day, Mladić, Živanović, Krstić, **Popović** and **Pandurević** walked through the empty streets of Srebrenica town.<sup>835</sup> They were met by members of the 10th Sabotage Detachment, the Drina

<sup>825</sup> Ex. P02906, “Notes of a telephone conversation between Nicolai and Gvero, 11 July 1995 at 16:15 hours”; Ex. P02374a (confidential); Cornelis Nicolai, T. 18486–18487 (29 Nov 2007). According to Nicolai, it meant that unless the air support stopped, the DutchBat compound in Potočari and surrounding areas would be shelled. In cross-examination, Nicolai confirmed that notes of the telephone conversation between **Gvero** and himself did not reflect that the compound in Potočari was to be shelled. But he maintained his position stating that “at the moment of this conversation, when General Gvero pointed out the consequences, I took that as being the threat of shelling the compound”. *Ibid.*, T. 18486–18487, 18511 (29 Nov 2007).

<sup>826</sup> Cornelis Nicolai, T. 18487 (29 Nov 2007).

<sup>827</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 115.

<sup>828</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 107; Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6155–6156 (19 Jan 2004); Božo Momčilović testified that on 11 July, late in the afternoon or in the evening, the Serb forces entered Srebrenica and the IKM was closed down. Božo Momčilović, T. 14098, 14115 (22 Aug 2007).

<sup>829</sup> Vinko Pandurević, T. 30867 (29 Jan 2009), T. 30874–30875 (30 Jan 2009).

<sup>830</sup> Dražen Erdemović, T. 10946–10948 (4 May 2007). Erdemović stated that he thought the location was the centre of town where there were buildings and a mosque. Dražen Erdemović, T. 10946. According to **Pandurević**, in the morning of 11 July, he had seen members of the 10th Sabotage Detachment. Vinko Pandurević, T. 30880 (30 Jan 2009).

<sup>831</sup> Dražen Erdemović, T. 10946–10948 (4 May 2007).

<sup>832</sup> Vinko Pandurević, T. 30875–30876 (30 Jan 2009).

<sup>833</sup> *Ibid.*, T. 30875 (30 Jan 2009).

<sup>834</sup> Miodrag Dragutinović, T. 12689 (15 June 2007).

<sup>835</sup> Ex. P02047, “Srebrenica Trial Video”, 00:24:30–00:33:15; Jean René Ruez, T. 1330 (8 Sept 2006); Vinko Pandurević, T. 30882 (30 Jan 2009).

Wolves and the Romanija Brigade.<sup>836</sup> Mladić repeatedly instructed the soldiers to continue to Potočari and Bratunac.<sup>837</sup>

261. Upon their arrival in Srebrenica town, members of the 10th Sabotage Detachment were calling on the few people who remained to leave their houses.<sup>838</sup> Members of the Detachment sent about 200 civilians up towards the football field on the other side of the town of Srebrenica.<sup>839</sup>

262. On the same day, Karadžić appointed Miroslav Deronjić Civilian Commissioner of the “Serbian Municipality of Srebrenica” with the task to revitalise the area for the return of displaced Serbs.<sup>840</sup>

### 3. Movement of the Population from Srebrenica Town to Potočari

263. On 10 July groups of the civilian population in Srebrenica town started moving north towards Potočari.<sup>841</sup> On the evening of 10 July, the ABiH 28th Division stopped the Bosnian Muslim civilian population who tried to leave Srebrenica town for Potočari and told them to return.<sup>842</sup> The same evening, 1,500 armed men gathered in the marketplace in Srebrenica town.<sup>843</sup> That was the last time DutchBat noticed the presence of ABiH 28th Division in Srebrenica town.<sup>844</sup>

264. On 11 July, thousands of Bosnian Muslims fled Srebrenica to Potočari seeking protection within the DutchBat compound.<sup>845</sup> Major Robert Franken, Deputy Commanding Officer of DutchBat, issued an order to Captain Groen, the Bravo Company Commander, to withdraw from Srebrenica and follow the tail of the Bosnian Muslims in a northern direction.<sup>846</sup>

<sup>836</sup> Dražen Erdemović, T. 10947–10948, 10951 (4 May 2007); Jean René Ruez, T. 1329 (8 Sept 2006); Ex. P02047, “Srebrenica Trial Video”, 00:24:30–00:24:39, 00:28:20–00:28:58; Ex. P02048 “Srebrenica Trial Video Transcript”, pp. 7, 9.

<sup>837</sup> Ex. P02047, “Srebrenica Trial Video”, 00:25:45–00:26:20, 00:28:00–00:28:13, 00:29:00–00:29:30, 00:30:28–00:30:36, 00:31:11–00:31:50; Ex. P02048 “Srebrenica Trial Video Transcript”, pp. 7–12.

<sup>838</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 119; Dražen Erdemović, T. 10944, 10953 (4 May 2007).

<sup>839</sup> Dražen Erdemović, T. 10953 (4 May 2007). See Prosecution Adjudicated Facts Decision, Annex, Fact 119.

<sup>840</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 118; Ex. P00010, “Republika Srpska Presidential Directive 01-1340/95 (01-1350/95)”. According to Deronjić, Karadžić asked him to take care of the Serb and Muslim civilians who had left Srebrenica and who were in Potočari. Miloslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6157 (19 Jan 2004).

<sup>841</sup> Pieter Boering, T. 1931 (19 Sept 2006), T. 1937 (21 Sept 2006). During the night of 10 July, Van Duijn saw people fleeing from the south with everything they could carry to the northern part of the enclave. Leendert van Duijn, T. 2267 (27 Sept 2006).

<sup>842</sup> Robert Franken, T. 2583 (17 Oct 2006).

<sup>843</sup> *Ibid.*, T. 2584 (17 Oct 2006), T. 2646 (18 Oct 2006).

<sup>844</sup> *Ibid.*, T. 2584 (17 Oct 2006).

<sup>845</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 120. Vincent Egbers said that it would be correct to say the movement of people from Srebrenica to Potočari was initiated by the UN because the population was panicking and did not know what to do. Vincent Egbers, T. 2879 (20 Oct 2006).

<sup>846</sup> Robert Franken, T. 2435, 2480 (16 Oct 2006). Franken wanted the Bravo Company to stay between the Serbs and the civilians and to bring the civilians to Potočari. *Ibid.*, T. 2480 (16 Oct 2006).

265. Several thousand Bosnian Muslims were moving along the road from Srebrenica to Potočari, most of them on foot.<sup>847</sup> The Trial Chamber finds that the population was shelled and shot at as it left and proceeded along the road from Srebrenica town to Potočari.<sup>848849</sup> Some people were wounded, there were dead bodies along the road, and the civilians were terrified.<sup>850</sup> DutchBat

<sup>847</sup> Johannes Rutten, T. 4834 (30 Nov 2006); Ex. 6DIC00054, "Aerial image marked by Rutten"; Eelco Koster, Ex. P02187, "92 *ter* transcript", KT. 3394–3395 (24 May 2000).

<sup>848</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 121; PW-126, T. 3599–3600 (6 Nov 2006) (testifying that when PW-126 left Srebrenica around 11:00 and moved slowly to Potočari there was constant shelling; when large shells fell as they walked along the road to Potočari, she and her brother would hide behind trees or houses, and continue after things calmed down); Momir Nikolić, T. 32977–32978 (22 Apr 2009) (testifying that in the afternoon of 11 July, the civilians who were on the move from Srebrenica to Potočari were targeted by the 2nd Battalion of the Bratunac Brigade; Momir Nikolić heard from the people who had targeted the civilians moving to Potočari, that they thought it was the movement of the Muslim force, however Momir Nikolić believed it to be an excuse; Momir Nikolić learned from members of DutchBat and military monitors that civilians were targeted; in Momir Nikolić's view, one could clearly see from the location of 2nd Battalion and other locations of Bratunac Brigade whether the people on move were armed or not); Vincent Egbers, T. 2717–2718 (18 Oct 2006) (testifying that when he placed people on the APC and started moving towards Potočari, they were shelled on the left and right side of the road, by mortar, four or five times, before he left; as a result of the firing people in the column were very, very scared), T. 2882 (20 Oct 2006) (testifying that there were grenades falling 100 metres from the colony); Mirsada Malagić, Ex. P02218, "92 *bis* transcript", KT. 1946–1947 (3 Apr 2000) (testifying that after she set off from Srebrenica to Potočari, all along the way, that is about four kilometres to the UNPROFOR base, shells were falling down both sides of the road; those shells were more intended to frighten children and helpless people); PW-118, Ex. P02210, "confidential – 92 *ter* transcript", KT. 1330 (27 Mar 2000) (testifying that there was some shelling, but he cannot be sure whether the column itself was targeted; there were lots of shells falling in the vicinity of the road); PW-121, Ex. P02227, "92 *ter* transcript", KT. 5751 (26 July 2000) (testifying that on the way to Potočari, the shells kept falling around her); PW-125, T. 3309 (31 Oct 2006) (testifying that as people were walking towards Potočari, they were not directly shelled but shells were falling around them); Leendert van Duijn, T. 2268–2270 (27 Sept 2006); Robert Franken, T. 2480–2481 (16 Oct 2006) (testifying that he was informed by the commander of the Bravo Company that the population moving towards Potočari was shelled by mortar and artillery), T. 2610–2611 (17 Oct 2006); Pieter Boering, T. 1938 (21 Sept 2006) (testifying that shots from a combination of firearms, rifles, machine-guns, and occasional shelling, of mortars, were audible, although they were not a very close range).

<sup>849</sup> **Judge Kwon's Separate Opinion:** I respectfully disagree with the majority's finding that either "the shelling followed [the Bosnian Muslims] on the journey to Potočari", as in *supra para. 257*, or "the population was shelled and shot at as it left and proceeded along the road from Srebrenica town to Potočari", as in the above main text. I feel compelled to write separately because, in my view, the evidence presented before the Trial Chamber does not substantiate such a finding and the finding as currently formulated may be misleading. There is no evidence that shells landed among the Bosnian Muslims moving from Srebrenica town to Potočari or that the people were targeted or shot at from close range. The evidence cited by the majority (except for Prosecution Adjudicated Fact 121 and Momir Nikolić's evidence, which still does not clearly address the context and the way in which the Bosnian Muslims were shelled and shot at) in the previous footnote 848 does not support such a finding. Most of the evidence adduced indicates that shells fell nearby or around the road. In addition, in this regard, I recall Franken's testimony that "if [the Bosnian Serb Forces] wanted to kill everybody in that column, they could have done so". *Robert Franken, T. 2611 (17 Oct 2006)*. While I accept that some shells landed in the vicinity of the Bosnian Muslim population fleeing to Potočari, I cannot agree that they were "shelled and shot at", as intentional targets.

<sup>850</sup> PW-126, T. 3599 (6 Nov 2006) (testifying that there were dead people and blood along the road, and there were a lot of people screaming for help; there were those covered in blood and dead and not moving); Momir Nikolić, T. 32977–32978 (22 Apr 2009) (testifying that he learned from members of DutchBat and military monitors that civilians were targeted, and those who were wounded during the attack were evacuated and given medical assistance by DutchBat members); Robert Franken, T. 2610–2611 (17 Oct 2006) (testifying that according to the reports he received, the people who went in a column from Srebrenica to Potočari were shelled and that wounded people from the column were picked up by DutchBat soldiers and brought in APCs to the DutchBat hospital). *But see* Vincent Egbers, T. 2882–2883 (20 Oct 2006) (testifying that nobody was killed when grenades fell 100 meters from the column; the injured people who were on his APC came from the hospital, and were not picked up along the road).

soldiers were guiding the fleeing population towards Potočari and DutchBat trucks were sent from Potočari to assist in transporting the population.<sup>851</sup>

266. From around 3 p.m. on 11 July, Bosnian Muslims, mostly women, children and elderly started arriving at the DutchBat compound in Potočari—first in small groups and then in a large constant stream.<sup>852</sup> People were directed to enter the DutchBat compound through the hole in the fence at the rear.<sup>853</sup> By around 6 p.m., when 4,000 or 5,000 Bosnian Muslims were in the compound, additional Bosnian Muslims were prevented from entering.<sup>854</sup> They were spread in the neighbouring factories, the bus station, empty houses, or further away on the western side of the road.<sup>855</sup> By the end of 11 July, in addition to those people inside the DutchBat compound there were about 15,000 people outside it.<sup>856</sup> This figure also included about 300 Bosnian Muslim men in the DutchBat compound and approximately 600 to 800 Bosnian Muslim men outside it.<sup>857</sup> Major Franken ordered Major Otter to find a safe route to guide the people into the DutchBat compound in Potočari because the road in front of the compound was in direct sight of the VRS artillery, including the anti-tank gun located in the area of OP Papa which had been firing all the time at the

<sup>851</sup> Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2113, 2181 (5 Apr 2000); Johannes Rutten, T. 4883 (30 Nov 2006). According to Vincent Egbers, about 20 people were in and on his APC. Vincent Egbers, T. 2883 (20 Oct 2006).

<sup>852</sup> Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3391–3392 (24 May 2000). *See also* Eelco Koster, T. 3035–3036 (26 Oct 2006) (stating that an injured woman had arrived in Potočari on the evening of 10 July); Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2111 (5 Apr 2000).

<sup>853</sup> The hole was made by the DutchBat at the evening of 10 July and was sealed. It was reopened on 11 July. Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2108, 2110–2113 (5 Apr 2000).

<sup>854</sup> Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2113 (5 Apr 2000).

<sup>855</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 122; Robert Franken, T. 2485 (16 Oct 2006); Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1020 (10 July 2003); Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3393–3394 (24 May 2000); Jean René Ruez, T. 1314–1318 (7 Sept 2006) (indicating the DutchBat compound in Potočari and the surrounding factories); Ex. P01545, “Video Srebrenica to Potočari/Susnjari”, 00:42 (showing the express compound that was used by the bus company), 00:36–01:06 (showing the blue factory which was just before the DutchBat compound), 01:22–01:25 (showing the Akumulator factory which was used by the UN battalion as its main base); Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2113 (5 Apr 2000).

<sup>856</sup> Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3395–3396 (24 May 2000); PW-115, Ex. P02200, “92 *bis* transcript”, BT. 6082–6083 (17 Dec 2003); Robert Franken, T. 2487–2488 (16 Oct 2006). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 122 (stating that by the end of 11 July, an estimated 20,000 to 25,000 Bosnian Muslims were gathered in Potočari); Ex. P00510 “UNMO daily sitrep, 11 July 1995”, p. 4 (stating that at 4:00 p.m. already 20,000 refugees have come to the DutchBat compound in Potočari and the number is growing steadily, and at 5:30 p.m. the refugees are still coming into the compound); Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1020 (10 July 2003); Ex. 1D00035 “Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation of Srebrenica 12 July 1995,” p. 2; Pieter Boering, T. 1939 (21 Sept 2006); Vincent Egbers, T. 2719 (18 Oct 2006).

<sup>857</sup> Robert Franken, T. 2489 (16 Oct 2006). *See also* Exs. 1D00463, 4D00017 “Interim Combat Report Army General Staff Republic of Bosnia and Herzegovina signed by Chief of Staff Enver Hadžihasanović 12 July 1995”, pp. 1–2 (reading in part that around 11 p.m. of 11 July, there were between 15,000 and 20,000 refugees in the zone of combat activities, together with 300 ABiH combatants in the camp in Potočari); Leendert van Duijn, T. 2350–2351 (28 Sept 2006). When shown Ex. 1D00463 Van Duijn stated that the figures of 15,000 to 20,000 refugees and 300 “fighters” of the ABiH in the DutchBat compound in Potočari seemed incorrect to him and that in any case, the total number of men of military age he saw on 12 and 13 July 1995, and the men that were singled out was over 350. *Ibid.*

compound.<sup>858</sup> Between 6:45 p.m. and 8:51 p.m., 45 shells flew over the DutchBat compound causing a lot of panic among the Bosnian Muslims who had taken refuge but deliberately missing the buildings.<sup>859</sup>

#### 4. Formation and Movement of the Column

267. On the evening of 11 July 1995, word spread through the Bosnian Muslim community that while the women and the more feeble were to go to Potočari, the able-bodied men should gather at Šušnjari,<sup>860</sup> a village on the edge of the Srebrenica enclave, located in a valley several kilometres north-west of Srebrenica.<sup>861</sup> Instead of continuing along the road to Potočari, Bosnian Muslim men separated from their families at the Lehovići hill, north-west of Srebrenica<sup>862</sup> and went into the woods and walked towards Šušnjari.<sup>863</sup> The testimony of various Bosnian Muslim witnesses

<sup>858</sup> Robert Franken, T. 2481 (16 Oct 2006); Robert Franken marked on Ex. PIC00017, "Aerial Potočari", where the UN base, the bus compound, and the abandoned factories were located; and indicated the route that Major Otter had established for the reception of the refugees. Robert Franken, T. 2482–2483 (16 Oct 2006).

<sup>859</sup> Ex. P00511, "UNMO Report dated 11 July 1995, 19:10" (stating that also around 6:40 p.m. 22 rockets and shells have been fired towards Budak and Gradac); Joseph Kingori, T. 19237, 19240–19241 (13 Dec 2007) (testifying that the sound of those 22 rockets were very scary to the civilians who were gathering at the compound). *See also* Eelco Koster, T. 3037–3038, 3044–3045, 3057 (26 Oct 2006) (testifying that on 11 July, shells fell in between the houses in the vicinity of the refugees); Eelco Koster, Ex. P02187, "92 *ter* transcript", KT. 3399 (24 May 2000); Ex. 1D00035", "Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation in Srebrenica, 12 July 1995," p. 1.

<sup>860</sup> PW-139, Ex. P02288, "confidential – 92 *ter* statement" (28 May 2000), para. 2; PW-110, T. 812 (25 Aug 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 245. The evidence presented before the Trial Chamber does not clearly establish the source of the decision to head to Šušnjari and the manner in which it was communicated. One witness gave evidence that "civilian structures" had ordered the move. PW-116, Ex. P02205, "92 *bis* transcript", KT. 2943 (14 Apr 2000). Another witness testified that "Army Command" had ordered all able bodied men to go to Šušnjari. PW-113, Ex. 4D00048 "confidential – 92 *ter* statement" (24 July 1995), p. 2. Salčinović's husband, who was a soldier in the ABiH, told her that he had been ordered to leave before Srebrenica fell. Samila Salčinović, Ex. P03233, "92 *bis* statement" (18 June 2000), p. 3. Ibišević testified that "military leadership" in Srebrenica told women, children and the elderly to head for the DutchBat base in Potočari, and grown men to try to break through the woods to Tuzla. Šehra Ibišević, Ex. P03235, "92 *bis* statement" (21 June 2000) p. 2. Other witnesses testified that the surrounding chaos and panic made them flee in a direction opposite to Potočari. PW-111, T. 6972 (6 Feb 2007), T. 7032–7033 (7 Feb 2007); PW-106, T. 3950 (15 Nov 2006); Osman Salkić, Ex. P02225, "92 *bis* statement" (4 Dec 2004), p. 4; PW-117, Ex. P02207, "92 *bis* transcript", KT. 3016–3017 (14 Apr 2000). Mevludin Orić, commander of a Bosnian Muslim "defence squad" in the villages neighbouring Lehovići, testified that no order was issued for the Bosnian Muslim men to gather at Šušnjari. Mevludin Orić, T. 974, 985, 987 (29 Aug 2006). Prior to the gathering of men, PW-113 heard from BiH soldiers and UNPROFOR that NATO airplanes were expected to bomb the Serbian army. He also heard that BiH soldiers were planning to launch a counter-attack to capture lost positions. PW-113, T. 3378 (1 Nov 2006); Ex. 4D00048, "confidential – 92 *ter* statement" (24 July 1995), p. 2. At the exit of the Srebrenica enclave, ham operators broadcasted that NATO planes would react and that people should wait and not leave Srebrenica yet. PW-106, T. 3945 (15 Nov 2006).

<sup>861</sup> PW-110, T. 794–795 (25 Aug 2006); Mevludin Orić, T. 872 (28 Aug 2006) (stating that Šušnjari was selected as a gathering location because, as surrounded by hills, the village was best protected from shelling and could not easily be observed).

<sup>862</sup> Ex. PIC00019, "Map of Srebrenica marked by Egbers".

<sup>863</sup> PW-116, Ex. P02205, "92 *bis* transcript", KT. 2943 (14 Apr 2000); PW-139, Ex. P02288, "confidential – 92 *ter* statement" (28 May 2000), para. 2; PW-112, Ex. P02272, "confidential – 92 *ter* transcript", KT. 3239 (23 May 2000); Šehra Ibišević, Ex. P03235, "92 *bis* statement" (21 June 2000) p. 2. (testifying that women, children, and a number of men who did not want to leave their families went to Potočari, while other fit men tried to get through the woods to free territory); Osman Salkić, Ex. P02225, "92 *bis* statement" (4 Dec 2004), p. 4; PW-117, Ex. P02207, "92 *bis* transcript", KT. 3016–3017 (14 Apr 2000). *See also* PW-111, T. 6972 (6 Feb 2007), T. 7032–7033 (7 Feb 2007) (PW-111 went to Jagličić).

indicates that the men attempted to escape in a column because they feared they would be killed if they remained there once the enclave fell into Bosnian Serb hands.<sup>864</sup>

268. At about 7 p.m. on 11 July, the Command of the ABiH 28th Division arrived from Srebrenica in Šušnjari, after which time people started to gather in “Sead’s house”.<sup>865</sup> At around 10 p.m., those present in “Sead’s house”, including the Bosnian Muslim authorities of Srebrenica, and Ramiz Bećirović, who was Chief of Staff of the ABiH 28th Division and standing in for its commander, Naser Orić, deliberated and decided to set off in a column, towards the ABiH-controlled territory in the north.<sup>866</sup> This decision was then communicated by word of mouth.<sup>867</sup> Since Šušnjari was south of the Bratunac–Konjević Polje Road, which was the main asphalt road in the area,<sup>868</sup> moving towards Tuzla meant breaking through VRS-held positions and eventually crossing the Konjević Polje–Nova Kasaba area.<sup>869</sup>

269. Before midnight on 11 July, the column was formed at the entrance of Buljim, a village close to the villages of Jagličići and Šušnjari.<sup>870</sup> Around midnight,<sup>871</sup> the column, which was

<sup>864</sup> See Mevlida Bektić, Ex. P03245, “92 bis statement” (16 June 2000), p. 2; Hana Mehmedović, Ex. P03244, “92 bis statement” (17 June 2000), p. 2; Salih Mehmedović, Ex. P03241, “92 bis statement,” (15 June 2000), p. 2; Hanifa Hafizović, Ex. P03230, “92 bis statement”(16 June 2000), p. 2 (stating that her son-in-law and his brother were afraid to get killed if they went to the DutchBat compound in Potočari and that indeed all the men who went to Potočari were killed); PW-112, Ex. P02272, “confidential – 92 ter transcript”, KT. 3239 (23 May 2000) (stating that he left for the woods as after the Bosnian Serbs took over the Srebrenica town because the situation was chaotic and there was no way out as they could only expect death, and there was no protection from DutchBat). See also Samila Salčinović, Ex. P03233, “92 bis statement” (18 June 2000), p. 3 (stating that male members of her family were afraid to go to Potočari); PW-127, T. 3509, 3537 (2 Nov 2006) (stating that it was evident that the objective of the Bosnian Serbs was “to kill all of us”. PW-127 concluded this “because of everything that had been happening from the beginning of the war, and all the shelling in Srebrenica.” He also stated “that because we were Muslims, they wanted to kill us.” That is why he left with the column); PW-111, T. 6972 (6 Feb 2007) (stating that the situation in Srebrenica was chaotic, the artillery and shelling attacks were intense, so they had to leave and he left with the column).

<sup>865</sup> Mevludin Orić, T. 871–872 (28 Aug 2006), T. 1076–1077 (30 Aug 2006).

<sup>866</sup> Prosecution Adjudicated Facts Decision, Annex, Facts 245–246; Mevludin Orić, T. 990–992 (29 Aug 2006), T. 1077 (30 Aug 2006), T. 1100 (31 Aug 2006); PW-139, Ex. P02288, “confidential – 92 ter statement” (28 May 2000), para. 2; PW-110, T. 812–814 (private session) (25 Aug 2006); PW-112, Ex. P02272, “confidential – 92 ter transcript”, KT. 3241–3242 (23 May 2000) (testifying that in Šušnjari there was consultation among “the head of the municipality, those in charge of civilian authority, and some others who were in Srebrenica in the course of the war, the chiefs of some secretariats for example”, and that the “Territorial Defence” was also there); PW-106, T. 3945–3947 (15 Nov 2006).

<sup>867</sup> Mevludin Orić, T. 1077 (30 Aug 2006).

<sup>868</sup> Ex. P02103, “Documents tendered with Statement of witness Jean-René Ruez”, p. 1; PW-110, T. 794 (25 Aug 2006); Jean René Ruez, T. 1381 (8 Sept 2006).

<sup>869</sup> See Prosecution Adjudicated Facts Decision, Annex, Facts 251–252. “As the Bosnian Muslim column attempted to break out of the enclave, it first moved through the area of responsibility of the Bratunac Brigade [...] [and] moved up towards the Zvornik Brigade’s zone of responsibility.”

<sup>870</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 247; PW-116, Ex. P02205, “92 bis transcript”, KT. 2945 (14 Apr 2000); PW-139, Ex. P02288, “confidential – 92 ter statement” (28 May 2000), paras. 3–4; Ramiz Husić, Ex. P02203, “92 bis statement” (9 June 1999), p. 4, para. 3. Jagličići was a village at the very outskirts of the Srebrenica enclave, close to OP Mike. PW-111, T. 7032 (7 Feb 2007); PW-138, T. 3871–3872 (9 Nov 2006); Vincent Egbers, T. 2707 (18 Oct 2006). Buljim is a village above Šušnjari. PW-112, T. 3284 (30 Oct 2006). See also PW-106, T. 4045 (private session) (16 Nov 2006).

<sup>871</sup> PW-139, Ex. P02288, “confidential – 92 ter statement” (28 May 2000), para. 4 (stating that due to the length of the column, the people at the rear only started moving around 2 a.m. on 12 July 1995). *But see* PW-111, T. 6972 (6 Feb



approximately ten kilometres long consisting of about 10,000 to 15,000 individuals,<sup>872</sup> started advancing towards Konjević Polje, passing through Nova Kasaba, and then towards Tuzla.<sup>873</sup> The group consisted predominantly of men between the ages of 16 and 65, although a small number of women, children, and elderly travelled with the column.<sup>874</sup>

270. The column was mixed with civilian and military components. There is evidence that approximately one third of the members of the column were armed.<sup>875</sup> While some witnesses testified that the men of the column carried only hunting rifles,<sup>876</sup> there is also evidence of semi-automatic and automatic firearms<sup>877</sup> as well as a range of other weapons.<sup>878</sup> Some of the Bosnian Muslim men in the column wore partial or full military uniform; others wore civilian clothes.<sup>879</sup>

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2007), T. 7032 (7 Feb 2007) (stating that he arrived in Jagličići on 12 July at dawn and left Jagličići in the afternoon of the same day together with the other men in the column, setting off towards Tuzla through the woods).

<sup>872</sup> PW-116, Ex. P02205, "92 bis transcript", KT. 2944–2945 (14 Apr 2000); PW-117, Ex. P02207, "92 bis transcript", KT. 3017 (14 Apr 2000); Mirko Trivić, T. 11848 (21 May 2007); Salih Mehmedović, Ex. P03241, "92 bis statement," (15 June 2000), p. 2; Mevludin Orić, T. 872–873 (28 Aug 2006), T. 991 (29 Aug 2006), T. 1078 (30 Aug 2006); PW-139, Ex. P02288, "confidential – 92 ter statement" (28 May 2000), para. 3 (stating that the column consisted of between approximately 17,000 or 18,000 people); PW-112, T. 3231, 3258 (30 Oct 2006); PW-112, Ex. P02272, "confidential – 92 ter transcript", KT. 3240 (23 May 2000) (stating that 12,000–15,000 men were gathered in the area of Šušnjari); Osman Salkić, Ex. P02225, "92 bis statement" (4 Dec 2004), p. 4 (according to which the column was about seven kilometres long); PW-106, T. 3950–3951 (15 Nov 2006) (stating that the column was a couple of kilometres long).

<sup>873</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 257; PW-116, Ex. P02205, "92 bis transcript", KT. 2945 (14 Apr 2000); Ramiz Husić, Ex. P02203, "92 bis statement" (9 June 1999), p. 4, para. 3; Salih Mehmedović, Ex. P03241, "92 bis statement," (15 June 2000), p. 2.

<sup>874</sup> Prosecution Adjudicated Facts Decision, Annex, Facts 248–249; PW-116, Ex. P02205, "92 bis transcript", KT. 2944 (14 Apr 2000) (stating that around 200–300 were women, and that the males were aged between 16 and 50 or 60); PW-119, Ex. P02212, "92 bis transcript", KT. 3188–3189 (23 May 2000) (stating that they were aged between 10 and 70). *See also* PW-106, T. 3949 (15 Nov 2006), T. 4029 (private session) (16 Nov 2006).

<sup>875</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 256. Around one third were armed. PW-116, Ex. P02205, "92 bis transcript", KT. 2944 (14 Apr 2000); PW-112, Ex. P02272, "confidential – 92 ter transcript", KT. 3240 (23 May 2000); PW-112, T. 3259, 3283–3284 (30 October 2006) (specifying that the "one third" estimate solely pertained to the members of the column present at Buljim where armed Bosnian Muslim men in civilian clothes returned to assist those unarmed members of the column who had not been able to pass through the Bosnian Serb lines). *See also* PW-119, Ex. P02212, "92 bis transcript", KT. 3217–3218 (23 May 2000) (testifying that there were some people not of military age in the column, which consisted mainly of civilians with few weapons). Ex. P00060, "CJB Zvornik Report, 12 July 1995", (stating that on 12 July, at approximately 5:30 p.m., the "majority of men of military age, about 8,000, (of whom 1,500 were armed) led by Ejub Golić and Ibrahim Mandžić [...] were in the Konjević Polje and Sandići sector"); PW-111, T. 6972–6973 (6 Feb 2007), T. 7032–7034 (7 Feb 2007) (testifying that PW-111, a soldier belonging to the 282nd Brigade, which was part of the 28th Division, arrived in Jagličići on the 12 July at dawn, and left Jagličići in the afternoon of the same day together with the other men in the column, setting off towards Tuzla through the woods; the column contained a substantial number of people who had hunting rifles and other types of weapons). *But see* Zoran Janković, T. 27371, 27373, 27389 (27 Oct 2008), according to whom 80% of the people in the column carried weapons.

<sup>876</sup> PW-139, Ex. P02288, "confidential – 92 ter statement" (28 May 2000), para. 3; PW-119, Ex. P02212, "92 bis transcript", KT. 3189–3190, 3217 (23 May 2000).

<sup>877</sup> PW-127, T. 3512 (2 Nov 2006); PW-119, Ex. P02212, "92 bis transcript", KT. 3218 (23 May 2000).

<sup>878</sup> Ramiz Husić, Ex. P02203, "92 bis statement" (9 June 1999), p. 5, para. 1; PW-111, T. 7034 (7 Feb 2007); Ex. 4D00013, "Interim Report by ABiH General Staff, 13 July 1995" (mentioning the delivery to the Srebrenica area of weapons and ammunition, including two nitroglycerin rifles with 100 nitroglycerin rounds and a 107 mm rocket launcher with 28 107 mm rockets). *See also* Zoran Janković, T. 27371, 27373, 27389 (27 Oct 2008), testifying that the Bosnian Muslim men in the column had rifles with nitro-glycerin bullets, sniper rifles, anti-helicopter rockets and two Brownings.

<sup>879</sup> PW-112, T. 3259–3261 (30 Oct 2006); PW-156, T. 7140 (8 Feb 2007); PW-110, T. 647 (24 Aug 2006), T. 806 (25 Aug 2006); Mevludin Orić, T. 875–876 (28 Aug 2006); Zoran Janković, T. 27371 (27 Oct 2008).

271. At the head of the column were units of the ABiH 28th Division,<sup>880</sup> including the stand-in commander Ramiz Bećirović with de-miners and armed soldiers,<sup>881</sup> directly followed by the staff of the Srebrenica hospital.<sup>882</sup> The composition of the rest of the column was mixed.<sup>883</sup> The ABiH Mountain Battalion, which was under the command of Ejub Golić, was responsible for protecting the rear of the column.<sup>884</sup>

### E. Potočari (10–13 July 1995)

272. After walking approximately four or five kilometres from Srebrenica to Potočari, the Bosnian Muslims arriving at the DutchBat compound in Potočari were exhausted and frightened.<sup>885</sup> On 11 July, approximately 20,000 people gathered in and around the DutchBat compound.<sup>886</sup> The shelling on that day, in particular, the shells which flew over the DutchBat compound, caused panic amongst the people gathered there.<sup>887</sup>

273. In the evening of 11 July, Franken, the DutchBat Deputy Commander, appointed a guard commander and prepared a ring of outposts to prevent Bosnian Serb Forces from entering the area in order to protect the Bosnian Muslims gathered in Potočari.<sup>888</sup> DutchBat also established two first aid posts, and distributed water and some food.<sup>889</sup>

#### 1. Hotel Fontana Meetings

274. Around 8 p.m. on 11 July, a meeting between the VRS and DutchBat took place at the Hotel Fontana in Bratunac.<sup>890</sup> According to Mladić, DutchBat had asked for the meeting.<sup>891</sup> DutchBat was

<sup>880</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2996 (14 Apr 2000); PW-139, Ex. P02288, “confidential – 92 *ter* statement” (28 May 2000), para. 3; PW-106, T. 3958, 4027 (private session) (15 Nov 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 256. *See also* Mevludin Orić, T. 991 (29 Aug 2006) (testifying that at the time the decision to move towards Tuzla was made, all those who were armed, the soldiers, had to take command from their superiors and the civilians were simply moving behind the army).

<sup>881</sup> Mevludin Orić, T. 1051 (30 Aug 2006).

<sup>882</sup> PW-106, T. 4019, 4026–4027 (private session) (16 Nov 2006).

<sup>883</sup> Mevludin Orić, T. 1050 (30 Aug 2006).

<sup>884</sup> PW-127, T. 3574 (private session) (3 Nov 2006); PW-139, T. 3749 (7 Nov 2006); PW-110, T. 795 (25 Aug 2006). *But see* Prosecution Adjudicated Facts Decision, Annex, Fact 256, referring to the “Independent Battalion of the 28th Division of the ABiH”.

<sup>885</sup> Robert Franken, T. 2488–2489 (16 Oct 2006); Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1019 (10 July 2003); Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3394 (24 May 2000); Jean René Ruez, T. 1312 (7 Sept 2006) (testifying that Potočari is about four or five kilometers away from Srebrenica); Ex. P01514, “Video south to Srebrenica town” at 00:01:54–00:01:59 (showing the route from Srebrenica to Potočari with the DutchBat compound which was south of Srebrenica town); Pieter Boering, T. 1931–1932 (19 Sept 2006), T. 1937–1938 (21 Sept 2006). *See also* Ex. 4D00017, “Interim Report of General Staff of ABiH, 12 July 1995”, p. 1.

<sup>886</sup> *See supra* paras. 264, 266.

<sup>887</sup> *See supra* para. 266.

<sup>888</sup> Robert Franken, T. 2488 (16 Oct 2006).

<sup>889</sup> *Ibid.*

<sup>890</sup> Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 1; Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 14–37.

represented by Colonel Karremans, Major Boering, and Sergeant-Major Rave, and the VRS was led by General Mladić who was accompanied by General Živanović, Colonel Radislav Janković, an intelligence officer of the Main Staff, Lieutenant-Colonel Svetozar Kosorić, the Drina Corps Chief of Intelligence, Major Momir Nikolić, the Chief of Security and Intelligence of the Bratunac Brigade, and other VRS officers.<sup>892</sup>

275. Mladić led this meeting in an intimidating manner.<sup>893</sup> He accused DutchBat of firing on VRS soldiers and failing to disarm the safe area.<sup>894</sup> Karremans said that he had spoken with General Nicolai at the UNPROFOR Command in Sarajevo and also with the “national authorities” about a request on behalf of the Bosnian Muslims at Potočari.<sup>895</sup> Karremans said that the UNPROFOR Command believed the enclave had been lost and he was there to “negotiate or ask for the withdrawal of the battalion and withdrawal of [the] refugees [gathered in Potočari], and if there [were] possibilities to assist in that withdrawal”.<sup>896</sup> Karremans told Mladić that there were at least 10,000 women and children within the DutchBat compound at Potočari, along with 82 wounded persons, and that many women had said: “We are waiting for the buses and can we leave the enclave?”<sup>897</sup> Mladić stated that neither UNPROFOR nor the Bosnian Muslim population was the objective of his “operations”, and told Karremans: “You can all leave, all stay, or all die here”.<sup>898</sup>

276. Karremans asked Mladić for humanitarian support including food and medicine.<sup>899</sup> They discussed the situation of the wounded among the Bosnian Muslim population and Mladić said that the VRS would take care of the wounded.<sup>900</sup> Near the end of the meeting, Mladić asked Karremans

<sup>891</sup> Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”, 00:09:38–00:09:42; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 19.

<sup>892</sup> Pieter Boering, T. 1941–1943, 1948–1949 (21 Sept 2006); Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 1; Prosecution Adjudicated Facts Decision, Annex, Fact 165. Pieter Boering said that he thought Krstić was present as well. Pieter Boering, T. 1943 (21 Sept 2006).

<sup>893</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 168.

<sup>894</sup> Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”, 00:02:11–00:06:59; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 15–18; Boering testified that he did not feel like an equal at this meeting; rather, he felt threatened by Mladić’s language and the manner in which Mladić’s bodyguards pushed Karremans into a corner. Pieter Boering, T. 1945–1946 (21 Sept 2006). Momir Nikolić said that Mladić “threatened and intimidated the Dutch officers”. Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 1.

<sup>895</sup> Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”, 00:09:43–00:10:00; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 19.

<sup>896</sup> Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”, 00:10:36–00:11:41; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 19; Prosecution Adjudicated Facts Decision, Annex, Fact 170.

<sup>897</sup> Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”, 00:11:02–00:11:08, 00:11:57–00:12:05, 00:23:20–00:23:28, 00:33:19–00:33:29; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 19–20, 27, 34.

<sup>898</sup> Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 29–30; Prosecution Adjudicated Facts Decision, Annex, Facts 170, 171.

<sup>899</sup> Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 20.

<sup>900</sup> Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 33–34.

whether he could ask through General Nicolai for some buses, and Karremans answered that he thought that it could be arranged.<sup>901</sup> Mladić asked Karremans to return at 11 p.m. for a second meeting and to bring representatives of the Bosnian Muslims at Potočari to the meeting to work out an “arrangement”, and said that if the ABiH in Srebrenica “want[ed] to talk” Karremans should bring one of their representatives.<sup>902</sup>

277. The second meeting began at approximately 11 p.m. that night.<sup>903</sup> Mladić was accompanied by Krstić, Radislav Janković, Kosorić, and Momir Nikolić.<sup>904</sup> Karremans and Boering were accompanied by Nesib Mandžić, a former teacher who agreed to unofficially represent the Bosnian Muslim population gathered in Potočari.<sup>905</sup> Boering described the second meeting as a “desperate situation, in trying [...] to make clear that we wanted to leave the enclave and that there were no prospects for better support.”<sup>906</sup> Karremans explained the difficult humanitarian situation in Potočari to Mladić, that there were between 15,000 and 20,000 persons there, with more coming in, and that 95% percent of them were women, children, and the elderly.<sup>907</sup> He told Mladić there were 88 wounded persons and explained that there was an urgent need for food, medicine, and fuel.<sup>908</sup> Karremans told Mladić that UNHCR was ready to provide 30 buses, that he also wanted to ask the UNPROFOR Command for buses, and that an evacuation plan should be made which would establish priority for those who should be transported first.<sup>909</sup>

278. During the meeting, the screaming of a pig being killed nearby could be heard by those in attendance, which Boering found threatening.<sup>910</sup> Additionally, Mladić ordered that a broken sign

<sup>901</sup> Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 36; Prosecution Adjudicated Facts Decision, Annex, Fact 173.

<sup>902</sup> Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 30, 31, 36; Prosecution Adjudicated Facts Decision, Annex, Facts 172, 175.

<sup>903</sup> Pieter Boering, T. 1951 (21 Sept 2006); Ex. P01992, “Video clip of the first meeting at Hotel Fontana taken from Ex. P02047”, 00:39:03–00:39:05; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 37; Prosecution Adjudicated Facts Decision, Fact 176. Momir Nikolić said that the meeting occurred at 10 p.m. Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 1.

<sup>904</sup> Pieter Boering, T. 1952, 1954, 1959 (21 Sept 2006); Prosecution Adjudicated Facts Decision, Annex, Facts 178, 181.

<sup>905</sup> Pieter Boering, T. 1950–1951 (21 Sept 2006); Robert Franken, T. 2486–2487, 2501 (16 Oct 2006); Prosecution Adjudicated Facts Decision, Fact 182. Boering testified that the DutchBat officers looked for a representative of the Bosnian Muslim population in Potočari after they left the first meeting, and asked Mandžić only because they saw him at that time and had met him previously on several occasions. Pieter Boering, T. 2137, 2139–2140 (25 Sept 2006). Franken testified that by this time, the ABiH commanders had disappeared. Robert Franken, T. 2501 (16 Oct 2006).

<sup>906</sup> Pieter Boering, T. 1958 (21 Sept 2006).

<sup>907</sup> Ex. P01994, “Video clip of the second meeting at Hotel Fontana taken from Ex. P02047”, 00:01:10–00:03:33; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 38–39.

<sup>908</sup> Ex. P01994, “Video clip of the second meeting at Hotel Fontana taken from Ex. P02047”, 00:02:02–00:15:18; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 39–46.

<sup>909</sup> Ex. P01994, “Video clip of the second meeting at Hotel Fontana taken from Ex. P02047”, 00:08:48–00:09:20, 00:13:50–00:14:17, 00:15:55–00:16:18; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 42, 45, 46.

<sup>910</sup> Prosecution Adjudicated Facts Decision, Fact 183; Pieter Boering, T. 1953–1954, 1958–1959 (21 Sept 2006); Ex. P01994, “Video clip of the second meeting at Hotel Fontana taken from Ex. P02047”, 00:01:44–00:02:02.

from Srebrenica's town hall be brought into the meeting and displayed to Mandžić, which Boering interpreted as a message to Mandžić that the VRS was in control of Srebrenica.<sup>911</sup> Finally, Mladić addressed Mandžić directly, saying:

Please write down the following: Number one, you need to lay down your weapons and I guarantee that all those who lay down their weapons will live. I give you my word, as a man and a General that I will use my influence to help the innocent Muslim population which is not the target of the combat operations carried out by the VRS. [...] In order to make a decision as a man and a Commander, I need to have a clear position of the representatives of your people on whether you want to survive [...] stay or vanish. I am prepared to receive here tomorrow at 10 am hrs a delegation of officials from the Muslim side with whom I can discuss the salvation of your people from the enclave, the former enclave of Srebrenica. [...] Have I made myself clear? Nesib, the future of your people is in your hands, not only in this territory.<sup>912</sup>

279. Mandžić said that he had no authority to negotiate on behalf of the ABiH or the Bosnian Muslims in Potočari.<sup>913</sup> Mladić told Mandžić that he needed to bring with him to the hotel the next morning "the people who can secure the surrender of weapons and save your people from destruction".<sup>914</sup> After this meeting, Mandžić, frightened, went in search of additional representatives of the Bosnian Muslims in Potočari who might accompany him to the third meeting.<sup>915</sup> Karremans sent a fax to the UNPROFOR Command, describing the situation as deteriorating, and noting that there were more than 15,000 people in an extremely vulnerable position, and that he would be unable to defend them.<sup>916</sup>

280. Immediately prior to the third meeting held at the Hotel Fontana at 10:00 a.m. on 12 July, Momir Nikolić met his superior **Popović**, Chief of Security of the Drina Corps, outside the Hotel.<sup>917</sup> **Popović** told Momir Nikolić that thousands of Bosnian Muslim women and children would be transported out of Potočari towards ABiH-held territory near Kladanj, and that the able-bodied men within the crowd of Bosnian Muslim civilians would be separated, temporarily detained in Bratunac, and killed shortly thereafter.<sup>918</sup> **Popović** told Momir Nikolić that "all the balija had to be

<sup>911</sup> Pieter Boering, T. 1959–1960 (21 Sept 2006); Ex. P01994, "Video clip of the second meeting at Hotel Fontana taken from Ex. P02047", 00:09:49–00:10:02; Prosecution Adjudicated Facts Decision, Fact 184. Momir Nikolić said that Mladić "threatened and intimidated the Dutch officers present and Nesib Mandžić" during this meeting. Momir Nikolić, Ex. C00001, "Statement of Facts and Acceptance of Responsibility, 6 May 2003", p. 1.

<sup>912</sup> Ex. P01994, "Video clip of the second meeting at Hotel Fontana taken from Ex. P02047", 00:20:46–00:24:14; Ex. P02048, "Srebrenica Trial Video Transcript", pp. 47–48; Prosecution Adjudicated Facts Decision, Annex, Fact 187.

<sup>913</sup> Ex. P01994, "Video clip of the second meeting at Hotel Fontana taken from Ex. P02047", 00:17:59–00:20:45, 00:24:34–00:24:45; Ex. P02048, "Srebrenica Trial Video Transcript" pp. 47–48; Prosecution Adjudicated Facts Decision, Annex, Fact 188.

<sup>914</sup> Ex. P01994, "Video clip of the second meeting at Hotel Fontana taken from Ex. P02047", 00:24:46–00:24:53; Ex. P02048, "Srebrenica Trial Video Transcript" p. 48; Prosecution Adjudicated Facts Decision, Annex, Fact 189.

<sup>915</sup> Pieter Boering, T. 1962 (21 Sept 2006).

<sup>916</sup> *Ibid.*, T. 1965 (21 Sept 2006); Ex. P00531, "Letter from Commanding Officer Dutch Battalion regarding meetings with General Mladić on 11 and 12 July."

<sup>917</sup> Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2.

<sup>918</sup> *Ibid.*

killed”.<sup>919</sup> **Popović** asked for Nikolić’s help with the operation, and Nikolić suggested that the Bosnian Muslim men could be detained in facilities such as the Vuk Karadžić School and the hangar in Bratunac.<sup>920</sup> At some point during this discussion, Kosorić, Chief of Intelligence in the Drina Corps,<sup>921</sup> joined the men and the three of them continued to discuss possible locations for detention of the Bosnian Muslim men prior to their execution, including the brick factory and the Sase mine.<sup>922</sup> At the time of this conversation, none of the convoys had left Potočari.<sup>923</sup>

281. **Popović** and others have contested Momir Nikolic’s evidence as to this conversation on 12 July.<sup>924</sup> As noted earlier, the Trial Chamber has taken a cautious approach to Momir Nikolic’s evidence in light of concerns as to his credibility.<sup>925</sup> It has done so with respect to this particular conversation, which is of significance. To begin with, the Trial Chamber notes that Momir Nikolić related this conversation in May 2003 as part of his Statement of Facts and Acceptance of Responsibility,<sup>926</sup> and his description of the content of the conversation with **Popović** has remained constant since that time.

282. The Trial Chamber has carefully reviewed his testimony on this point, noting that this was the first occasion where the circumstances of the discussion were the subject of intense scrutiny, given that one of the other alleged participants—**Popović**—was an Accused in the trial. In the view of the Trial Chamber, it is understandable, therefore, that more details were revealed on this occasion. While his description was not clear throughout as to who was present at precisely which point in time, the Trial Chamber considers this is attributable to the circumstances in which the meetings occurred and the passage of time. Importantly though, despite much cross-examination on the point, he remained consistent as to the subject matter discussed.<sup>927</sup>

283. Having assessed his evidence on this point carefully and in totality, the Trial Chamber accepts it as reliable. Specifically, the Trial Chamber is satisfied that Momir Nikolić was told by **Popović** of the plan to separate and murder the Bosnian Muslim men and that the conversation unfolded as Momir Nikolić described it.

284. By way of support for this conclusion, the Trial Chamber notes that in acknowledging the

<sup>919</sup> Momir Nikolić, T. 32918 (21 Apr 2009).

<sup>920</sup> *Ibid.*, T. 32918 (21 Apr 2009); Momir Nikolić, Ex. C00002, “Supplementary Statement provided by Momir Nikolić on request of the Trial Chamber, 16 Apr 2009”, p. 2.

<sup>921</sup> Svetozar Kosorić, T. 33760 (30 June 2009).

<sup>922</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2.

<sup>923</sup> Momir Nikolić, T. 32921 (21 Apr 2009).

<sup>924</sup> *See, inter alia*, Popović Final Brief, paras. 289–305; Nikolić Final Brief, paras. 590–646.

<sup>925</sup> *See supra*, paras. 48–54.

<sup>926</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”.

<sup>927</sup> *See* Momir Nikolić, T. 32904, 32917–32919 (21 April 2009), T. 33042 (22 April 2009), T. 33329–33330 (28 April 2009).

subject-matter of the conversation, Momir Nikolić incriminated himself directly in these matters. He placed himself and his superior in the Security Branch within the chain of command responsible for arranging the executions. Further, he outlined suggestions he made as to possible detention and execution sites. It is also notable that in so doing, he removed any possibility of arguing that his role in the subsequent separations at Potočari was in furtherance of a simple screening process, as opposed to a murder operation. This is of note considering that witnesses described that he had a list of suspected war criminals with him in Potočari.<sup>928</sup> Any arguments in his favour based on that evidence were eliminated by what he related about his conversation with **Popović** on the morning of 12 July. These factors add to the reliability of the evidence.

285. There are also pieces of evidence which corroborate his testimony on this point. There is video evidence which places **Popović** and Momir Nikolić together outside the Hotel Fontana prior to the third meeting on the morning of 12 July.<sup>929</sup> **Popović** and Kosorić were seen speaking to each other outside the Hotel Fontana before the meeting on 12 July.<sup>930</sup> In addition, DutchBat officer Boering saw Kosorić and Momir Nikolić together in Bratunac after the third Hotel Fontana meeting.<sup>931</sup>

286. Several events which followed directly after the conversation also support Momir Nikolić's version of what was discussed. Shortly after this conversation, at the third Hotel Fontana meeting, Mladić announced for the first time the "screening" of men to be carried out in Potočari, consistent with what **Popović** told Nikolić would happen.<sup>932</sup> Momir Nikolić claims he mentioned the Vuk Karadžić school and the Bratunac hanger as detention sites and indeed those sites were ultimately used.<sup>933</sup> Further, he mentioned the Brick Factory as a potential execution site and according to other evidence, the next day **Beara** examined this same site.<sup>934</sup>

287. And tellingly, the Trial Chamber notes that the tragic events which played out shortly thereafter correspond exactly to what Momir Nikolić described in that conversation. The Bosnian

<sup>928</sup> DutchBat members testified that Momir Nikolić, together with Colonel Vuković, did make some effort to check the identities of the detained men at Potočari, and that they did this with a list of alleged war criminals in their possession. *See supra*, para. 323; Joseph Kingori, T. 19270 (14 Dec 2007); Johannes Rutten, T. 4853, 4899 (30 Nov 2006); Ex. 4D00015, "List of War Criminals known to the command of the Bratunac Brigade, 12 July 1995".

<sup>929</sup> Ex. P02047, "Srebrenica Trial Video", 01.42.50; Ex. P01936, "Video stills taken from the Srebrenica Trial Video", p. 29.

<sup>930</sup> PW-109, T. 14589–14591 (private session) (31 Aug 2007) (testifying that General Krstić and Col. Krsmanovic were also part of this conversation, and the men discussed buses for the transfer of the Bosnian Muslim population, although PW-109 did not hear **Popović** speak).

<sup>931</sup> Pieter Boering, T. 1976–1977 (21 Sept 2006).

<sup>932</sup> *See infra*, paras. 1051–1052.

<sup>933</sup> *See infra*, paras. 452–455, 460–463.

<sup>934</sup> Miroslav Deronjić, Ex. P03139a, "92 *quater* transcript", BT. 6275 (20 Jan 2004) (stating that on 14 July, **Beara** was inquiring about using the brick factory to house prisoners).

Muslim men were separated in Potočari, detained in Bratunac and ultimately killed in mass executions. While the majority of the executions took place in Zvornik, the discussions between **Beara** and **Deronjić** on the night of 13 July evidence that this was a change of plan resulting from **Deronjić's** opposition to the killings taking place in his area.<sup>935</sup> Momir Nikolić describes the coordinating role that **Popović** and the Security Branch were to play in the operation and that is in fact what the Trial Chamber finds occurred.<sup>936</sup> The Trial Chamber has considered the possibility that Momir Nikolić constructed his evidence of this conversation to correspond to the events which subsequently unfolded. However, given that in so doing he directly incriminated himself in the murder operation at this early stage, the Trial Chamber considers it is not a reasonable possibility. Weighing all these factors, the Trial Chamber finds Momir Nikolić's testimony regarding this conversation to be reliable.

288. In making this finding, the Trial Chamber notes that Kosorić in his testimony denied that he discussed the killing operation with Momir Nikolić and **Popović** on 12 July.<sup>937</sup> The Trial Chamber has considered Kosorić's evidence on this point. The Trial Chamber notes that Kosorić was a reluctant witness and his evidence was not forthcoming.<sup>938</sup> He was evasive in his answers and he was clearly downplaying his role in events and denying any involvement on his part. The Trial Chamber does not find his evidence on the content of this conversation reliable and it does not raise any doubt as to the Trial Chamber's finding about the conversation between Momir Nikolić, **Popović** and eventually Kosorić on the morning of 12 July. Thus, the Trial Chamber finds that the conversation between **Popović** and Momir Nikolić took place on the morning of 12 July as described by Momir Nikolić in his testimony.<sup>939</sup>

289. At approximately 10 a.m. on 12 July, the third and final meeting was held at the Hotel Fontana.<sup>940</sup> This time, Mandžić and the DutchBat officers were accompanied by two additional

<sup>935</sup> See *infra*, paras. 1264, 1266.

<sup>936</sup> See *infra*, paras. 1068, 1072, 1166, 1168.

<sup>937</sup> Svetozar Kosorić, T. 33763–33765 (30 June 2009).

<sup>938</sup> Kosorić was subpoenaed to give evidence (see Decision on Vujadin Popović's Request for a Subpoena *ad Testificandum*, confidential, 14 May 2009). During his testimony, Kosorić frequently evaded questions by responding that he either did not remember or did not know and consistently provided alternative justifications instead of straight answers. When asked repeatedly whether he met Momir Nikolić outside the Hotel Fontana on 12 July, Kosorić states that he does not remember. However, when confronted with testimony from Major Boering that he encountered Nikolić and Kosorić at the Hotel Fontana on 12 July, Kosorić stated that he doesn't "know about that". Svetozar Kosorić, T. 33793–33794 (30 June 2009). Even after being presented with a video clip that depicts Kosorić in Potočari, Kosorić asserted that he does not remember standing around while officers gave press interviews and, when pressed, stated that he was only there as part of Mladić's entourage. Svetozar Kosorić, T. 33789 (30 June 2009). Kosorić was also evasive about the Hotel Fontana meetings. When asked if he attended the first meeting, he stated that he was merely a liaison before eventually responding that he did in fact attend the meeting. Svetozar Kosorić, T. 33779–33780 (30 June 2009).

<sup>939</sup> See *supra*, para. 280.

<sup>940</sup> Pieter Boering, T. 1968 (21 Sept 2006); Ljubisav Simić, Ex. 4D00606, "92 *ter* transcript", BT. 7607 (15 Apr 2004); Ex. P01995, "Video clip of the third meeting at Hotel Fontana taken from Ex. P02047".



persons from among the crowd of Bosnian Muslims at Potočari, Ibro Nuhanović and Čamila Omanović, neither of whom officially represented the ABiH or the Muslim municipal authorities in Srebrenica.<sup>941</sup> Mladić was accompanied by Krstić, Kosorić, Radislav Janković and **Popović**.<sup>942</sup> Several civilian authorities, including Ljubisav Simić, the President of the Bratunac municipality, Srbislav Davidović, the President of the Bratunac municipality Executive Board, Miroslav Deronjić, the Civilian Commissioner for the Serbian Municipality of Srebrenica,<sup>943</sup> and Dragomir Vasić, the Head of the Zvornik CJB were also present.<sup>944</sup> The Bosnian Muslim representatives “request[ed] free passage for able-bodied men, because, allegedly, they [we]re unarmed and they [we]re not in contact with their army in the woods.”<sup>945</sup>

290. Addressing the Bosnian Muslim representatives, Mladić said:

I want to help you, but I want absolute co-operation from the civilian population because your army has been defeated. There is no need for your people to get killed, your husband, your brothers or your neighbours. All you have to do is say what you want. As I told this gentleman last night, you can either survive or disappear. For your survival, I demand that all your armed men, even those who committed crimes – and many did – against our people, surrender their weapons to the VRS. Upon surrendering the weapons you may choose to stay in the territory or, if so you wish, go wherever you want. The wish of every individual will be observed no matter how many of you there are.<sup>946</sup>

Mladić also said that he would provide the vehicles to transport the Bosnian Muslims but that someone else would need to provide fuel, noting specifically that UNPROFOR should bring four or five tanker trucks of fuel because of the high number of Bosnian Muslims gathering at Potočari.<sup>947</sup> Mladić announced that all the Bosnian Muslim men in Potočari would be screened for war crimes.<sup>948</sup> At the end of the meeting, Mladić and Deronjić, along with Vasić, discussed with the DutchBat officers technical details of the transportation and reached an agreement that DutchBat

<sup>941</sup> Pieter Boering, T. 1968 (21 Sept 2006); Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 49–51.

<sup>942</sup> Ex. P00453, “Statement signed by Franken, Mandžić and Deronjić on 17 July 1995”, p. 1 (listing the participants at the 12 July meeting); Pieter Boering, T. 1968–1969 (21 Sept 2006); Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 2; Ex. P01995, “Video clip of the third meeting at Hotel Fontana taken from Ex. P02047”.

<sup>943</sup> Ex. P00453, “Statement signed by Franken, Mandžić and Deronjić on 17 July 1995”, p. 1 (listing the participants at the 12 July meeting); Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6189, 6192–6194, 6200–6201 (19 Jan 2004), 6423 (22 Jan 2004); Ljubisav Simić, Ex. 4D00606, “92 *ter* transcript”, BT. 7608 (15 Apr 2004).

<sup>944</sup> Ex. P00453, “Statement signed by Franken, Mandžić and Deronjić on 17 July 1995”, p. 1 (listing the participants at the 12 July meeting); Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6193 (19 Jan 2004); Ljubisav Simić, Ex. 4D00606, “92 *ter* transcript”, BT. 7608 (15 Apr 2004); Ljubisav Simić, T. 27207 (22 Oct 2008).

<sup>945</sup> Ex. P03040, “Report from the Zvornik CJB RS MUP on third Hotel Fontana Meeting, 12 July 1995”, p. 1.

<sup>946</sup> Ex. P01995, “Video clip of the third meeting at Hotel Fontana taken from Ex. P02047”, 00:04:26–00:05:38; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 51.

<sup>947</sup> Ex. P01995, “Video clip of the third meeting at Hotel Fontana taken from Ex. P02047”, 00:06:18–00:06:48; Ex. P02048, “Srebrenica Trial Video Transcript” p. 52. *See also* Ex. P03040, “Report from the Zvornik CJB RS MUP on third Hotel Fontana Meeting, 12 July 1995”, p. 1.

<sup>948</sup> Pieter Boering, T. 1969, 1974 (21 Sept 2006). *See also* Ex. P03040, “Report from the Zvornik CJB RS MUP on third Hotel Fontana Meeting, 12 July 1995”, p. 1.

would escort the convoys.<sup>949</sup> Mladić asked the Bosnian Serb civilian authorities to provide food and milk to the infants, to organise an infirmary, and to transfer those in the hospital in Srebrenica to the DutchBat infirmary.<sup>950</sup> Following the meeting, Radislav Janković, from the Department of Security and Intelligence of the VRS Main Staff, told Momir Nikolić to “coordinate” the transportation of the women and children and the separation of the able-bodied Bosnian Muslim men.<sup>951</sup>

291. After leaving this third meeting, Boering and Karremans discussed what had happened and realised that they did not understand precisely what agreements had been reached at the meeting.<sup>952</sup> It was unclear to them how inspections or screenings of the Bosnian Muslims in Potočari would take place,<sup>953</sup> who would arrange for their humanitarian needs, or who would carry out the transportations or provide the fuel.<sup>954</sup> Karremans then sent Boering back to Bratunac to get further information.<sup>955</sup> Upon his return to the Hotel Fontana, Boering encountered Momir Nikolić together with Kosorić.<sup>956</sup> Momir Nikolić told Boering that everything had already been agreed upon, that “things had already started”, that Boering had no further business in Bratunac, and that Boering should leave immediately.<sup>957</sup> As he drove back to Potočari, Boering could see a line of buses and trucks heading towards Potočari.<sup>958</sup>

292. At the request of Radislav Janković, five days later on 17 July, Mandžić, Deronjić, and Franken, the DutchBat Deputy Commander, signed a statement purporting to memorialise the agreements reached at the 12 July meeting at the Hotel Fontana.<sup>959</sup> The signed statement says that following a request from the Bosnian Muslim side to conduct negotiations on the evacuation of the Bosnian Muslim civilian population from the Srebrenica enclave the two sides agreed: (1) that the Bosnian Muslim civilian population could stay in the enclave or move out, depending upon the wish of each individual, (2) that the Bosnian Muslim civilian population could go where it wanted to go if it should elect to leave the enclave, and that it had chosen to be evacuated to Kladanj, and (3) that the evacuation would be carried out by the VRS and RS police, with UNPROFOR

<sup>949</sup> Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6192–6193 (19 Jan 2004). *See also* Ex. P03040, “Report from the Zvornik CJB RS MUP on third Hotel Fontana Meeting, 12 July 1995”, p. 1.

<sup>950</sup> Ljubisav Simić, Ex. 4D00606, “92 *ter* transcript”, BT. 7611 (15 Apr 2004). *See also* Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6200 (19 Jan 2004), BT. 6423 (22 Jan 2004).

<sup>951</sup> Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 2; Momir Nikolić, Ex. C00002, “Further Statement”, p. 2, T. 33268–33269 (27 Apr 2009).

<sup>952</sup> Pieter Boering, T. 1976 (21 Sept 2006).

<sup>953</sup> *Ibid.*, T. 1969 (21 Sept 2006).

<sup>954</sup> *Ibid.*, T. 1975 (21 Sept 2006).

<sup>955</sup> *Ibid.*, T. 1976 (21 Sept 2006).

<sup>956</sup> Pieter Boering, T. 1976–1977 (21 Sept 2006); Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 2.

<sup>957</sup> Pieter Boering, T. 1976 (21 Sept 2006); Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 2.

<sup>958</sup> Pieter Boering, T. 1976 (21 Sept 2006), 2008 (22 Sept 2006).

supervising and providing an escort for the evacuation.<sup>960</sup> Deronjić stated that segments of the signed statement were inaccurate with regard to agreements reached at the 12 July meeting, including specifically that the civilian population could stay or move depending on its wish.<sup>961</sup> Franken testified that the statement was “nonsense” as the Bosnian Muslims did not have “a realistic opportunity to stay [...] or move in any direction” and Mladić had ordered that they should go to Kladanj.<sup>962</sup>

## 2. Provision of Buses and Fuel for the Transportation of the Bosnian Muslim Population

293. During the night of 11 July, General Petar Škrbić, the Assistant Commander for Mobilisation and Personnel Affairs of the Main Staff,<sup>963</sup> was asked by Mladić over the telephone to request the requisition of buses from the RS Ministry of Defence (“MOD”) to be sent to the Bratunac sports stadium by 2:30 p.m. on 12 July.<sup>964</sup> Škrbić sent Momčilo Kovačević, the Assistant Minister of the MOD<sup>965</sup> an urgent written request for buses the next morning.<sup>966</sup> At 9:50 a.m. on 12 July, the MOD received Škrbić’s urgent request that it mobilise at least 50 buses to be sent to the Bratunac sports stadium by 2:30 p.m. from the municipalities of “Pale, Sokolac, Rogatica, Višegrad, Han Pijesak, Vlasenica, Milići, Bratunac, and Zvornik”.<sup>967</sup> In response to this request, Kovačević sent an order to the local MOD Departments in Sarajevo and in Zvornik, requesting the mobilisation of at least 20 and 50 buses respectively.<sup>968</sup>

<sup>959</sup> Robert Franken, T. 2516–2519 (16 Oct 2006), 2530 (17 Oct 2006); Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6205–6206 (19 Jan 2004), 6217–6218 (20 Jan 2004); Ex. P00453, “Statement signed by Franken, Mandžić and Deronjić on 17 July 1995”, p. 1.

<sup>960</sup> Ex. P00453, “Statement signed by Franken, Mandžić and Deronjić on 17 July 1995”, p. 1.

<sup>961</sup> Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6205–6206 (19 Jan 2004), 6217–6218 (20 Jan 2004).

<sup>962</sup> Robert Franken, T. 2517–2518 (16 Oct 2006), T. 2530 (17 Oct 2006).

<sup>963</sup> Petar Škrbić, T. 15467–15469 (17 Sept 2007).

<sup>964</sup> *Ibid.*, T. 15469–15474, 15481 (17 Sept 2007); Ex. P02899, “Main Staff document No. 09/31/18-3/154, type-signed Škrbić, 12 July 1995”.

<sup>965</sup> See Ex. P00012, “RS MOD Document, Request No. 02-21-3614/95 for mobilisation of buses, Momčilo Kovačević, 12 July 1995”.

<sup>966</sup> Petar Škrbić, T. 15472–15473, 15476 (17 Sept 2007); Ex. P02899, “Main Staff document No. 09/31/18-3/154, type-signed Škrbić, 12 July 1995.”

<sup>967</sup> Ex. P02899, “Main Staff document No. 09/31/18-3/154, type-signed Škrbić, 12 July 1995.”

<sup>968</sup> Ex. P00012, “RS MOD Document, Request No. 02-21-3614/95 for mobilisation of buses, Momčilo Kovačević, 12 July 1995”. Ex. P00014, “RS MOD document, Request 02-21-3638/95 for mobilisation of buses, signed by Momčilo Kovačević, 12 July 1995”; Ex. P00013, “Document titled – request for the mobilisation of buses from the Secretariat for the Defence Ministry Zvornik No. 02-21-3615/95, signed by Momčilo Kovačević, 12 July 1995.” In response to Kovačević’s order to the MOD – Zvornik, Stevan Ivanović, Secretary of the MOD – Zvornik, ordered the MOD Departments in Zvornik, Milići, Vlasenica, Šekovići, and Bratunac to immediately mobilise all buses and trucks and to report to the Bratunac sports stadium. Ivanović further ordered the cancellation of all regular bus services and requested a report every 30 minutes regarding the implementation of this order. Ex. P02900, “Order from RS MOD No. 02–78/95, to the MOD departments in Zvornik, Milići, Vlasenica, Šekovići and Bratunac, 12 July 1995”; Ex. P02901, “Order from RS MOD No. 02–79/95 to the MOD departments in Zvornik, Milići, Šekovići and Bratunac, signed by Stevan Ivanović, 12 July 1995.”

294. On 12 July, at 7:35 a.m., Krstić ordered Lt. Colonel Krsmanović, the Chief of Transportation of the Drina Corps, to send 50 buses from Pale, Višegrad, Rogatica, Sokolac, Han Pijesak, Vlasenica, Milići, Bratunac, and Zvornik to the Bratunac sports stadium by 5 p.m. that day.<sup>969</sup> At 8:35 a.m., the Bratunac Brigade received an urgent Drina Corps Command order from Živanović, addressed to all subordinate units of the Drina Corps, requesting that “all the available buses and mini-buses belonging to the [VRS] must be secured for the use of the Drina Corps Command on 12 July”, that they arrive at the Bratunac sports stadium by 4:30 p.m. at the latest, and follow instructions about locations for fuel distribution while the buses from the Zvornik and Bratunac Brigades were to be fueled at their commands.<sup>970</sup> The order further stated that the Drina Corps Command had sent a message to the MOD asking for public and private buses to be mobilised.<sup>971</sup>

295. At 10 a.m. on 12 July, the Drina Corps reported to the Main Staff that buses would be used from various municipalities,<sup>972</sup> but that their exact final destination was still unknown.<sup>973</sup>

296. At some point on 12 July, Živanović sent another urgent order from the Drina Corps Command to the Zvornik and Bratunac Brigades, instructing the Zvornik Brigade to regulate the traffic at the Konjević Polje junction while the Bratunac Brigade was ordered to regulate the traffic in cooperation with the Bratunac SJB on the Konjević Polje – Bratunac road at 4:30 p.m., particularly around the Bratunac sports stadium.<sup>974</sup> Priority was to be “given to the buses for evacuation”.<sup>975</sup> In response, the Zvornik Brigade sent a military police detachment to Konjević Polje.<sup>976</sup> At 1:05 p.m., an intercept recorded Krstić ordering the Vlasenica Brigade to get in touch with the MUP and then to secure the road which would be used as the evacuation route for the buses.<sup>977</sup>

297. The VRS made considerable efforts to requisition buses.<sup>978</sup> Fuel, which was scarce in the VRS at the time, was needed in large quantities to transport the Bosnian Muslim population out of

<sup>969</sup> Ex. P01101d, “Intercept, 12 July 1995, 0735 hours.” See *supra*, fn. 330.

<sup>970</sup> Ex. P00110, “Drina Corps Order, signed by Živanović, 12 July 1995”; Dragoslav Trišić, T. 27064 (20 Oct 2008).

<sup>971</sup> Ex. P00110, “Drina Corps Order, signed by Živanović, 12 July 1995”; See also Dragoslav Trišić, T. 27064–27066 (20 Oct 2008); Ex. P00322, “Zvornik Brigade daily combat report no. 06/215, type-signed Vinko Pandurević, 12 July 1995”.

<sup>972</sup> Ex. P00156, “Document of Drina Corps No. 21/6-686 to the VRS Main Staff, Command Post and Rear Command Post (for information) signed by Maj. Gen. Živanović, Commander, 12 July 1995”. The municipalities are identified as Pale, Sokolac, Višegrad, Rogatica, Han Pijesak, Milići, Šekovići, Bratunac and Zvornik. *Ibid.*

<sup>973</sup> *Ibid.*

<sup>974</sup> Ex. 7DP00157, “Drina Corps Order, signed by Živanović, 12 July 1995”.

<sup>975</sup> *Ibid.*,

<sup>976</sup> Ex. P00322, “Zvornik Brigade daily combat report no. 06/215, type-signed Vinko Pandurević, 12 July 1995”; Vinko Pandurević, T. 30925–30926 (30 Jan 2009). See also PW-168, T. 15823 (closed session) (26 Sept 2007), T. 16150–16151(closed session) (10 Oct 2007).

<sup>977</sup> Ex. P01114a, “Intercept, 12 July 1995, 13:05 hours”.

<sup>978</sup> See Ex. P01105a, “Intercept, 12 July 1995, 09:15 hours, from notebook 92.”

Potočari.<sup>979</sup> Early on 12 July, following an order from Mladić, the Drina Corps requested approval for 10,000 litres of diesel and 2,000 litres of petrol from the Main Staff for the fueling of the buses being used for the transportation.<sup>980</sup> Various intercepts recorded conversations on the problems the VRS was having in procuring fuel on 12 July.<sup>981</sup>

298. Similar to the orders sent on 12 July, Kovačević sent orders to MOD Departments in Sarajevo, Zvornik and Bijeljina on 13 July, requesting the immediate mobilisation of all available means of transport from designated municipalities to report to specified locations or to be on call.<sup>982</sup>

299. On 12 July, at 10 p.m., a meeting attended by a number of officers, including Mladić, Krstić, **Pandurević**, and Mirko Trivić was held at the Bratunac Brigade Headquarters.<sup>983</sup> During the meeting, Trivić overheard Mladić on the telephone procuring vehicles and fuel to transport the Bosnian Muslim population away from Potočari.<sup>984</sup> Mladić said that he would take care of the buses while the person he was speaking to was ordered to take care of the fuel.<sup>985</sup>

300. On 13 July, in a report sent to the MUP in Pale and to the Bijeljina Public Security Department and Bijeljina Police Forces Headquarters, Vasić stated that the MUP would be in charge of the “evacuation of the remaining civilian population from Srebrenica to Kladanj (about 15,000) by bus” and that 10 tonnes of petrol were “urgently” needed.<sup>986</sup>

301. Franken testified that “somebody in the UN” had decided that UNPROFOR would supply the fuel for the transportation of the Bosnian Muslim population out of Srebrenica.<sup>987</sup> However, due to DutchBat’s shortage of fuel, the VRS first provided the fuel which DutchBat had to replace later.<sup>988</sup> The VRS was able to procure fuel itself and at some point on 12 July, a cistern carrying fuel

<sup>979</sup> Dragoslav Trišić, T. 27114–27115 (21 Oct 2008).

<sup>980</sup> Ex. P00156, “Document of Drina Corps No. 21/6-686 to the VRS Main Staff, Command Post and Rear Command Post (for information) signed by Maj. Gen. Živanović, Commander, 12 July 1995”.

<sup>981</sup> Ex. P01105a, “Intercept, 12 July 1995, 09:15 hours, from notebook 92”; Ex. P01111a, “Intercept, 12 July 1995, 12:20 hours”.

<sup>982</sup> Ex. P00015, “RS MOD document, Request (01–21–3655/95), for mobilisation of buses for transportation of personnel, 13 July 1995”; Ex. P00016, “RS MOD Document, Request (01–21–3656/95) for mobilisation of buses for transportation of personnel, 13 July 1995”; Ex. P00017, “RS MOD document, Request (02–21–3640/95), for mobilisation of buses, 13 July 1995”.

<sup>983</sup> See *infra* paras. 366–376.

<sup>984</sup> Mirko Trivić, T. 11845 (21 May 2007), T. 11980–11981(23 May 2007).

<sup>985</sup> *Ibid.*, T. 11845 (21 May 2007).

<sup>986</sup> Ex. P00886, “Document from the Zvornik CJB to Republika Srpska MUP Office of the Minister, Pale Bijeljina Public Security Department, Bijeljina Police Forces Headquarters signed by Chief of the Centre Dragomir Vasić, 13 July 1995”.

<sup>987</sup> Robert Franken, T. 2568 (17 Oct 2006). Franken says either “Smith or Karremans”. *Ibid.*

<sup>988</sup> *Ibid.*, T. 2569 (17 Oct 2006).

came from the Drina Corps and was available for re-fueling of buses at Vihor's Transport Company's parking lot in Bratunac.<sup>989</sup>

### 3. Bosnian Serb Forces Taking over Control of Potočari

302. In the morning of 12 July, when groups of Bosnian Muslims were still arriving in Potočari,<sup>990</sup> Bosnian Serb Forces, including some Jahorina Recruits,<sup>991</sup> the 1st PJP Company from Zvornik,<sup>992</sup> and the Bratunac Brigade,<sup>993</sup> approached Potočari and the area of the DutchBat compound from all directions.<sup>994</sup> They took over OP Papa, the UN checkpoint at Žuti Most without engaging DutchBat.<sup>995</sup> Some time before the third Hotel Fontana meeting, Dragomir Vasić, the Chief of the Zvornik CJB, sent a report to, *inter alia*, the MUP forces in Bijeljina and in Pale, stating that joint police forces were advancing towards Potočari with the goal of "taking UNPROFOR personnel prisoner, surrounding the entire civilian population and cleansing the area of enemy troops."<sup>996</sup>

<sup>989</sup> Dragoslav Trišić, T. 27078–27079 (20 Oct 2008), T. 27111–27115 (21 Oct 2008); Ex. 4D00613, "Bratunac Brigade overview of fuel, 2 Aug 1995", p. 1; Ex. 5D01385, "Bratunac Brigade receipt for fuel, 13 July 1995"; Ex. 5D01386, "Vihor Company receipt fuel, 14 July"; Robert Franken, T. 2569–2570 (17 Oct 2006).

<sup>990</sup> Robert Franken, T. 2488 (16 Oct 2006).

<sup>991</sup> PW-160, T. 8579–8581 (9 Mar 2007), T. 8676–8677 (12 Mar 2007). *See also* PW-100, T. 14802–14803, 14807 (5 Sept 2007); Mendeljev Đurić, T. 10805–10807, 10833–10834, 10857–10859 (2 May 2007), T. 10893 (3 May 2007); Ex. PIC00098, "Ex. P02478 marked by Mendeljev Đurić."

<sup>992</sup> Zarko Zarić, T. 26917–26918, (9 Oct 2008), T. 26952 (10 Oct 2008); Nenad Filipović, T. 26995–26997 (10 Oct 2008); PW-160, T. 8580–8581, 8592 (9 Mar 2007).

<sup>993</sup> Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; PW-160, T. 8593 (9 Mar 2007), T. 8675 (private session) (12 Mar 2007).

<sup>994</sup> Robert Franken, T. 2489–2490 (16 Oct 2006), T. 2614 (17 Oct 2006); Johannes Rutten, Ex. P02178, "92 *ter* transcript", KT. 2116–2117 (5 Apr 2000); Johannes Rutten, T. 4835–4836, 4877 (30 Nov 2006); Martijn Anne Mulder, Ex. P02199, "92 *bis* statement", (24 and 25 Oct 1995 and 12 May 2000), p. 3 (24 and 25 Oct 1995); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Leendert van Duijn, T. 2273 (27 Sept 2006), T. 2335–2339 (28 Sept 2006); Ex. 4DIC00014, "Map marked by Van Duijn". *See also* Eelco Koster, Ex. P02187, "92 *ter* transcript", KT. 3402 (24 May 2000); PW-160, T. 8592–8593 (9 Mar 2007), T. 8675 (private session) (12 Mar 2007); Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 27–28; Zarko Zarić, T. 26917–26918, (9 Oct 2008), T. 26952 (10 Oct 2008); Ex. 4D00547, "Aerial of Žuti Most close-up." There is also evidence that VRS soldiers in black uniforms passed through Potočari on 12 July. Joseph Kingori, T. 19245 (13 Dec 2007); PW-114, Ex. P02188, "92 *ter* transcript", KT. 1499–1500, 1544 (28 Mar 2000). *See also* Dražen Erdemović, T. 10939–10940, 10951–10952, 10960, 10996 (4 May 2007) (stating that uniform included a black overall with a removable insignia and that most of them wore black uniforms when they were in Srebrenica on 11 July). Based solely on the evidence that one of the uniforms of the 10th Sabotage Detachment was black, on Erdemović's testimony that he did not approach Potočari on that day, and on the fact that the members of the 10th Sabotage Detachment he recognised on photos were not wearing black uniforms, the Trial Chamber is not satisfied that the troops in black approaching Potočari on 12 July were members of the 10th Sabotage Detachment.

<sup>995</sup> Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995," p. 2; Ex. P03789, "Borovčanin Report to SBP and other police staff, 13 July 1995", p. 1; PW-160, T. 8657–8659 (12 Mar 2007); Mendeljev Đurić, T. 10805–10807, 10856–10858 (2 May 2007); Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002," pp. 61, 63–64; Nenad Filipović, T. 26994, 26996–26997 (10 Oct 2008); Robert Franken, T. 2588 (17 Oct 2006).

<sup>996</sup> Ex. P00059, "Dispatch signed by Dragomir Vasić, 12 July 1995," para. 6. *See also* Zarko Zarić, T. 26937–26938 (9 Oct 2008).

303. As the Bosnian Serb Forces advanced towards Potočari, they searched houses and some houses and haystacks were set on fire.<sup>997</sup> The Bosnian Muslims gathered in Potočari could see the burning houses and haystacks and coupled with the arrival of the Bosnian Serb Forces, this caused panic amongst them.<sup>998</sup>

304. Once in Potočari, members of the Bosnian Serb Forces, including MUP units, who were all well-armed,<sup>999</sup> took up positions along the road among the Bosnian Muslims.<sup>1000</sup> While some of the members of the Bosnian Serb Forces acted properly towards the Bosnian Muslims,<sup>1001</sup> there were instances of mockery and threats.<sup>1002</sup> Some insulted the Bosnian Muslims, telling them, for example, that “[they] will never go back to Srebrenica” or “[y]ou are Turks and you would be best off if you go to Turkey.”<sup>1003</sup>

305. At one point, Bosnian Serb Forces, including members of the MUP with dogs, went inside the DutchBat compound accompanied by Franken and other DutchBat soldiers to check if there were any ABiH soldiers hiding there and moved around the Bosnian Muslims sheltering there.<sup>1004</sup> Amongst the Bosnian Serb Forces entering the compound were Momir Nikolić, Chief of Intelligence and Security of the Bratunac Brigade, **Borovčanin**, and one of his commanders.<sup>1005</sup>

<sup>997</sup> PW-114, Ex.P02188, “92 *ter* transcript”, KT.1501 (28 Mar 2000); Leendert van Duijn, T. 2273 (27 Sept 2006), T. 2339 (28 Sept 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 144; Mendeljev Đurić, T. 10806, 10833 (2 May 2007).

<sup>998</sup> Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2116–2117 (5 Apr 2000); Hana Mehmedović, Ex. P03244 “92 *bis* statement” (17 June 2000), p. 2; PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1250–1251 (24 Mar 2000); Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1950–1951 (3 Apr 2000); Ex. P04536, “Potočari Footage – Video of the Serb forces entering Potočari on 12 July 1995” 00:03:06–00:03:43, p. 1 (transcript); Prosecution Adjudicated Facts Decision, Annex, Fact 144.

<sup>999</sup> PW-126, T. 3601 (6 Nov 2006); PW-114, Ex. P02188, “92 *ter* transcript”, KT. 1504–1507 (28 Mar 2000).

<sup>1000</sup> Joseph Kingori, T. 19245–19246 (13 Dec 2007); Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2117–2118 (5 Apr 2000); Johannes Rutten, T. 4877 (30 Nov 2006); Hana Mehmedović, Ex. P03244, “92 *bis* statement” (17 June 2000), p. 2; Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1951 (3 Apr 2000).

<sup>1001</sup> PW-126, T. 3601 (6 Nov 2006); PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1251 (24 Mar 2000); PW-118, T. 3483 (2 Nov 2006).

<sup>1002</sup> Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2117–2118, (5 Apr 2000); Johannes Rutten, T. 4877 (30 Nov 2006); Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1951 (3 Apr 2000).

<sup>1003</sup> PW-126, T. 3601 (6 Nov 2006).

<sup>1004</sup> Robert Franken, T. 2490–2491, 2493 (16 Oct 2006); Paul Groenewegen, T. 2975 (25 Oct 2006); Martijn Anne Mulder, Ex. P02199, “92 *bis* statement” (24 and 25 Oct 1995, 12 May 2000), p. 12 (12 May 2000); Ex. ID00035”, “Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation in Srebrenica, 12 July 1995,” p. 3; Šehra Ibišević, Ex. P03235, “92 *bis* statement” (21 June 2000), pp. 3–4. Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 14, 18, 89–91, 144–146; PW-160, T. 8570 (9 Mar 2007), T. 8631 (12 Mar 2007). The Trial Chamber finds that the Bosnian Serb Forces with dogs were MUP forces.

<sup>1005</sup> Joseph Kingori, T. 19450–19451, 19454 (11 Jan 2008); PW-160, T. 8583, 8585 (9 Mar 2007), T. 8671 (12 Mar 2007). See also Ex. P04536, “Potočari Footage – video of the Serb forces entering Potočari on 12 July 1995 and transcript”, 00:07:13–00:07:44, pp. 3–4 (transcript) (showing Duško Jević, on the morning of 12 July asking DutchBat officers whether there were also ABiH soldiers among the civilians sheltering in the DutchBat compound and a male voice asking how many men there were and their age).

#### 4. Disarming DutchBat

306. In the early afternoon of 12 July, Rutten and other DutchBat soldiers were patrolling the area around the bus station in Potočari, when Bosnian Serb Forces approached the area and robbed them of some equipment and personal belongings.<sup>1006</sup> The DutchBat soldiers were pushed away when they tried to stop the members of the Bosnian Serb Forces from carrying off their equipment.<sup>1007</sup> At that moment, ABiH gunfire was heard coming from a hill, and the Bosnian Serb Forces fired back, using some of the DutchBat soldiers as shields.<sup>1008</sup> When he saw this, Rutten pointed his gun at the members of the Bosnian Serb Forces and demanded that they let the DutchBat soldiers go.<sup>1009</sup> They did so but then continued carrying DutchBat equipment away.<sup>1010</sup>

307. Later that afternoon, some Jahorina Recruits forced Rutten and the DutchBat soldiers under his command, in the bus station area, to surrender more of their equipment at gunpoint, including weapons, communication equipment, and bulletproof vests.<sup>1011</sup> Rutten and the other DutchBat soldiers were then detained for a few hours near a small bridge close to the bus station.<sup>1012</sup> They were guarded by two Jahorina Recruits until Mendeljev Đurić, a.k.a. “Mane”, Commander of the 1st Company of the Jahorina Recruits, released them after a few hours, and only after Rutten had twice protested to him about the DutchBat soldiers’ detention and their being robbed of their equipment.<sup>1013</sup>

308. In the early hours of the night of 12 July, some Jahorina Recruits robbed DutchBat soldiers who were stationed in the area of the bus station of their equipment.<sup>1014</sup> They walked in groups of three or four up to one DutchBat soldier at a time, and demanded that he surrender his weapons,

<sup>1006</sup> Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2118, 2120–2121 (5 Apr 2000); PW-114, Ex. P02188, “92 *ter* transcript”, KT. 1510 (28 Mar 2000), KT. 1562 (29 Mar 2000).

<sup>1007</sup> Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2118 (5 Apr 2000).

<sup>1008</sup> *Ibid.*, KT. 2118–2119 (5 Apr 2000).

<sup>1009</sup> *Ibid.*, KT. 2119 (5 Apr 2000).

<sup>1010</sup> *Ibid.*, KT. 2119 (5 Apr 2000).

<sup>1011</sup> *Ibid.*, KT. 2120–2122 (5 Apr 2000); Johannes Rutten, T. 4810–4811 (29 Nov 2006), T. 4920–4922 (4 Dec 2006). *But see* PW-100, T. 14875 (6 Sept 2007); PW-160, T. 8659 (12 Mar 2007), T. 8708 (13 Mar 2007). *See also* Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 70–71; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 7, 24; PW-160, T. 8587, 8604 (9 Mar 2007), T. 8637–8638 (private session), 8639, 8654, 8683 (12 Mar 2007); Mendeljev Đurić, T. 10806–10807, 10864, (2 May 2007). The Trial Chamber finds that in the afternoon of 12 July the only special police force present in Potočari under **Borovčanin**’s command was the Jahorina Recruits which was under the command of Mendeljev Đurić a.k.a. Mane, who released Rutten and the other DutchBat soldiers. The Trial Chamber therefore finds that some Jahorina Recruits robbed and detained Rutten and his men.

<sup>1012</sup> Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2122–2123 (5 Apr 2000); Johannes Rutten, T. 4816 (29 Nov 2006); Ex. PIC00052, “Aerial Image with Rutten’s Markings”. *See also* Ex. PIC00181, “Document from the HQ UNPROFOR Sarajevo, Office of Lieutenant General Rupert Smith regarding the Aftermath of Fall of Srebrenica,” pp. 2–3.

<sup>1013</sup> Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2122–2124 (5 Apr 2000); Johannes Rutten, T. 4929–4930 (4 Dec 2006).

<sup>1014</sup> Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3411 (24 May 2000); Eelco Koster, T. 3049–3052 (26 Oct 2006).



bulletproof vest, and helmet.<sup>1015</sup> Two Jahorina Recruits demanded that Lieutenant Koster, a DutchBat officer, surrender all his equipment and when he refused, a gun was pointed at him.<sup>1016</sup> He was only released when he threatened to report the incident to Mane.<sup>1017</sup> Most of the 30 to 40 DutchBat officers who were there with Koster that night lost their equipment in this way.<sup>1018</sup>

##### 5. Humanitarian Situation and Atmosphere

309. During the period from 11 to 13 July there was very little food or water in Potočari.<sup>1019</sup> During the day, the Bosnian Muslim population gathered there suffered from the stifling heat.<sup>1020</sup> During the nights, when it was cold, most of the people had to sleep outside without blankets.<sup>1021</sup> Because food was scarce, DutchBat rations could only be provided to those Bosnian Muslims inside the DutchBat compound.<sup>1022</sup> DutchBat could not purify the water it had due to lack of fuel.<sup>1023</sup> While there was a well outside,<sup>1024</sup> the small water supply available was insufficient for the 20,000 to 30,000 Bosnian Muslims who were inside and outside the DutchBat compound.<sup>1025</sup>

310. On 12 July, the Bosnian Serb civilian authorities, acting on Mladić's order, sent fire engines carrying drinking water and a few water cisterns to Potočari and provided some food, including bread and sweets, that was handed out to the Bosnian Muslim civilians by the Bosnian Serb Forces.<sup>1026</sup> Mladić personally handed out the food, as did **Borovčanin**; **Popović** was also present.<sup>1027</sup> This was all filmed by a Serbian television station.<sup>1028</sup> However, as soon as the cameras

<sup>1015</sup> Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3411 (24 May 2000).

<sup>1016</sup> *Ibid.*; Eelco Koster, T. 3052–3053 (26 Oct 2006).

<sup>1017</sup> Eelco Koster, T. 3052–3054 (26 Oct 2006).

<sup>1018</sup> Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3411 (24 May 2000); Šehra Ibišević, Ex. P03235, "92 bis statement" (21 June 2000), pp. 3–5.

<sup>1019</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 123; Ex. 1D00035", "Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation in Srebrenica, 12 July 1995," p. 2; Mirsada Malagić, Ex. P02218, "92 bis transcript", KT. 1950 (3 Apr 2000); Pieter Boering, T. 1940 (21 Sept 2006); Ex. 4D00017, "Interim Report of General Staff of ABiH, 12 July 1995", p. 1..

<sup>1020</sup> Robert Franken, T. 2511 (16 Oct 2006); Vincent Egbers, T. 2719 (18 Oct 2006); PW-121, Ex. P02227, "92 bis transcript", KT. 5751–5752 (26 July 2000); Mile Janjić, Ex. P02963, "92 ter transcript", BT. 9772 (24 May 2004).

<sup>1021</sup> Paul Groenewegen, Ex. P02196, "92 ter transcript", BT. 1021 (10 July 2003).

<sup>1022</sup> Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3398 (24 May 2000).

<sup>1023</sup> Robert Franken, T. 2511 (16 Oct 2006); Vincent Egbers, T. 2919–2920 (20 Oct 2006).

<sup>1024</sup> Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3398 (24 May 2000).

<sup>1025</sup> Vincent Egbers, T. 2919 (20 Oct 2006); Robert Franken, T. 2488, 2511 (16 Oct 2006); Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3398 (24 May 2000); Prosecution Adjudicated Facts Decision, Annex, Fact 124; PW-114, Ex. P02188, "92 ter transcript", KT. 1510 (28 Mar 2000). *See also* Exs. P00515, P00489, "UNMO Report, 13 July 1995".

<sup>1026</sup> Ljubisav Simić, Ex. 4D00606, "92 ter transcript", BT. 7610–7613, 7660–7661 (15 Apr 2004); Ljubisav Simić, T. 27198–27200 (22 Oct 2008); PW-162, T. 9207 (22 Mar 2007), T. 9299 (23 Mar 2007); PW-170, Ex. P02960, "confidential – 92 ter transcript", BT. 7868 (20 Apr 2004); Mendeljev Đurić, T. 10894–10895, 10900 (3 May 2007); Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3404–3405 (24 May 2000); Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2127 (5 Apr 2000); Dragoslav Trišić, T. 27066–27067 (20 Oct 2008).

<sup>1027</sup> Mendeljev Đurić, T. 10900–10901 (3 May 2007); Leendert van Duijn, T. 2277 (27 Sept 2006); Ex. P04536, "Potočari Footage -Video of the Serb forces entering Potočari on 12 July 1995", 00:16:28–00:18:10 (showing **Borovčanin** distributing food); 00:30:13–00:30:14 (showing **Popović** at the scene), pp. 10–11 (transcript);

turned away, some of the Bosnian Serb Forces took the bread and other goods back.<sup>1029</sup> As described by Simić, a member of the Bosnian Serb civilian authorities, "[t]he food was a drop in the sea, I must say. I was surprised when I realised what the situation was. I had never seen anything like it. It was shocking [...] and remains shocking to me to this day."<sup>1030</sup>

311. The standards of hygiene in Potočari deteriorated very quickly due to the overcrowded conditions combined with the lack of shelter facilities.<sup>1031</sup> People who had been injured were also seeking shelter in the DutchBat compound.<sup>1032</sup> Some people even injured themselves hoping that they would get better treatment and be transported to the ICRC.<sup>1033</sup> Medical doctors informed Franken that without water and without improvement of the hygienic situation, people would die in the next two or three days.<sup>1034</sup> On 11 July 1995, DutchBat soldiers distributed basic medical supplies and first aid assisted by MSF,<sup>1035</sup> but there was a shortage of medical supplies.<sup>1036</sup>

312. In the DutchBat compound, DutchBat soldiers tried to calm the Bosnian Muslims, as panic broke out from time to time.<sup>1037</sup> Due to the presence of the Bosnian Serb Forces, people did not dare leave the compound and used it as toilet, bedroom, and even gave birth there.<sup>1038</sup> There was at least one suicide in the DutchBat compound<sup>1039</sup> and a number of deaths, including some because of dehydration.<sup>1040</sup>

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Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 13–14, 143. *See also* Dragoslav Trišić, T. 27164 (21 Oct 2008).

<sup>1028</sup> PW-160, T. 8721 (13 Mar 2007); Ex. P04536, "Potočari Footage-Video of the Serb forces entering Potočari on 12 July 1995", p. 11 (transcript); Ex. P01577, "Video clip showing UN APC in Srebrenica, taken from Srebrenica trial video – 00:09:16 to 00:10:06"; Pieter Boering, T. 2008 (22 Sept 2006); Joseph Kingori, T. 19248 (13 Dec 2007); Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 143.

<sup>1029</sup> Joseph Kingori, T. 19248 (13 Dec 2007); Johannes Rutten, Ex. P02178, "92 *ter* transcript", KT. 2125 (5 Apr 2000).

<sup>1030</sup> Ljubisav Simić, Ex. 4D00606, "92 *ter* transcript", BT. 7612 (15 Apr 2004); Ljubisav Simić, T. 27273 (23 Oct 2008).

<sup>1031</sup> Robert Franken, T. 2511 (16 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 125; Ex. 1D00035", "Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation in Srebrenica, 12 July 1995," p. 2.

<sup>1032</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 125.

<sup>1033</sup> Leendert van Duijn, T. 2299 (27 Sept 2006).

<sup>1034</sup> Robert Franken, T. 2511 (16 Oct 2006).

<sup>1035</sup> Eelco Koster, Ex. P02187, "92 *ter* transcript", KT. 3397, 3401 (24 May 2000); Eelco Koster, T. 3060 (26 Oct 2006). *See also* Ljubisav Simić, Ex. 4D00606, "92 *ter* transcript", BT. 7611–7612, 7629 (15 Apr 2004).

<sup>1036</sup> Robert Franken, T. 2511 (16 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 125. *See also* Ljubisav Simić, Ex. 4D00606, "92 *ter* transcript", BT. 7611–7612, 7629 (15 Apr 2004); Zlatan Čelanović, T. 6676–6677 (31 Jan 2007).

<sup>1037</sup> Leendert van Duijn, T. 2299 (27 Sept 2006).

<sup>1038</sup> Robert Franken, T. 2511 (16 Oct 2006). *See also* Joseph Kingori, T.19273-19274 (14 Dec 2007); Exs. P00515, P00489, "UNMO Report, 13 July 1995".

<sup>1039</sup> Eelco Koster, T. 3095 (26 Oct 2006); PW-114, Ex. P02188, "92 *ter* transcript", KT. 1526 (28 Mar 2000); Paul Groenewegen, T.2985–2986 (25 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 146; Mirsada Malagić, Ex. P02218, "92 *bis* transcript", KT. 1959–1960 (3 Apr 2000); Robert Franken, T. 2511 (16 Oct 2006); Leendert van Duijn, T. 2299 (27 Sept 2006).

<sup>1040</sup> Robert Franken, T. 2511 (16 Oct 2006); PW-114, Ex. P02188, "92 *ter* transcript", KT. 1509 (28 Mar 2000); Joseph Kingori, T. 19273–19274 (14 Dec 2007); Exs. P00515, P00489, "UNMO Report, 13 July 1995".

313. The mood during the night between 12 and 13 July was fearful.<sup>1041</sup> Bosnian Serb Forces moved through the crowd and repeatedly took men away, regardless of their age, after which shouting, moaning, screaming and bursts of fire would be heard.<sup>1042</sup> Some of the Bosnian Muslim men that were taken away did not return.<sup>1043</sup>

314. Women were also taken away during the night and screams would then be heard.<sup>1044</sup> One witness heard children crying and screaming, and women screaming “Let me go”, “Don’t,” “Please let me go”, “Leave me alone,” which contributed to the atmosphere of panic and fear.<sup>1045</sup>

315. As night fell, the Bosnian Muslims became more frightened and Ahmo Hasić, a Bosnian Muslim there, described it as “hell on earth”.<sup>1046</sup> Other witnesses described the night as follows: “[T]hat night [...] was terrible, killings, raping, it was horror [...]”, and “you hear 30,000 people all screaming at the same time, there is just no way to describe that situation”.<sup>1047</sup>

## 6. Transportation of Bosnian Muslims out of Potočari

### (a) Boarding of Buses and Separation of Bosnian Muslim Men from their Families

316. In the early or mid-afternoon of 12 July, dozens of buses and trucks started arriving in Potočari in front of the DutchBat compound.<sup>1048</sup> When the boarding of the buses began, Jević, who communicated with Mane via radio,<sup>1049</sup> stood in front of the DutchBat compound and instructed the buses and trucks to turn around to enable the people to board.<sup>1050</sup> Mane, leading the Jahorina Recruits, together with members of the Bratunac Brigade Military Police, coordinated the boarding

<sup>1041</sup> Paul Groenewegen, Ex. P02196, “92 *ter* transcript” BT. 1028 (10 July 2003).

<sup>1042</sup> Ahmo Hasić, T. 1176-1177 (6 Sept 2006); Hana Mehmedović, Ex. P03244, “92 *bis* statement” (17 June 2000), pp. 2, 4; Šehra Ibišević, Ex. P03235, “92 *bis* statement” (21 June 2000), p. 5. *See also* Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1955-1959 (3 Apr 2000); Hanifa Hafizović, Ex. P03230, “92 *bis* statement” (16 June 2000), pp. 2-3.

<sup>1043</sup> Šehra Ibišević, Ex. P03235, “92 *bis* statement” (21 June 2000), p. 5; Hana Mehmedović, Ex. P03244, “92 *bis* statement” (17 June 2000), p. 2; Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1955-1957 (3 Apr 2000) (stating that their families had not seen or heard from them since that day, and that among these men were Ahmo Salihović, who was one of Mirsada Malagić’s neighbours, who is listed in the list of individuals whose remains have been exhumed in the Srebrenica Related Graves, compiled and identified by The International Commission on Missing Persons (“2009 ICMP List of Deceased”), and Bijao Fejzić, who was approximately 17 years old at the time, but whose name does not appear on the 2009 ICMP List of Deceased). *See* Ex. P04494 (confidential).

<sup>1044</sup> Šehra Ibišević, Ex. P03235, “92 *bis* statement” (21 June 2000), p. 3; Behara Krdžić, Ex. P03237, “92 *bis* statement” (16 June 2000), p. 3; Hana Mehmedović, Ex. P03244, “92 *bis* statement” (17 June 2000), pp. 2, 4.

<sup>1045</sup> PW-118, Ex. P02210, “confidential— 92 *ter* transcript”, KT. 1254 (24 Mar 2000); PW-125, T. 3310-3311 (31 Oct 2006).

<sup>1046</sup> Ahmo Hasić, T. 1176-1177 (6 Sept 2006); Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1955 (3 Apr 2000).

<sup>1047</sup> PW-125, T. 3311 (31 Oct 2006); Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3398-3399 (24 May 2000) (describing the situation as “surrealistic”).

<sup>1048</sup> Robert Franken, T. 2492 (16 Oct 2006); Pieter Boering, T. 2008 (22 Sept 2006); Vincent Egbers, T. 2719 (18 Oct 2006); Leendert van Duijn, T. 2285 (27 Sept 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 203; Ex. P00512, “UNMO HQ Sector BH-NE Daily sit report, 12 July 95.”

<sup>1049</sup> Mendeljev Đurić, T. 10808-10809, 10816 (2 May 2007).

of the buses by the Bosnian Muslims.<sup>1051</sup> Colonel Lazar Acamović, the Assistant Commander for Logistics of the Drina Corps, told Franken, that he was in charge of the transportation.<sup>1052</sup> The people boarding the buses were predominantly Bosnian Muslim women, children, and the elderly.<sup>1053</sup>

317. To prevent aggression and contact on both sides, DutchBat soldiers tried to maintain a free area with a string of tape between the Bosnian Muslim population and the Bosnian Serb Forces.<sup>1054</sup> In the early afternoon of 12 July, **Borovčanin** was inside this taped-off area.<sup>1055</sup> The DutchBat soldiers tried to position themselves as a human cordon, in a line, in between the Bosnian Muslim population on the one hand, and the Bosnian Serb Forces, some of them with dogs,<sup>1056</sup> and the buses on the other.<sup>1057</sup> To help control the crowd heading to the buses, DutchBat soldiers let through small groups of Bosnian Muslims at a time.<sup>1058</sup>

318. At some point, Mladić, who was also in this area, moved towards the Bosnian Muslim people gathered there and told them to be patient, that anyone wishing to stay could stay and anyone wishing to be transported to Kladanj or wherever, would be transported and that they were safe.<sup>1059</sup> Mladić also stated that priority to board the buses be given to the women and children over

<sup>1050</sup> PW-160, T. 8586, 8596–8598 (9 Mar 2007); Ex. PIC00073, “Aerial image of Potočari marked by PW-160”.

<sup>1051</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 210; Leendert van Duijn, T. 2290, 2300–2301 (27 Sept 2006). *But see* Mendeljev Đurić, T. 10810–10812 (2 May 2007), T. 10898 (3 May 2007) (stating that they directed the people towards the buses together with DutchBat but that “[i]t was not [his] responsibility to ensure the boarding. It was [his] responsibility to ensure security on that location. But [he] had nothing to do with transport or the boarding.”). The Trial Chamber finds that on the totality of the evidence before it, Mane and the Jahorina Recruits were assisting in the boarding of the buses by the Bosnian Muslims. To the extent that he downplayed his role in this, the Trial Chamber finds Đurić not credible on this point.

<sup>1052</sup> Robert Franken, T. 2492 (16 Oct 2006). *See also* Joseph Kingori, T. 19274–19275 (14 Dec 2007); Exs. P00515, P00489, “UNMO Report, 13 July 1995”; Dragoslav Trišić, T. 27058, 27066, 27092 (20 Oct 2008).

<sup>1053</sup> Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1026 (10 July 2003); Robert Franken, T. 2496–2497 (16 Oct 2006); Mendeljev Đurić, T. 10897 (3 May 2007); Prosecution Adjudicated Facts Decision, Annex, Fact 203.

<sup>1054</sup> Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1024–1025 (10 July 2003); Paul Groenewegen, T. 2967–2968 (25 Oct 2006); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 13; Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 67–68; PW-125, T. 3312 (31 Oct 2006).

<sup>1055</sup> Ex. P04536, “Potočari Footage-Video of the Serb forces entering Potočari on 12 July 1995”, 00:16:35–00:17:17, p. 8 (transcript); Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 69; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 13, 143.

<sup>1056</sup> Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1024–1025 (10 July 2003); Paul Groenewegen, T. 2975 (25 Oct 2006); Ex. P04536, “Potočari Footage-Video of the Serb forces entering Potočari on 12 July 1995”, 00:18:10–00:19:00, p. 9 (transcript). *See also* Eelco Koster, T. 3052–3053 (26 Oct 2006).

<sup>1057</sup> Leendert van Duijn, T. 2274, 2285–2286, T. 2291 (27 Sept 2006). *See also* Paul Groenewegen, T. 2981 (25 Oct 2006); PW-126, T. 3630–3631, 3638–3639 (6 Nov 2006).

<sup>1058</sup> Leendert van Duijn, T. 2286 (27 Sept 2006); Mendeljev Đurić, T. 10809–10812 (2 May 2007), T. 10898 (3 May 2007); PW-160, T. 8679 (12 Mar 2007).

<sup>1059</sup> Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9772 (24 May 2004); PW-160, T. 8581 (9 Mar 2007), T. 8720 (13 Mar 2007), T. 8721–8722 (private session) (13 Mar 2007); Mendeljev Đurić, T. 10809 (2 May 2007); Ex. P02047, “Srebrenica Trial Video”, 01:58:57–01:59:00, 02:02:33–02:02:54; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 55–56.

the men.<sup>1060</sup> However, around this time, he was intercepted saying that “They’ve all capitulated and surrendered and we’ll evacuate them all – those who want to go and those [who] don’t want to.”<sup>1061</sup>

319. Very soon after the first buses and trucks arrived, the Bosnian Serb Forces, including some Jahorina Recruits led by Mane,<sup>1062</sup> and the Bratunac Brigade Military Police, supervised by Momir Nikolić, started separating the Bosnian Muslim men from their families and did not allow them to board the buses.<sup>1063</sup> The men separated were aged between around 15 and 65 years.<sup>1064</sup> The separation caused great anxiety and concern among the Bosnian Muslim population.<sup>1065</sup>

320. As the separations continued, Bosnian Serb Forces used force at times and pushed people onto the overloaded buses and trucks.<sup>1066</sup> When Van Duijn, a DutchBat officer, noticed the separations, he asked Mane, who had told Van Duijn that he was “the local commander of the Serb forces there”, why they singled out the men.<sup>1067</sup> Mane responded that they had a list of war criminals and they wanted to screen the Bosnian Muslim men.<sup>1068</sup> Van Duijn objected to Mane whenever young boys or men too old to be soldiers were separated from their families and on all these occasions, the boys or men were let through and could accompany their families on the buses

<sup>1060</sup> Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9772 (24 May 2004); Ex. P02047, “Srebrenica Trial Video”, 01:59:04–01:59:08, 01:59:19–01:59:21; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 55.

<sup>1061</sup> Ex. P01113a, “Intercept 12 July 1995, 12:50 hours”.

<sup>1062</sup> Leendert van Duijn, T. 2290, 2300–2301 (27 Sept 2006); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9779–9780 (24 May 2004); Mile Janjić, T. 17938–17941 (20 Nov 2007).

<sup>1063</sup> Leendert van Duijn, T. 2286 (27 Sept 2006), T. 2317 (28 Sept 2006); Joseph Kingori, T. 19251–19252 (13 Dec 2007); Mile Janjić, T. 17937–17938 (20 Nov 2007); PW-100, T. 14818–14819 (5 Sept 2007). Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003,” p. 2, Momir Nikolić, T. 33012 (22 Apr 2009). *But see* Mendeljev Đurić, T. 10811, 10816–10817, 10838, 10862–10863, 10872 (2 May 2007) (denying his or the Jahorina Recruits’ role in separating the men); Mile Janjić, T. 18015, 18017–18019, 18021 (21 Nov 2007) (stating that the Bratunac Brigade Military Police did not participate in the separation of the Bosnian Muslims on 12 and 13 July). The Trial Chamber finds, in the light of the totality of the evidence before it, that Mane and members of the 1st Company of the Jahorina Recruits also participated in the separation of the Bosnian Muslim men. The Trial Chamber finds the testimony of Đurić and Janjić not credible on this point.

<sup>1064</sup> Joseph Kingori, T. 19251, 19254–19255 (13 Dec 2007); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9829–9831 (25 May 2004); Leendert van Duijn, T. 2289, 2291 (27 Sept 2006), T. 2347 (28 Sept 2006); Paul Groenewegen, T. 3001–3002 (25 Oct 2006); Peter Boering T. 2012 (22 Sept 2006). *See* PW-110, T. 632–633 (private session) (24 Aug 2006); Ahmo Hasić, T. 1173 (6 Sept 2006); PW-105, T. 7744 (private session) (26 Feb 2007); PW-106, T. 3927, 3968 (private session) (15 Nov 2006); PW-107, T. 4113 (17 Nov 2006); Ex. P03522 (confidential).

<sup>1065</sup> Joseph Kingori, T. 19251–19252, 19256–19257 (13 Dec 2007); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9786 (24 May 2004). *See also* Paul Groenewegen, T. 2968–2969 (25 Oct 2006).

<sup>1066</sup> Robert Franken, T. 2651–2652 (18 Oct 2006); PW-160, T. 8589–8590 (private session) (9 Mar 2007); Joseph Kingori, T. 19255–19256 (13 Dec 2007); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 3.

<sup>1067</sup> Leendert van Duijn, T. 2287 (27 Sept 2006).

<sup>1068</sup> Leendert van Duijn, T. 2287 (27 Sept 2006), T. 2346 (28 Sept 2006); Mile Janjić, T. 18036 (21 Nov 2007); Ex. 4D00015, “List of war criminals known to the command of the Bratunac Brigade, 12 July 1995”; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 10–11, 21. *But see* Mendeljev Đurić, T. 10883–10884 (3 May 2007). *See also* Johannes Rutten, T. 4853–4855 (30 Nov 2006); Joseph Kingori, T. 19283 (14 Dec 2007).

leaving Potočari.<sup>1069</sup> Some of the men separated included disabled men and men with walking sticks.<sup>1070</sup>

321. The transportation and separation lasted until the evening of 12 July.<sup>1071</sup> Mane told Van Duijn that they would stop for the night and return the next day, at 8:30 a.m, to continue the transportation.<sup>1072</sup> Before they left, Jević headed a roll call of the Jahorina Recruits.<sup>1073</sup> Jević reported that same evening to **Borovčanin** at the police station in Bratunac and **Borovčanin** told him to continue with the “evacuation” the next day.<sup>1074</sup>

322. While the separation and transportation of the Bosnian Muslims were ongoing, Mladić was constantly moving through the area.<sup>1075</sup> Radislav Janković was also present in Potočari.<sup>1076</sup> Mile Janjić, a Bratunac Brigade military policeman, together with other members of the Bratunac Brigade military police and one member of MUP assisted Janković in the counting of the Bosnian Muslims who were getting onto the buses.<sup>1077</sup>

323. Around 6 a.m. on 13 July 1995, buses were already arriving;<sup>1078</sup> DutchBat soldiers started the transportation of the Bosnian Muslims before the Bosnian Serb Forces’ arrival, in order to keep the Bosnian Muslim men with their families and allow them to step onto the buses.<sup>1079</sup> When the Bosnian Serb Forces returned, some two hours later, Bosnian Muslim men were again separated from their families.<sup>1080</sup> Mane was again leading the Bosnian Serb Forces who were directing the people to the buses and separating the men from their families.<sup>1081</sup> Momir Nikolić, together with

<sup>1069</sup> Leendert van Duijn, T. 2289, 2291 (27 Sept 2006), T. 2347 (28 Sept 2006).

<sup>1070</sup> PW-169, T. 17313 (1 Nov 2007).

<sup>1071</sup> Leendert van Duijn, T. 2295–2296 (27 Sept 2006); Eelco Koster, T. 3025–3026 (25 Oct 2006); PW-160, T. 8607 (9 Mar 2007).

<sup>1072</sup> Leendert van Duijn, T. 2295–2296 (27 Sept 2006).

<sup>1073</sup> PW-100, T. 14821 (5 Sept 2007); Leendert van Duijn, T. 2297–2298 (27 Sept 2006). The roll call took place on the road between the house with the lawn and the White House where the separation of the men had taken place. *Ibid.* The Trial Chamber finds that the roll call of the Bosnian Serb Forces referred to by Van Duijn was a roll call of the Jahorina Recruits.

<sup>1074</sup> PW-160, T. 8607–8608 (9 Mar 2007).

<sup>1075</sup> Mendeljev Đurić, T. 10809 (2 May 2007), T. 10900–10901 (3 May 2007); Leendert van Duijn, T. 2292 (27 Sept 2006); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9771–9772 (24 May 2004); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 13, 144–145; Ex. P02047, “Srebrenica Trial Video”, 1:58:10-2:02:56 (showing Mladić walking around and talking to the Bosnian Muslims gathered there).

<sup>1076</sup> Leendert van Duijn, T. 2280–2281, 2283 (27 Sept 2006); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9770 (24 May 2004); Robert Franken, T. 2493 (16 Oct 2006), T. 2597–2598 (17 Oct 2006); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5.

<sup>1077</sup> Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9767–9770, 9773–9778 (24 May 2004), BT. 9840–9846 (25 May 2004); Mile Janjić, T. 17943, 17946–17948 (20 Nov 2007), T. 18011–18012 (21 Nov 2007); PW-126, T. 3602 (6 Nov 2006).

<sup>1078</sup> Leendert van Duijn, T. 2298–2300 (27 Sept 2006); Ex. P02196, Paul Groenewegen, “92 *ter* transcript”, BT. 1028 (10 July 2003).

<sup>1079</sup> Leendert van Duijn, T. 2300 (27 Sept 2006), T. 2318–2319 (28 Sept 2006); Mendeljev Đurić, T. 10815, 10870–10871 (2 May 2007).

<sup>1080</sup> Leendert van Duijn, T. 2300–2301 (27 Sept 2006); Ex. P02196, Paul Groenewegen, “92 *ter* transcript”, BT. 1030–1031 (10 July 2003). *See also* Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9792–9793 (24 May 2004).

<sup>1081</sup> Leendert van Duijn, T. 2290, 2300–2301 (27 Sept 2006); Mile Janjić, T. 17938–17941 (20 Nov 2007).

Colonel Vuković, liaison officer with DutchBat for the Skelani Brigade,<sup>1082</sup> had a list of alleged war criminals, and was identifying who the Bosnian Muslim men in the DutchBat compound were.<sup>1083</sup>

324. That morning, Momir Nikolić had again ordered Janjić and the other military policemen of the Bratunac Brigade who had already been in Potočari on 12 July to return there to continue with the same assignments performed the day before.<sup>1084</sup> Janjić found the same people who were there on 12 July, including Radislav Janković and the members of the SBP.<sup>1085</sup> The boarding of the buses ended in the late afternoon, just before nightfall.<sup>1086</sup> As the last buses were being boarded, Janković ordered Janjić to go to Srebrenica to see if any Bosnian Muslims were still there.<sup>1087</sup> It is clear that the Bosnian Serb Forces wanted to ensure that no Bosnian Muslims remained there.<sup>1088</sup>

(b) Detention of Bosnian Muslim Men in the White House

325. On both 12 and 13 July 1995, the Bosnian Muslim men separated from their families were detained in houses in the vicinity; one of these was a white house (“White House”).<sup>1089</sup> The White House was about 150 metres in front of the main gate of the DutchBat compound in the direction of Bratunac about 15 to 20 metres off the main road and it was being guarded by Bosnian Serb Forces.<sup>1090</sup>

326. Franken received reports on 12 July that the Bosnian Muslim men held in the White House were being mistreated.<sup>1091</sup> He sent patrols there during the course of the afternoon but Bosnian Serb Forces did not allow them to enter the White House.<sup>1092</sup> Franken complained to Radislav Janković

<sup>1082</sup> Momir Nikolić, T. 33269–33270 (27 Apr 2009).

<sup>1083</sup> Joseph Kingori, T. 19270 (14 Dec 2007) (also stating that there was also a Colonel Drcić with Momir Nikolić and Vuković), T. 19450–19451 (11 Jan 2008); Ex. 4D00015, “List of War Criminals known to the command of the Bratunac Brigade, 12 July 1995”; Johannes Rutten, T. 4853, 4898–4899 (30 Nov 2006).

<sup>1084</sup> Mile Janjić, Ex. P02963, “92 ter transcript”, BT. 9793–9795, 9797–9798 (24 May 2004); Mile Janjić, T. 18015–18016 (21 Nov 2007).

<sup>1085</sup> Mile Janjić, Ex. P02963, “92 ter transcript”, BT. 9794–9795, 9797 (24 May 2004); Mile Janjić, T. 18015–18016 (21 Nov 2007).

<sup>1086</sup> Mile Janjić, Ex. P02963, “92 ter transcript”, BT. 9798 (24 May 2004).

<sup>1087</sup> *Ibid.*, BT. 9799–9800 (24 May 2004).

<sup>1088</sup> Joseph Kingori, T. 19441–19442 (11 Jan 2008).

<sup>1089</sup> Johannes Rutten, Ex. P02178, “92 ter transcript”, KT. 2129–2130 (5 Apr 2000); Johannes Rutten T. 4815–4816 (29 Nov 2006), T. 4855 (30 Nov 2006); Ex. PIC00052, “Aerial Image with Rutten’s Markings”; Pieter Boering, T. 2012, 2015, 2017–2018 (22 Sept 2006), Ex. P01535, “Photograph of White House”; Mile Janjić, Ex. P02963, “92 ter transcript”, BT. 9782–9783 (24 May 2004); Mile Janjić, T. 18006–18007 (20 Nov 2007).

<sup>1090</sup> Pieter Boering, T. 2012 (22 Sept 2006); Vincent Egbers, T. 2749–2750 (19 Oct 2006); Joseph Kingori, T. 19455 (11 Jan 2008); PW-169, T. 17310–17312 (1 Nov 2007); Robert Franken, T. 2497 (16 Oct 2006); Ahmo Hasić, T. 1235–1236 (6 Sept 2006).

<sup>1091</sup> Robert Franken, T. 2498–2500 (16 Oct 2006); Johannes Rutten, Ex. P02178, “92 ter transcript”, KT. 2134 (5 Apr 2000); Momir Nikolić, T. 32989–32990 (22 Apr 2009). *But see* Ahmo Hasić, T. 1178–1179 (6 Sept 2006), 1252–1253 (7 Sept 2006); Johannes Rutten, Ex. P02178, “92 ter transcript”, KT. 2134 (5 Apr 2000); Johannes Rutten T. 4857–4858, (30 Nov 2006).

<sup>1092</sup> Robert Franken, T. 2499 (16 Oct 2006).

who responded that the men were prisoners of war and that he would take action to prevent any ill-treatment.<sup>1093</sup> However, throughout the day, Franken continued receiving disconcerting reports.<sup>1094</sup>

327. In order to “protect” the Bosnian Muslim men who were still in the DutchBat compound, Franken had them registered on a list.<sup>1095</sup> Hoping to deter the Bosnian Serb Forces from mistreating the Bosnian Muslim men detained, Franken informed Radislav Janković of this list and that the names of the men on the list were not only known within the UN, but had also been sent to the Dutch government.<sup>1096</sup> Attempts were made to also register the Bosnian Muslim men outside the DutchBat compound but because of intimidation by the Bosnian Serb Forces, it could not be done.<sup>1097</sup>

328. In the afternoon of 12 July, Boering saw members of the Bosnian Serb Forces, led by Mladić’s bodyguard, marching off behind the White House.<sup>1098</sup> Boering was stopped from following them by other members of Bosnian Serb Forces with dogs.<sup>1099</sup> Later he heard shots being fired.<sup>1100</sup> On 13 July, Kingori, an UNMO observer, went to the White House, attempting to investigate reports from DutchBat on such incidents.<sup>1101</sup> However he was prevented from doing so by Bosnian Serb Forces.<sup>1102</sup> In addition, he also witnessed a Bosnian Muslim man being taken behind the White House and then he heard a gun being fired, but he was asked to leave the area under threat.<sup>1103</sup>

329. On 13 July, the White House was packed with Bosnian Muslim men, including some sitting in front of it.<sup>1104</sup> The front balcony on the left side was also full.<sup>1105</sup> Members of DutchBat estimated that the White House and its balcony held approximately 300 or 400 Bosnian Muslim

<sup>1093</sup> Robert Franken, T. 2499 (16 Oct 2006).

<sup>1094</sup> *Ibid.*, T. 2499–2500 (16 Oct 2006).

<sup>1095</sup> *Ibid.*, T. 2500–2503 (16 Oct 2006); Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3423–3424 (24 May 2000).

<sup>1096</sup> Robert Franken, T. 2503 (16 Oct 2006).

<sup>1097</sup> *Ibid.*, T. 2502 (16 Oct 2006).

<sup>1098</sup> Pieter Boering, T. 2013, 2015–2016 (22 Sept 2006).

<sup>1099</sup> *Ibid.*, T. 2013 (22 Sept 2006).

<sup>1100</sup> *Ibid.*, T. 2013, 2016 (22 Sept 2006). The Trial Chamber notes that this incident was not charged in the Indictment and it is also not satisfied that shots were fired behind the White House.

<sup>1101</sup> Joseph Kingori, T. 19267–19268, 19271–19272 (14 Dec 2007) *See also* Ex. P00514, P00488, “Sitrep update, 13 July 1995”; Ex. PIC00181, “Document from the HQ UNPROFOR Sarajevo, Office of Lieutenant General Rupert Smith regarding the Aftermath of Fall of Srebrenica, 13 July 1995, p. 2.

<sup>1102</sup> Joseph Kingori, T. 19267 (14 Dec 2007).

<sup>1103</sup> *Ibid.*

<sup>1104</sup> Leendert van Duijn, T. 2303 (27 Sept 2006); Joseph Kingori, T. 19249 (13 Dec 2007); Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2135 (5 Apr 2000).

<sup>1105</sup> Johannes Rutten, T. 4971 (4 Dec 2006); Zoran Petrović, T. 18770–18771 (5 Dec 2007); Ex. P02011, “Video by journalist Zoran Petrović, Studio B version, which includes two scenes not in the original video (V000-0550)”, 00:07:28–00:07:34.



men.<sup>1106</sup> That afternoon, **Borovčanin** was standing with Van Duijn, Kingori and Miki, the interpreter, outside the White House in front of which personal belongings of the detained Bosnian Muslim men were piled up.<sup>1107</sup>

330. No food, water or sanitary facilities were provided to the detained Bosnian Muslim men.<sup>1108</sup> Kingori complained to Mladić about the conditions and the overcrowding of the Bosnian Muslim men detained in the White House but Mladić ignored him.<sup>1109</sup> Mladić also refused Kingori entry into the White House.<sup>1110</sup> Egbers and Rutten, DutchBat officers who managed to go into the White House in the morning and afternoon of 13 July respectively, both noted that the Bosnian Muslim men looked very frightened.<sup>1111</sup> Some men held there were interrogated by members of the Bosnian Serb Forces.<sup>1112</sup>

331. On both days, before entering the White House, the Bosnian Muslim men were made to leave behind their personal belongings outside, including identity cards and passports.<sup>1113</sup> On 13 July, when Van Duijn confronted Mane with the reason he had given Van Duijn the day before as to why the Bosnian Muslim men had been separated—to be screened for war criminals—and with the fact that the men would need their passports in order to prove their identity, Mane grinned and told Van Duijn that the men would no longer need their passports.<sup>1114</sup> The Bosnian Muslim men's belongings were later set on fire after they were transported out of Potočari on 13 July.<sup>1115</sup> Most of the men separated at Potočari on 12 and 13 July 1995 have not been seen alive since.<sup>1116</sup>

<sup>1106</sup> Johannes Rutten, Ex. P02178, "92 *ter* transcript", KT. 2150 (5 Apr 2000); Johannes Rutten, T. 5216 (7 Dec 2006); Ex. 1DIC00058, "Photograph of the White House marked by Rutten"; Paul Groenewegen, Ex. P02196, "92 *ter* transcript", BT. 1031 (10 July 2003); Paul Groenewegen, T. 2973, 3015–3016 (25 Oct 2006).

<sup>1107</sup> Ex. P02047, "Srebrenica Trial Video", 02:29:45–02:30:00; Joseph Kingori, T. 19292 (14 Dec 2007). *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 85, 125–127; Leendert van Duijn, T. 2301 (27 Sep 2006).

<sup>1108</sup> Joseph Kingori, T. 19291 (14 Dec 2007); PW-169, T. 17311 (1 Nov 2007).

<sup>1109</sup> Joseph Kingori, T. 19249–19250 (13 Dec 2007); T. 19293 (14 Dec 2007); Ex. P02047, "Srebrenica Trial Video", 02:30:46.6 (showing the White House identified by Kingori as "where all the men were herded in").

<sup>1110</sup> Joseph Kingori, T. 19250–19251 (13 Dec 2007).

<sup>1111</sup> Johannes Rutten, Ex. P02178, "92 *ter* transcript", KT. 2150 (5 Apr 2000); Vincent Egbers, T. 2751–2752 (19 Oct 2006), T. 2887 (20 Oct 2006). *See also* Leendert van Duijn, T. 2303–2304 (27 Sept 2006).

<sup>1112</sup> Robert Franken, T. 2497 (16 Oct 2006); PW-114, Ex. P02188, "92 *ter* transcript", KT. 1512 (28 Mar 2000); Johannes Rutten, Ex. P02178, "92 *ter* transcript", KT. 2134 (5 Apr 2000); PW-100, T. 14818–14819 (5 Sept 2007).

<sup>1113</sup> Robert Franken, T. 2497 (16 Oct 2006); Eelco Koster, Ex. P02187, "92 *ter* transcript", KT. 3408–3409 (24 May 2000); Joseph Kingori, T. 19251, 19256 (13 Dec 2007), T. 19454 (11 Jan 2008); Johannes Rutten, Ex. P02178, KT. 2132, 2134, 2195 (5 Apr 2000); Johannes Rutten, T. 4893 (30 Nov 2006); Pieter Boering, T. 2018–2019 (22 Sept 2006); Leendert van Duijn, T. 2303–2304 (27 Sept 2006); Momir Nikolić, T. 32989 (22 Apr 2009); Mile Janjić, Ex. P02963, "92 *ter* transcript", BT. 9783 (24 May 2004), BT. 9832 (25 May 2004).

<sup>1114</sup> Leendert van Duijn, T. 2304 (27 Sept 2006).

<sup>1115</sup> Robert Franken, T. 2512–2513 (16 Oct 2006) (testifying that Ex. P01897, "photograph", shows the burning pile of belongings next to the White House); PW-114, Ex. P02188, "92 *ter* transcript", KT. 1512–1513 (28 Mar 2000), T. 1541–1542 (29 Mar 2000); Ex. P02194, "Photograph of Belongings Burning".

<sup>1116</sup> Hanifa Hafizović, Ex. P03230, "92 *bis* statement" (16 June 2000), pp. 1, 3, 5; Nura Efendić, Ex. P03238, "92 *bis* statement" (21 June 2000), pp. 2–4; Behara Krdžić, Ex. P03237, "92 *bis* statement" (16 June 2000), pp. 2–3. For example, Kasim Hafizović and Senahid Hafizović, who were identified by Hanifa Hafizović and Nura Efendić, and whose names appeared on the 2009 ICMP List of Deceased; Meho (Mesa) Efendić who was identified by Nura

(c) Transportation of Bosnian Muslim Women, Children, and the Elderly to ABiH-held Territory

332. On 12 and 13 July 1995, the Bosnian Muslim women, children, and the elderly were transported out of Potočari on buses and trucks, to ABiH-held territory near Kladanj.<sup>1117</sup> Each convoy was escorted by Bratunac Brigade Military Police or members of the SBP.<sup>1118</sup> The buses and trucks went through Bratunac, towards Konjević Polje and Vlasenica, and many of them stopped at the village of Tišća on the way to Kladanj.<sup>1119</sup>

333. DutchBat soldiers attempted to escort the buses and the escort of the first convoy on 12 July, headed by Kosorić, the Drina Corps Chief of Intelligence, in fact succeeded.<sup>1120</sup> Subsequent attempts by DutchBat to escort the buses on 12 July failed as DutchBat jeeps were hijacked by the Bosnian Serb Forces.<sup>1121</sup> They were robbed of their vehicles, their weapons, their flak jackets, ammunition and the equipment they had in their jeeps.<sup>1122</sup> The Bosnian Serb Forces seized approximately 16 UN vehicles at the time.<sup>1123</sup>

334. On a number of occasions, the vehicles transporting the Bosnian Muslim women, children, and the elderly were stopped by Bosnian Serb Forces who checked if there were men on board and threatened and demanded money from the women.<sup>1124</sup>

335. On arriving in Tišća, VRS soldiers directed the women, children, and the elderly to the direction of Kladanj.<sup>1125</sup> They continued on foot to ABiH-held territory and later boarded buses that took them to Dubrave, in the vicinity of Tuzla.<sup>1126</sup> Major Sarkić, a liaison officer with the Milići

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Efendić and Hanifa Hafizović and whose name appeared on the 2009 ICMP List of Deceased; and Nazif Krdžić, who was identified by Behara Krdžić, and whose name appeared on the 2009 ICMP List of Deceased. See Ex. P04494 (confidential).

<sup>1117</sup> Nura Efendić, Ex. P03238, “92 bis statement” (21 June 2000), pp. 2, 4; Šehra Ibišević, Ex. P03235, “92 bis statement” (21 June 2000), p. 5; Samila Salčinović, Ex. P03233, “92 bis statement” (18 June 2000), p. 1; Pieter Boering, T. 2010, 2015 (22 Sept 2006).

<sup>1118</sup> Mile Janjić, T. 17934–17935 (20 Nov 2007), T. 18016–18017 (21 Nov 2007); Martijn Anne Mulder, Ex. P02199, “92 bis statement” (24 and 25 Oct 1995 and 12 May 2000), p. 3 (24 and 25 Oct 1995); Ex. P01133a (confidential).

<sup>1119</sup> Hana Mehmedović, Ex. P03244, “92 bis statement” (17 June 2000), pp. 2, 6; Hanifa Hafizović, Ex. P03230, “92 bis statement” (16 June 2000), p. 2; Pieter Boering, T. 2021–2022, 2078 (22 Sept 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 215.

<sup>1120</sup> Pieter Boering, T. 2020–2021 (22 Sept 2006) (stating that the first convoy consisted of approximately ten buses and six trucks); Martijn Anne Mulder, Ex. P02199, “92 bis statement”, (24 and 25 Oct 1995 and 12 May 2000), pp. 3 (24 and 25 Oct 1995), pp. 12–13 (12 May 2000); Vincent Egbers, T. 2720 (18 Oct 2006), T. 2803–2804 (19 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Facts 130, 131, 217.

<sup>1121</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 217.

<sup>1122</sup> Vincent Egbers, T. 2721 (18 Oct 2006); Robert Franken, T. 2494–2495 (16 Oct 2006).

<sup>1123</sup> Robert Franken, T. 2495 (16 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 218.

<sup>1124</sup> Hana Mehmedović, Ex. P03244, “92 bis statement” (17 June 2000), p. 6; Šehra Ibišević, Ex. P03235, “92 bis statement” (21 June 2000), pp. 2, 5; Mirsada Malagić, Ex. P02218, “92 bis transcript”, KT. 1975-1976 (3 Apr 2000).

<sup>1125</sup> Mirsada Malagić, Ex. P02218, “92 bis transcript”, KT. 1981–1982 (4 Apr 2000).

<sup>1126</sup> Nura Efendić, Ex. P03238, “92 bis statement” (21 June 2000), pp. 1, 3; Mejra Mešanović, Ex. P03234, “92 bis statement” (19 June 2000), p. 2; Samila Salčinović, Ex. P03233, “92 bis statement” (18 June 2000), p. 1; Mirsada Malagić, Ex. P02218, “92 bis transcript”, KT. 1981–1982 (4 Apr 2000); Vincent Egbers, T. 2747–2749 (19 Oct 2006), T. 2923 (20 Oct 2006).

Brigade, who was in charge of these VRS soldiers, asked Boering, the DutchBat officer who had escorted the first convoy of buses on 12 July, to accompany the Bosnian Muslims as they walked through no man's land toward the Bosnian Muslim side at Kladanj, a distance of approximately five kilometres, which Boering did.<sup>1127</sup> That day, Mulder, a DutchBat officer, also found a few dead bodies of Bosnian Muslim women, who did not appear to have any wounds, inside the vehicles that had just transported them.<sup>1128</sup>

336. Boering witnessed an incident where VRS soldiers, led by Major Sarkić, selected some Bosnian Muslim men who were “older than about 14 and younger [...] [than] 60 or 70” from the people who had just disembarked from the first convoy of buses near Tišća, and took them away in the direction of a forest.<sup>1129</sup> Major Sarkić told Boering “that he was doing this job upon assignment from the Drina Corps, with [the Milići Brigade].”<sup>1130</sup>

337. In the morning of 13 July 1995, DutchBat soldiers were again given the task of escorting convoys to Kladanj.<sup>1131</sup> However, members of the Bosnian Serb Forces again forced about 10 DutchBat officers at gunpoint to stop, took their vehicles and equipment, including helmets and bullet-proof vests, and had them sit by the side of the road at Konjevići.<sup>1132</sup> When Rutten attempted to escort a final convoy out of Potočari that day, his car was blocked at gunpoint by two cars driven by members of the Bosnian Serb Forces so he turned back.<sup>1133</sup>

(d) Transportation of Bosnian Muslim Men to Bratunac

338. The first convoys of buses to leave Potočari included a few men but some of them were separated at checkpoints, including Tišća, before reaching Kladanj.<sup>1134</sup> Later on 12 July, the Bosnian Muslim men detained in the White House were taken one behind the other under the guard of members of the Bosnian Serb Forces to other buses.<sup>1135</sup> The members of the Bosnian Serb Forces forcing the men to board the buses, kicked some of them and hit them with rifle butts.<sup>1136</sup> In the

<sup>1127</sup> Pieter Boering, T. 2023–2025 (22 Sept 2006). See also Ex. P02047, “Srebrenica Trial Video”, 02:13:19–02:17:31.

<sup>1128</sup> Martijn Anne Mulder, Ex. P02199, “92 bis statement” (24 and 25 Oct 1995 and 12 May 2000), p. 13 (12 May 2010). See also Exs. P00515, P00489, “UNMO Report, 13 July 1995”.

<sup>1129</sup> Pieter Boering, T. 2022–2023 (22 Sept 2006); Exs. 1D00018, 4D00025 “Statement of Pieter Boering, 3–6, 10 Feb 1998”, p. 11.

<sup>1130</sup> Pieter Boering, T. 2022–2024 (22 Sept 2006) (stating that this was said in broken German). See also Martijn Anne Mulder, Ex. P02199, “92 bis statement” (24 and 25 Oct 1995 and 12 May 2000), pp. 13–14 (12 May 2000).

<sup>1131</sup> Vincent Egbers, T. 2749 (19 Oct 2006); Martijn Anne Mulder, Ex. P02199, 24 and 25 Oct 1995 and 12 May 2000”, 12 May 2000), p. 3 (24 and 25 Oct 1995), p. 14 (12 May 2000).

<sup>1132</sup> Vincent Egbers, T. 2753–2757 (19 Oct 2006); Martijn Anne Mulder, Ex. P02199, “92 bis statement” (24 and 25 Oct 1995 and 12 May 2000), pp. 3–4 (24 and 25 Oct 1995), p. 14 (12 May 2000).

<sup>1133</sup> Johannes Rutten, Ex. P02178, “92 ter transcript”, KT. 2154–2155 (5 Apr 2000).

<sup>1134</sup> See *supra*, Chapter III, Section E. 6(c). See also Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 3.

<sup>1135</sup> Joseph Kingori, T. 19256 (13 Dec 2007); PW-100, T. 14818–14819 (5 Sept 2007).

<sup>1136</sup> PW-126, T. 3618–3619 (private session) (6 Nov 2006). See also PW-160, T. 8589–8590 (private session) (9 Mar 2007).

beginning of the process, in every convoy with Bosnian Muslim women, children, and the elderly, there was a bus transporting men from the White House towards Bratunac.<sup>1137</sup> Later, men were transported separately from the convoy of women, children, and the elderly.<sup>1138</sup> Between 10 and 15 buses full with Bosnian Muslim men left Potočari on 12 July.<sup>1139</sup>

339. An UNMO member tried to record the men's names as they were boarding the buses by asking them to shout it out.<sup>1140</sup> Men were crying out, asking UNPROFOR why they would not stop the Bosnian Serbs from separating them and taking them away "to be killed by these people".<sup>1141</sup> DutchBat soldiers tried to follow a bus carrying the men, but they were stopped at OP Papa in the area of Žuti Most, and when they tried to continue, they were again stopped by Bosnian Serb Forces.<sup>1142</sup> When the escort jeep later caught up with the tail of the convoy, the bus carrying the Bosnian Muslim men had disappeared.<sup>1143</sup>

340. On 13 July, Van Duijn, a DutchBat officer, wanting to make sure that DutchBat would accompany the Bosnian Muslim men when they were transported away separately from the White House, tried to get on a bus carrying Bosnian Muslim men only, but was prevented at gunpoint from doing so.<sup>1144</sup> Mane pulled him away and in a clear, deliberate tone, told him not to get on that bus.<sup>1145</sup> Escorted by Bratunac Brigade Military Police, the Bosnian Muslim men were taken to the Vuk Karadžić School and the Old School in Bratunac.<sup>1146</sup>

<sup>1137</sup> Robert Franken, T. 2497–2498 (16 Oct 2006), T. 2591 (17 Oct 2006); Hana Mehmedović, Ex. P03244, "92 bis statement" (17 June 2000), pp. 2–3. Some of the men were taken to a hangar behind the Vuk Karadžić School in Bratunac. PW-169, T. 17315–17316, 17318, 17330 (1 Nov 2007); Ahmo Hasić, T. 1178 (6 Sept 2006).

<sup>1138</sup> Robert Franken, T. 2497–2498 (16 Oct 2006).

<sup>1139</sup> Mile Janjić, Ex. P02963, "92 ter transcript", BT. 9786 (24 May 2004), BT. 9844–9845 (25 May 2004); Mile Janjić, T. 17933, 17942–17945 (20 Nov 2007). *See also* Momir Nikolić, T. 33009–33010 (22 Apr 2009).

<sup>1140</sup> Joseph Kingori, T. 19263 (14 Dec 2007).

<sup>1141</sup> *Ibid.*, T. 19256–19257 (13 Dec 2007).

<sup>1142</sup> Robert Franken, T. 2498 (16 Oct 2006); Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2108 (5 Apr 2000); Johannes Rutten, T. 4962 (4 Dec 2006).

<sup>1143</sup> Robert Franken, T. 2498 (16 Oct 2006).

<sup>1144</sup> Leendert van Duijn, T. 2304–2305 (27 Sept 2006).

<sup>1145</sup> *Ibid.*, T. 2305–2306 (27 Sept 2006).

<sup>1146</sup> Ahmo Hasić, T. 1178 (6 Sept 2006), T. 1259–1260 (7 Sept 2006). However, the Trial Chamber notes that the Parties have stipulated that he had identified the Old School on an aerial of Bratunac in a proofing session in 2003. *See* T. 21190–21191 (7 Feb 2008); Mile Janjić, Ex. P02963, "92 ter transcript", BT. 9805 (24 May 2004); Mile Janjić, T. 17934 (20 Nov 2007), T. 18016–18017 (21 Nov 2007); PW-115, Ex. P02200, "92 bis transcript", BT. 6090–6094, 6098 (17 Dec 2003). From the sequence of events described by PW-115, the Trial Chamber concludes that he was referring to 13 July 1995. PW-115 showed the location of the school on Ex. P02202, "Aerial Image of Bratunac town, marked by witness during proofing session" which was the location of the Vuk Karadžić School as indicated on Ex. P02103, "Documents tendered with Ruez", p. 272.

(e) Conclusion

341. In all, about 10,000 to 15,000 Bosnian Muslims left Potočari on 12 July.<sup>1147</sup> The remaining Bosnian Muslim population in Potočari, except for some wounded, was removed on 13 July.<sup>1148</sup>

342. On both 12 and 13 July, Momir Nikolić, together with Jević<sup>1149</sup> and several VRS and MUP units—Drina Corps military police under Major Petrović,<sup>1150</sup> elements of the 10th Sabotage Detachment,<sup>1151</sup> elements of the 65th Protection Regiment's Military Police,<sup>1152</sup> the Bratunac Brigade 2nd and 3rd Battalions,<sup>1153</sup> the Bratunac Brigade Military Police,<sup>1154</sup> and MUP members with German Shepherd dogs<sup>1155</sup> assisted in the separation and detention of the Bosnian Muslim able-bodied men and the transportation of the Bosnian Muslim population.<sup>1156</sup>

<sup>1147</sup> Ex. P00059, "Dispatch signed by Dragomir Vasić, 12 July 1995," para. 3; Ex. P00239, "Bratunac Brigade Daily combat report to the Drina Corps signed by Blagojević, 12 July 1995", para. 7.

<sup>1148</sup> Robert Franken, T. 2504 (16 Oct 2006); Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3413–3414 (24 May 2000); Ex. P00516, "UNMO Sit report 13 July 95"; Prosecution Adjudicated Facts Decision, Annex, Fact 219.

<sup>1149</sup> Momir Nikolić, T. 32904–32905 (21 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, 16 Apr 2009", p. 3; Leendert van Duijn, T. 2278–2279 (27 Sept 2006); Mendeljev Đurić, T. 10809 (2 May 2007). *But see* PW-160, T. 8587–8588, 8591–8592 (9 Mar 2007), T. 8619–8620, 8657 (12 Mar 2007), T. 8720, 8725–8726, 8744 (13 Mar 2007). The Trial Chamber finds that Jević and the Jahorina Recruits were assisting in the separation of the Bosnian Muslim men and the boarding of the Bosnian Muslim women, children, and the elderly. *See supra*, paras. 316, 319–321, 323.

<sup>1150</sup> Momir Nikolić, T. 33012–33013 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, 16 Apr 2009", p. 3. *See also* Dragoslav Trišić, T. 27073–27074, 27087 (20 Oct 2008), T. 27168 (21 Oct 2008). Momir Nikolić, T. 32986–32987 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, 16 Apr 2009", p. 3.

<sup>1151</sup> *See also* Robert Franken, T. 2616 (17 Oct 2006).

<sup>1152</sup> Momir Nikolić, T. 32986–32987 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, 16 Apr 2009", p. 3. *See also* Dragoslav Trišić, T. 27166 (21 Oct 2008).

<sup>1153</sup> Momir Nikolić, T. 33012–33013 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, p. 3. *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 18–19; Prosecution Adjudicated Facts Decision, Annex, Fact 132; Dragoslav Trišić, T. 27069 (20 Oct 2008).

<sup>1154</sup> Momir Nikolić, T. 33012–33013 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, 16 Apr 2009", p. 3; Prosecution Adjudicated Facts Decision, Annex, Fact 210; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 146; Ex. P03246, "Borovčanin Interview Book of Still Images," p. 85. *See also* Dragoslav Trišić, T. 27073–27074 (20 Oct 2008), T. 27168 (21 Oct 2008); PW-160, T. 8592–8593 (9 Mar 2007), T. 8675 (12 Mar 2007). *See supra*, paras. 316, 319, 322, 324, 332, 340.

<sup>1155</sup> Momir Nikolić, T. 32986–32987 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, 16 Apr 2009", p. 3. *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 89–91, 144; PW-160, T. 8570 (9 Mar 2007).

<sup>1156</sup> Momir Nikolić, T. 33012–33013 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement provided by Momir Nikolić on request of the Trial Chamber, 16 Apr 2009", p. 3. The Trial Chamber notes that Momir Nikolić testified that the soldiers of the Drina Wolves of the Zvornik Brigade were involved in tasks in Potočari related to the "transportation of the women and children to Kladanj and the separation and detention of the able-bodied Muslim men". The Trial Chamber however finds that in light of the fact that his testimony on this point is vague and uncorroborated, such evidence is insufficient to find that members of the Drina Wolves assisted in the separation and transportation of the Bosnian Muslims in Potočari. *See infra*, para. 2001.

343. The following VRS officers were present in Potočari during the process of removal of the Bosnian Muslim population: Mladić,<sup>1157</sup> Krstić,<sup>1158</sup> Radislav Janković,<sup>1159</sup> **Popović**,<sup>1160</sup> Svetozar Kosorić,<sup>1161</sup> Momir Nikolić,<sup>1162</sup> Zeljko Kerkez, Chief of the Department for Traffic and Transportation Service of the Main Staff,<sup>1163</sup> Colonel Acamović,<sup>1164</sup> and Colonel Krsmanović, Chief of the Transportation Service of the Drina Corps.<sup>1165</sup>

(f) Transportation of the Wounded out of Srebrenica

344. On 11 July, DutchBat officers moved some of the wounded and sick from the hospital in Srebrenica to Potočari.<sup>1166</sup> Others were taken to the Bratunac hospital,<sup>1167</sup> although on 13 July, there were still some wounded and sick in the Srebrenica hospital.<sup>1168</sup>

345. On 12 July, Nicolai contacted **Gvero** on the evacuation of the Bosnian Muslim wounded from Srebrenica.<sup>1169</sup> Nicolai informed **Gvero** of the agreements reached regarding the “evacuation of the wounded people” from Srebrenica at the 3rd Hotel Fontana meeting.<sup>1170</sup> **Gvero** and Nicolai had a disagreement about the transportation of the wounded by air.<sup>1171</sup>

346. On 15 July, a meeting was held in Belgrade between Milošević and Mladić on the one hand, and Akashi, Carl Bildt, Thorvald Stoltenberg, and Smith, on the other hand, during which, among other issues, the situation in Srebrenica was discussed.<sup>1172</sup> Informal agreements were reached that UNHCR and ICRC were to have full access to the Srebrenica area and that UNPROFOR was to

<sup>1157</sup> See *supra*, paras. 310, 322, 330.

<sup>1158</sup> Ex. P02047, “Srebrenica Trial Video”, 02:03:05–02:04:25; PW-109, T. 14592 (closed session) (31 Aug 2007); Mile Janjić, T. 17964–17965 (20 Nov 2007).

<sup>1159</sup> See *supra*, paras. 322, 326–327.

<sup>1160</sup> See *supra*, para. 310.

<sup>1161</sup> Pieter Boering, T. 2020–2021 (22 Sept 2006); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 15–16. **Borovčanin** also stated that Glogovac Siniša from the State Security in Zvornik and a second officer from the State Security whose name **Borovčanin** did not know were also present in Potočari on 12 July. *Ibid.* See *supra*, para. 333.

<sup>1162</sup> See *supra*, paras. 305, 319, 323–324.

<sup>1163</sup> Zeljko Kerkez, T. 24068, 24087 (25 July 2008).

<sup>1164</sup> See *supra*, para. 316.

<sup>1165</sup> Zeljko Kerkez, T. 24088 (25 July 2008).

<sup>1166</sup> Robert Franken, T. 2610–2611 (17 Oct 2006), T. 2628–2629 (18 Oct 2006); Vincent Egbers, T. 2717–2718 (18 Oct 2006), T. 2918, 2929 (20 Oct 2006); Pieter Boering, T. 1940 (21 Sept 2006).

<sup>1167</sup> Joseph Kingori, T. 19265 (14 Dec 2007).

<sup>1168</sup> *Ibid.*, T. 19269–19270 (14 Dec 2007).

<sup>1169</sup> Cornelis Nicolai, T. 18493, 18495 (29 Nov 2007), T. 18553 (30 Nov 2007). See Joseph Kingori, T. 19280 (14 Dec 2007); Ex. P00519, “Sitrep update, 14 July 1995”.

<sup>1170</sup> Cornelis Nicolai, T. 18494–18495 (29 Nov 2007); Ex. P02907, “Notes of telephone conversation between General Nicolai and General Gvero, 12 July 1995 at 14:45 hours”, p. 1.

<sup>1171</sup> Ex. P02907, “Notes of a telephone conversation between General Nicolai and General Gvero, 12 July 1995 at 14:45 hours”, p. 1; Cornelis Nicolai, T. 18495 (29 Nov 2007), T. 18554–18555 (30 Nov 2007). See also Ex. 1D00035”, “Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation in Srebrenica, 12 July 1995,” p. 2.

<sup>1172</sup> Ex. P02942, “UNPROFOR cable from Akashi to Annan regarding meeting in Belgrade, 17 July 1995”; Rupert Smith, T. 17530–17532 (6 Nov 2007).

organise the immediate evacuation of the wounded from Potočari and Bratunac.<sup>1173</sup> Towards the end of the meeting, it was agreed that **Gvero** would meet with UNHCR, at noon on 16 July 1995, to discuss the evacuation of the wounded.<sup>1174</sup>

347. On 16 July, representatives of the VRS Main Staff and of the ICRC agreed that evacuations of about 100 Bosnian Muslim wounded from Bratunac to Tuzla would be carried out by ICRC teams on 17 July.<sup>1175</sup>

348. At the local level, DutchBat contacted the VRS and General Nicolai understood that he had reached an agreement to evacuate several Bosnian Muslim wounded, from Bratunac Hospital, to Tuzla.<sup>1176</sup> However, when the convoy reached the border of Bosnian Serb territory, Bosnian Serb Forces shot at it and forced it back.<sup>1177</sup> Around 3 p.m. on 16 July, when Nicolai called the VRS and requested that the convoy be let through as had been agreed, he was told that there was no detailed agreement and that **Gvero** was discussing the matter with UNHCR.<sup>1178</sup>

349. It was only on 17 July that Franken met with ICRC, Radislav Janković, Momir Nikolić, and Deronjić to discuss the situation of the wounded Bosnian Muslims who remained in the DutchBat compound in Potočari and in the Bratunac Hospital.<sup>1179</sup> At this meeting, Franken agreed to hand over the wounded to the ICRC.<sup>1180</sup> Momir Nikolić however insisted on accompanying the ICRC members to the infirmary in the DutchBat compound as Nikolić believed there were war criminals among the Bosnian Muslim wounded.<sup>1181</sup> In a press release dated 18 July 1995, the ICRC announced that on 17 and 18 July, with **Gvero**'s agreement, 88 wounded and sick were evacuated from Bratunac and Potočari to Tuzla.<sup>1182</sup> 23 other Bosnian Muslims were refused Bosnian Serb

<sup>1173</sup> Ex. P02942, "UNPROFOR cable from Akashi to Annan regarding meeting in Belgrade, 17 July 1995".

<sup>1174</sup> *Ibid.*; Rupert Smith, T. 17533 (6 Nov 2007).

<sup>1175</sup> Ex. P02567, "VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995".

<sup>1176</sup> Cornelis Nicolai, T. 18497 (29 Nov 2007); Ex. P02978, "Notes of a telephone conversation between General Nicolai and Col. Marković, 16 July 1995 at 15:00 hours."

<sup>1177</sup> Cornelis Nicolai, T. 18497-18498 (29 Nov 2007).

<sup>1178</sup> *Ibid.* See also Ex. P02978, "Notes of a telephone conversation between General Nicolai and Col. Marković, 16 July 1995, 15:00 hours."

<sup>1179</sup> Robert Franken, T. 2514-2515 (16 Oct 2006). See also Prosecution Adjudicated Facts Decision, Annex, Fact 224. The Trial Chamber finds that this must have been Miroslav Deronjić who appears as signatory of Ex. P00453, "Declaration signed by Franken, Deronjić and Mandžić on 17 July 1995, p. 2.

<sup>1180</sup> Robert Franken, T. 2516 (16 Oct 2006).

<sup>1181</sup> *Ibid.*

<sup>1182</sup> Robert Franken, T. 2530 (17 Oct 2006); Ex. P00536, "ICRC Communication to the press No. 95/32, 18 July 1995". See also Ex. P04157, "ICRC interview to Deutsche Welle, 20 July 1995", p. 2; Ex. P02567, "VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995"; Ex. P00524, UNMO Sit Report, 17 July 1995"; Ex. P02570, "VRS Main Staff order regarding movement of international humanitarian organizations, signed by Miletić, 18 July 1995". See also Prosecution Adjudicated Facts Decision, Annex, Fact 224.

authorisation to leave as they were men of military age, and they were kept in the Bratunac hospital.<sup>1183</sup> ICRC considered them POWs.<sup>1184</sup>

350. On 19 July, an agreement was signed by Smith and Mladić which stated that both sides agreed to “the evacuation of wounded Muslims from Potočari, as well as from the hospital in Bratunac” and the “evacuation of women, children and elderly Muslims, those who want to leave.”<sup>1185</sup>

## 7. Killings

### (a) Luke School near Tišća<sup>1186</sup>

351. On the morning of 13 July 1995, PW-118, a Bosnian Muslim man, managed to board one of the buses near the DutchBat compound in Potočari.<sup>1187</sup> He was hidden by Bosnian Muslim women on the bus as it drove to Luke.<sup>1188</sup> The town of Luke is about 5 kilometres southwest of Tišća which is approximately 35 kilometres northwest of Potočari.<sup>1189</sup> There, the bus stopped and the women and children were ordered to proceed on foot.<sup>1190</sup> PW-118 was stopped by a VRS soldier and taken to Luke School on the orders of a VRS major.<sup>1191</sup> After he arrived at the school at approximately 10:00 a.m., PW-118’s hands were tied and he sat on the ground outside the school until nightfall.<sup>1192</sup> Then, he and about 21 other Bosnian Muslim men were taken into a classroom of the school, questioned, and beaten by a group of about ten VRS soldiers.<sup>1193</sup> Each question was

<sup>1183</sup> Ex. P00536, “ICRC Communication to the press No. 95/32, 18 July 1995”; Ex. P02567, “VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995”; Ex. P00524, UNMO Sit Report, 17 July 1995”.

<sup>1184</sup> Ex. P00536, “ICRC Communication to the press No. 95/32, 18 July 1995.”

<sup>1185</sup> Ex. P02265, “Agreement between General Smith and General Mladić, 19 July 1995”; Robert Franken, T. 2698 (18 Oct 2006).

<sup>1186</sup> The Indictment alleges that on 13 July 1995, some Bosnian Muslims were taken to the Luke School, where they were abused and assaulted, and that on or about 13 July and 14 July, 25 Bosnian Muslim males from the school were transported to a pasture nearby and executed. Indictment, para. 30.5.

<sup>1187</sup> PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1257–1258 (24 Mar 2000).

<sup>1188</sup> *Ibid.*, KT. 1257–1259 (24 Mar 2000); PW-118, T. 3467 (1 Nov 2006).

<sup>1189</sup> Ex. P02110, “Map 5 of the Zvornik area from Map Book with red dots making mass execution points.”

<sup>1190</sup> PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1259–1261 (24 Mar 2000).

<sup>1191</sup> *Ibid.*, KT. 1261 (24 Mar 2000); PW-118, T. 3427 (1 Nov 2006). *See also* Ex. P02103, “Documents tendered with statement of Witness Jean René Ruez”, pp. 20–21; Jean-René Ruez, T. 1369–1370 (8 Sept 2006); Pieter Boering, T. 2022–2023 (22 Sept 2006).

<sup>1192</sup> PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1263, 1268–1269, 1281 (24 Mar 2000); PW-118, T. 3427 (1 Nov 2006).

<sup>1193</sup> PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, “92 *ter* transcript”, KT. 1285–1287 (24 Mar 2000); PW-118, T. 3428 (1 Nov 2006), T. 3472 (2 Nov 2006); Ex. P02283, “Photograph of Witness” (confidential). PW-118 recognised one of the Bosnian Serb soldiers at the Luke School that day as Savo Ristanović. He also saw someone else he knew from before the war, who he was told was a commander of a special intervention unit of the army. PW-118 testified that the VRS soldiers who beat the prisoners were dressed like this commander, and wore “coverall type” uniforms with different coloured bandanas tied in the back, similar to the uniforms of sabotage units. PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1271–1274, 1276–1277, 1282, 1284, 1287–1288 (24 Mar 2000). The Trial Chamber finds that based solely on this piece of evidence, it cannot conclude that the VRS soldiers beating the Bosnian Muslim prisoners were members of the 10th Sabotage Detachment.



followed by a blow to the head with a fist or a rifle, or a kick to the chest.<sup>1194</sup> PW-118 overheard the soldiers discussing Kravica and how they had “finished with the balijs”.<sup>1195</sup>

352. Sometime after midnight, the prisoners were ordered onto a truck.<sup>1196</sup> The truck drove towards Vlasenica, turned left, and stopped briefly at a small brook.<sup>1197</sup> PW-118 heard one of the VRS soldiers bang on the roof of the truck and say, “Not here. Take them up there, where they took people before.”<sup>1198</sup> The truck then drove to an abandoned meadow in Rašića Gaj, where the VRS soldiers began shooting the prisoners in the truck and throwing them off.<sup>1199</sup> Two men sitting next to PW-118 jumped out of the truck and ran, but only made it approximately 20 metres before being shot.<sup>1200</sup> PW-118 also jumped off the truck and ran.<sup>1201</sup> He heard one of the VRS soldiers say, “Look at this balijs motherfucker. He’s fleeing, he’s escaping”, at which time the VRS soldiers began shooting at PW-118.<sup>1202</sup> PW-118 reached the forest and eventually arrived in ABiH-controlled territory.<sup>1203</sup>

353. The Trial Chamber finds that on 13 July, approximately 22 Bosnian Muslim men were interrogated and beaten while detained at the Luke School. At night, these prisoners were loaded onto a truck, driven to a meadow in Rašića Gaj, and shot.

(b) “Opportunistic” Killings in Potočari

(i) Killings of nine Bosnian Muslim Men whose Bodies were Found on 13 July near the DutchBat Compound<sup>1204</sup>

354. On 13 July 1995, after midday, DutchBat officers Rutten, Koster, and Van Schaik went to investigate the rumours they had heard that Bosnian Muslim men had been killed in Potočari, close to a stream, near the road on the Budak side.<sup>1205</sup>

<sup>1194</sup> PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1285–1286 (24 Mar 2000).

<sup>1195</sup> *Ibid.*, KT. 1285 (24 Mar 2000).

<sup>1196</sup> *Ibid.*, KT. 1288–1290 (24 Mar 2000).

<sup>1197</sup> *Ibid.*, KT. 1292–1293 (24 Mar 2000).

<sup>1198</sup> *Ibid.*, KT. 1293 (24 Mar 2000).

<sup>1199</sup> *Ibid.*, KT. 1294–1296 (24 Mar 2000). PW-118 identified two of the men on the truck with him who were killed at Rašića Gaj as Azem Bočić and Abdul Kadir. PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1262, 1301–1302 (24 Mar 2000). The Trial Chamber notes that neither name appears on the list of individuals whose remains have been exhumed in the Srebrenica Related Graves, compiled and identified by The International Commission on Missing Persons (“2009 ICMP List of Deceased”). See Ex. P04494 (confidential).

<sup>1200</sup> PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1296 (24 Mar 2000).

<sup>1201</sup> *Ibid.*, KT. 1297 (24 Mar 2000).

<sup>1202</sup> *Ibid.*

<sup>1203</sup> *Ibid.*, KT. 1297, 1301 (24 Mar 2000).

<sup>1204</sup> The Indictment alleges that on 12 July, nine Bosnian Muslim men were killed in the woods near the DutchBat compound on the Budak side of the main road. These killings are alleged as part of the “opportunistic” killings. Indictment, para. 31.1.a. See also Prosecution Closing Arguments, T. 34175 (3 Sept 2009) (noting that while the Indictment states 12 July, the evidence shows the dead men were found on 13 July). The Trial Chamber notes that the Defence have been on notice of this.

355. They were directed by locals to a field near the stream, at about 500 metres distance from the DutchBat compound, where they discovered nine dead male bodies in civilian clothes.<sup>1206</sup> All but two of the men whose faces were sideways were lying with their faces down toward the stream.<sup>1207</sup> Rutten inspected each of the bodies and checked for vital signs.<sup>1208</sup> The corpses were still warm, without flies around them and blood was still flowing from small-calibre gunshot wounds in the back in the vicinity of the heart.<sup>1209</sup> There were no blood trails on the ground.<sup>1210</sup>

356. Van Schaik saw identification documents lying close to the bodies but as the DutchBat officers came under fire from the Bosnian Serb Forces, he did not take the documents.<sup>1211</sup>

357. On their return to the DutchBat compound, Rutten informed the DutchBat Command, of the discovery of the bodies,<sup>1212</sup> but no follow-up investigation was carried out as the Bosnian Serb Forces curtailed DutchBat's movements outside their compound.<sup>1213</sup>

358. On 25 July 2005, a grave containing the remains of three individuals was exhumed in a field known as "Rabin", owned by Osmo Šahinagić, in Potočari.<sup>1214</sup> On 25 April 2006, another grave containing the remains of six individuals, later identified, was exhumed in the same field.<sup>1215</sup> An

<sup>1205</sup> Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2138–2139 (5 Apr 2000); Johannes Rutten, T. 4906–4907 (30 Nov 2006), T. 4965 (4 Dec 2006); Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3415 (24 May 2000); Eelco Koster, T. 3025–3026 (25 Oct 2006), T. 3073–3075 (26 Oct 2006).

<sup>1206</sup> Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2139–2140 (5 Apr 2000); Johannes Rutten, T. 4965 (4 Dec 2006); Ex. PIC00053, "Aerial Image, Ex. P02179, marked by Rutten"; Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3415–3416 (24 May 2000); Eelco Koster, T. 3072–3074 (26 Oct 2006); Ex. PIC00025, "Aerial Image, Ex. P01516 marked by Koster". See also PW-114, Ex. P02188, "92 ter transcript", KT. 1506, 1528–1533 (28 Mar 2000), KT. 1538–1539 (29 Mar 2000); PW-114, T. 3146–3147, 3157–3159 (27 Oct 2006); Ex. P02190, "Aerial Image of Potočari on 13 July Marked by PW-114"; Ex. 4DIC00027, "Aerial Image, Ex. P01516 marked by PW-114"; Robert Franken, T. 2505–2507 (16 Oct 2006); Ex. PIC00017, "Aerial photograph of Potočari marked by Franken".

<sup>1207</sup> Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2140 (5 Apr 2000); Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3415 (24 May 2000); Eelco Koster, T. 3077 (26 Oct 2006); PW-114, T. 3147 (27 Oct 2006).

<sup>1208</sup> Johannes Rutten, T. 4878, 4907–4908 (30 Nov 2006).

<sup>1209</sup> Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2140 (5 Apr 2000); Johannes Rutten, T. 5257–5258 (7 Dec 2006); Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3415 (24 May 2000); PW-114, Ex. P02188, "92 ter transcript", KT. 1539 (29 Mar 2000); PW-114, T. 3170 (27 Oct 2006).

<sup>1210</sup> Johannes Rutten, T. 4812 (29 Nov 2006); PW-114, T. 3170 (27 Oct 2006).

<sup>1211</sup> Johannes Rutten, T. 4916–4917 (4 Dec 2006); Eelco Koster, T. 3032–3033 (26 Oct 2006), T. 3116–3117 (27 Oct 2006). Rutten took several photographs of the nine bodies and kept the film until he returned to The Netherlands where Major de Ruiter from the intelligence branch of the Dutch Army took it for developing. The following day Rutten was informed that the film was destroyed. That same day, when Rutten spoke to Commander Bloemen, he had the impression that the latter had seen the developed photographs. Johannes Rutten, T. 4901–4902 (30 Nov 2006), T. 4979–4982 (4 Dec 2006), T. 5268–5269 (7 Dec 2006).

<sup>1212</sup> Johannes Rutten, T. 4965–4966 (4 Dec 2006).

<sup>1213</sup> *Ibid.*, T. 4879 (30 Nov 2006).

<sup>1214</sup> Dušan Dunjić, T. 27860–27864 (5 Nov 2008); Ex. 4D00540, "Prof. Dušan Dunjić's Forensic Expert Report on Potočari and Sandići", pp. 32–37; Ex. P03894, "Sketch of exhumations in Potočari on 25 July 2005, location no. SR POT-01"; Ex. P03486, "Exhumation report No. 1466/05 for Potocari 27 July 2005.

<sup>1215</sup> Ex. P04490, "Srebrenica Investigation by Dušan Janc, ICTY-OTP Investigator - Update to the summary of forensic evidence – Exhumation of the graves related to Srebrenica, 13 Mar 2009", pp. 4, 34; Ex. P03517d (confidential). The men listed are Ramo Zukić, Mujo Pejmanović, Sadik Suljagić, Redzo Dautović, Hasib Čavkušić, Muaz Šišić, last seen on 11 July 1995 in Potočari, with the exception of Ramo Zukić who was last seen in the forest. *Ibid.* Dušan Dunjić, T. 27859 (private session), 27860–27864 (5 Nov 2008); Ex. 4D00540, "Prof. Dušan Dunjić's

aerial photograph of the Rabin field shows two areas of disturbed earth between 17 and 27 July 1995.<sup>1216</sup> These two disturbed areas are close to where the DutchBat officers indicated they had found the nine Bosnian Muslim men and in the same area where the bodies were exhumed in the two burial sites in 2005 and 2006.<sup>1217</sup>

359. Having considered all the evidence before it, the Trial Chamber finds that nine Bosnian Muslim men were killed by Bosnian Serb Forces in a field near a stream, at about 500 metres distance from the DutchBat compound, on 13 July 1995.

(ii) Killing of one Bosnian Muslim Man near the White House on 13 July<sup>1218</sup>

360. On 13 July 1995, while he was patrolling the area where the Bosnian Muslims were boarding the buses, Paul Groenewegen, a DutchBat soldier, heard a lot of shouting.<sup>1219</sup> The shouting was coming from the direction of a house where an unarmed Bosnian Muslim man of about 30 years, in civilian clothes, was trying to resist being taken away by four members of the Bosnian Serb Forces.<sup>1220</sup> They rather aggressively made him stand facing a wall, stood around him, and shot him in the head from a distance of about three metres.<sup>1221</sup> The man immediately collapsed.<sup>1222</sup> Other members of the Bosnian Serb Forces were walking around the area where this occurred and watched the incident but continued with their business.<sup>1223</sup> The shooting took place about 70 to 80 metres away from the crowd of Bosnian Muslims,<sup>1224</sup> and it was possible for them to see it.<sup>1225</sup> Groenewegen reported the shooting later that same evening, and made an official statement the next morning.<sup>1226</sup>

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Forensic Expert Report on Potočari and Sandići”, pp. 32–37 (also stating that identification documents belonging to Hasib Čavkušić and Muaz Šišić were also found in the grave); Ex. P03895, “Sketch of an exhumation site in Potočari on 25 Apr 2006, location no. POT 01 SRE”; Ex. P03485, “Autopsy report No. KTA-RZ. 22/06 for Potocari, 15 May 2006 (exhumation conducted on 25 Apr 2006).”

<sup>1216</sup> Ex. P03483 “Aerial image of disturbed earth - Potocari, Bosnia and Herzegovina, 27 July 1995.”

<sup>1217</sup> Ex. P03897 “Comparison of aerial images of disturbed earth and DutchBat testimony re location of nine bodies at Potočari”; Ex. P03894, “Sketch of exhumations in Potočari on 25 July 2005, location no. SR POT-01”; Ex. P03895, “Sketch of an exhumation site in Potočari on 25 Apr 2006, location no. POT 01 SRE”; Dušan Dunjić, T. 27862–27865 (5 Nov 2008).

<sup>1218</sup> The Indictment alleges that on 13 July, one Bosnian Muslim man was taken behind a building near the “White House” and executed. Indictment, para. 31.1. d.

<sup>1219</sup> Paul Groenewegen, Ex. P02196, “92 ter transcript”, BT. 1030, 1034 (10 July 2003).

<sup>1220</sup> *Ibid.*, BT. 1033–1035 (10 July 2003); Paul Groenewegen, T. 2965, 2976, 3013–3014 (25 Oct 2006).

<sup>1221</sup> Paul Groenewegen, Ex. P02196, “92 ter transcript”, BT. 1034 (10 July 2003); Paul Groenewegen, T. 2965–2967, 2990–2991, 3014 (25 Oct 2006); Ex. P02266, “Map marked by Groenewegen”; Robert Franken, T. 2506 (16 Oct 2006), Robert Franken, T. 2572–2573, 2589 (17 Oct 2006).

<sup>1222</sup> Paul Groenewegen, Ex. P02196, “92 ter transcript”, BT. 1035 (10 July 2003).

<sup>1223</sup> *Ibid.*, BT. 1035–1036 (10 July 2003).

<sup>1224</sup> *Ibid.*, BT. 1036 (10 July 2003); Paul Groenewegen, T. 2989–2990 (25 Oct 2006); Ex. P02266, “Map marked by Groenewegen”. See also Robert Franken, T. 2506 (16 Oct 2006), T. 2621–2622 (17 Oct 2006); Ex. 6DIC00018, “Aerial photograph of Potočari marked by Franken.”

<sup>1225</sup> Paul Groenewegen T. 2989–2990 (25 Oct 2006).

<sup>1226</sup> Paul Groenewegen, Ex. P02196, “92 ter transcript”, BT. 1036 (10 July 2003); Paul Groenewegen, T. 2991–2992 (25 Oct 2006); Robert Franken, T. 2505–2506 (16 Oct 2006), T. 2572–2573, 2589 (17 Oct 2006).

361. The Trial Chamber finds that a Bosnian Muslim man was killed on 13 July by Bosnian Serb Forces near the White House in full view of the Bosnian Muslims gathered there.

## F. Bratunac Area (11–15 July 1995)

### 1. Introduction

362. For the purposes of this section, the term “Bratunac area” comprises the territory delimited by the Bratunac-Konjević Polje Road to the north, the Konjević Polje-Milići Road to the west and the Bratunac-Srebrenica Road to the east. The town of Bratunac is in Republika Srpska and is located about five kilometres from Potočari and ten kilometres from Srebrenica in a northerly direction and was outside the parameters of the Srebrenica “safe area”.<sup>1227</sup> Bratunac fell within the area of responsibility of the Bratunac Brigade with its headquarters located in Bratunac town.<sup>1228</sup> Other buildings significant for the purposes of the present Judgement, such as Hotel Fontana,<sup>1229</sup> the SDS Bratunac office and both military and civilian police stations, were also situated there. Bratunac town was a necessary passage *en route* from Potočari to Kladanj and other parts of ABiH-held territory.

363. As previously mentioned in this Judgement, during the night of 11 to 12 July 1995, a column of Bosnian Muslim men attempted to leave the Srebrenica enclave towards Tuzla by breaking through the defence lines of the VRS in the Bratunac area.<sup>1230</sup>

### 2. Deployment of Bosnian Serb Forces in the Bratunac Area (11–12 July)

364. On 11 July 1995, in response to information received as to the movement of the ABiH 28th Division, VRS forces, mostly units of the Drina Corps, were ordered “to block the return and withdrawal of Muslim forces to and from Srebrenica and their communicating along the enclave-Kladanj and Olovo axis and back,” by “erecting additional obstructions, carrying out ambush activities and introducing patrols, ensuring control over the territory along the frontline and deep in[to] the defence zones and areas”.<sup>1231</sup>

<sup>1227</sup> Dragan Nesković, T. 27432 (28 Oct 2008); Mićo Gavrić, T. 26495 (1 Oct 2008); Ex. P01876, “Map of northern area Showing Battalion AOR’s”, p. 2; Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, p. 5.

<sup>1228</sup> Zlatan Čelanović, T. 6627–6628, 6649 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović”. See also *supra*, 135.

<sup>1229</sup> See *supra*, paras. 274–293.

<sup>1230</sup> See *infra*, paras. 267–271.

<sup>1231</sup> Exs. 7DP00438, 4D00079, “Order by Milenko Živanović to the Drina Corps, 11 July 1995”; Ex. 6DP00439, “Order to block, the linking up of the 28th Division, 11 July”, p. 2. See also Ex. 4D00078, “Order by Mladić to the Drina Corps, 11 July 1995”.

365. On 12 July 1995,<sup>1232</sup> at approximately 9 a.m., Krstić convened a meeting in Bojna,<sup>1233</sup> which was also attended by **Pandurević**, Mirko Trivić, Colonel Svetozar Andrić and Colonel Obrad Vičić.<sup>1234</sup> That day, a number of different units were deployed to cover various sections of the Bratunac-Konjević Polje Road.<sup>1235</sup> The SBP 2nd Šekovići Detachment was ordered by its commander, Rado Čuturić,<sup>1236</sup> to secure the road from “Bosnian Muslim forces” trying to break through in the direction of Tuzla.<sup>1237</sup> In the early evening of 12 July, the 1st PJP Company was also deployed at Sandići and instructed to remain there and secure the Bratunac-Konjević Polje Road, which they did until early the next morning.<sup>1238</sup> In total, approximately 170 members of the Jahorina Recruits were deployed along the road on 12 July during the late afternoon and night.<sup>1239</sup> A Praga and a BVP combat vehicle with a three-barrel gun were deployed in the same area as the 1st PJP Company from Zvornik,<sup>1240</sup> followed by a tank on 13 July.<sup>1241</sup> In addition, elements of the Military Police Battalion of the 65th Protection Regiment of the VRS Main Staff and, subsequently, other companies of the Zvornik PJP, a company from the Bijeljina PJP, a company of the Doboj PJP and the 2nd Company of the Jahorina Recruits, amongst others, were also involved in blocking

<sup>1232</sup> Vinko Pandurević, T. 30897 (30 Jan 2009); Mirko Trivić, T. 11833 (21 May 2007), T. 11978, 11998–12000 (23 May 2007).

<sup>1233</sup> Bojna borders Srebrenica town to the south. Ex. P02116, “Map Krivaja 95-Srebrenica and Bratunac”.

<sup>1234</sup> Vinko Pandurević, T. 30897 (30 Jan 2009); Mirko Trivić, T. 11795 (18 May 2007). On 12 July 1995, Obrad Vičić was the Chief of Operations and Training of the Drina Corps. For a more detailed description of the position of Mirko Trivić, Colonel Andrić and Colonel Vičić.

<sup>1235</sup> Lazar Ristić, T. 10043–10044 (16 Apr 2007), T. 10190 (18 Apr 2007); Ex. 7D01056, “Map of zone of responsibility of the Zvornik Brigade according to Drina Corps Order”.

<sup>1236</sup> There is conflicting evidence as to who was the commander of the SBP 2nd Šekovići Detachment in July 1995. Some evidence points to Rado Čuturić being the commander. Predrag Čelić, T. 13459 (28 June 2007); PW-160 T. 8625 (12 Mar 2007); Milenko Pepić, T. 13539 (9 July 2007). *See also* Borovčanin Final Brief, para. 26. *But see* Ex. P02853, “Transcript of OTP interview of Ljubomir Borovčanin, 11 and 12 Mar 2002”, p. 64; Prosecution Final Brief, paras. 594, 1410, 1874, 1991, 1997, 2145; Ex. P00070, “Ministry of Interior of Republika Srpska – Personal questionnaire to establish rank of an authorized official, Miloš Stupar”. The Trial Chamber after considering the evidence in its totality, relies on Pepić’s and Čelić’s testimony, given they were members of the SBP 2nd Šekovići Detachment, and finds that Čuturić was the Commander of the SBP 2nd Šekovići Detachment in the relevant period.

<sup>1237</sup> Milenko Pepić, T. 13549–13551, 13589–13590 (9 July 2007). Along this road, in the direction from Kravica to Sandići, the 2nd Platoon of the SBP 2nd Šekovići Detachment was positioned closest to Kravica—about one kilometre from the Kravica Warehouse, directly on the border that divided Sandići and Kravica villages, not far from the road sign that marked the beginning of the area of Sandići—the 3rd Platoon was positioned closest to Konjević Polje, and the 1st Platoon was positioned between the two. *Ibid.*, T. 13550–13551 (9 July 2007).

<sup>1238</sup> Dobrisav Stanojević, T. 12880–12883, 12896, 12900–12901 (19 June 2007); Ex. PIC00132, “Map of Sandići marked by witness”; Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2004”, pp. 78–79.

<sup>1239</sup> Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995,” p. 3; Ex. P00060, “CJB Zvornik Report, 13 July 1995”; Mendeljev Đurić, T. 10812–10813, 10819, 10865–10866, 10869–10870 (2 May 2007); Nenad Filipović, T. 26998–26999, 27015 (10 Oct 2008); Zarko Zarić, T. 26931–26933 (9 Oct 2008); PW-160, T. 8602–8604 (9 Mar 2007), T. 8683, 8687 (12 Mar 2007).

<sup>1240</sup> Dobrisav Stanojević, T. 12882 (19 June 2007); *see also* Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995,” p. 3; Ex. P00062, “Document from Zvornik CJB signed by Dragomir Vasić, 13 July 1995”.

<sup>1241</sup> Dobrisav Stanojević, T. 12882 (19 June 2007).

the column on 12 and 13 July at various locations in the Bratunac area, including around Konjević Polje and Nova Kasaba.<sup>1242</sup>

(a) Meeting at the Bratunac Brigade Command

366. The Prosecution and the Accused agree that there was a meeting of the VRS commanders at the Bratunac Brigade Command after the fall of Srebrenica. The date of this meeting is heavily contested, however. The Prosecution submits that the meeting took place on 12 July.<sup>1243</sup> On the other hand, **Pandurević** contends that this meeting occurred on 11 July.<sup>1244</sup>

367. The Prosecution case is centred around the testimony and diary of Mirko Trivić, Commander of the Romanija Brigade, who testified that the meeting took place on 12 July 1995.<sup>1245</sup> **Pandurević** challenges the reliability of Trivić's diary, also pointing to his own testimony and those of Milenko Jevđević, Zvonko Bajagić, Eileen Gilleece, and Miodrag Dragutinović, who say that the meeting took place on 11 July.<sup>1246</sup>

368. The Trial Chamber has carefully scrutinised the diary in its entirety, and has viewed the relevant parts in context, in the light of the evidence given by Trivić and other evidence before it. The Trial Chamber notes that the diary fell apart at some point and was reassembled by Trivić, numbered on the top, and certain pages containing personal information taken out.<sup>1247</sup> Nonetheless, the Trial Chamber finds that there is nothing to suggest that Trivić had any motive to modify the construction of the diary or to rearrange the order in favour of the Prosecution case. The markings at the top of the pages, added by him, after the diary came apart, were to the best of his recollection

<sup>1242</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 259; PW-168, T. 15991–15992 (closed session) (28 Sept 2007); Ex. P01121a, "Intercept, 12 July 1995, 16:40 hours" (specifying that one squad of the civilian police was located around Konjević Polje and Hrnčići and the 65th Protection Regiment around Nova Kasaba, Jelah and Kamenica); PW-160, T. 8600 (private session), 8603–8604 (9 Mar 2007), T. 8683, 8687 (12 Mar 2007); Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995," p. 3; Ex. P00886, "Document from the Zvornik CJB to the RS MUP, type-signed Vasić, 13 July 1995"; Ex. P03112, "CJB Zvornik Dispatch No. 12-6/08-508/95, regarding the activities of various PJP units, Dragomir Vasić, 14 July 1995."

<sup>1243</sup> Prosecution Pre-Trial Brief, para. 224. *See also* Prosecution Final Brief, paras. 1355–1361, 1380, 1387–1388. *See also infra*, para. 1855.

<sup>1244</sup> Pandurević Final Brief, paras. 98, 411, 413–419; Vinko Pandurević, T. 32151, 32173 (26 Feb 2009). *See also infra*, para. 1855.

<sup>1245</sup> Mirko Trivić, T. 11836–11837 (21 May 2007), T. 11978–11979 (23 May 2007); Ex. P04630, "Trivić's Diary", p. 0648-6799.

<sup>1246</sup> Vinko Pandurević, T. 32161–32163 (26 Feb 2009); Pandurević Final Brief, paras. 414–418, 421. According to **Pandurević**, a significant number of Žepa entries in Trivić's diary are out of order, which impacts on the correctness of the sequence of pages at the front, as the pages, as part of a notebook, would have been linked. Pandurević Final Brief, paras. 422–423. This was because Trivić wrote the events on the Srebrenica operation conventionally, but then turned the book around and recorded the Žepa operation from the back of the book. *Ibid.*, para. 421. The Trial Chamber notes that indeed, the date 12 July does not appear on the same leaf as the reference to the meeting.

<sup>1247</sup> *See* Decision on Prosecution Motion to Reopen its Case, 26 Jan 2010; Ex. 7D01240, "Stipulations between OTP and the Defence on Trivić's Diary".

according to the original structure of the diary.<sup>1248</sup> The Trial Chamber considers that in this regard, it was Trivić who was in the best position at the time to know what the right order had been.

369. The Trial Chamber cannot exclude the possibility that page 0648-6788 of the diary is misplaced and that it is not a continuation of 0648-6787.<sup>1249</sup> Nevertheless, this bears little significance in the context of the pages just before and after it, as viewing pages 0648-6787 to 0648-6795 in context, the Trial Chamber is satisfied that they accurately describe the attack on Srebrenica town, from 9 a.m. to 5:30 p.m., which culminated in the arrival of Mladić and his triumphant walk in the town on 11 July. Further, the Trial Chamber notes that pages 0648-6794 to 0648-6795 flow well, in that Trivić ends a somewhat personalised description about his conversation with Mladić, and then flips over to a new page to note the events from 5.30 p.m. onwards on 11 July. These are understandably brief after the momentous fall of Srebrenica. The events recorded here are generally corroborated by other evidence on the trial record.<sup>1250</sup>

370. Turning to pages 0648-6796 to 0648-6798, covering the day of 12 July, the Trial Chamber is satisfied that after describing his assigned tasks, Trivić sets out the actual movement of the units through the town and further, on the next page. More importantly, the events described on page 0648-6797 reflect what other evidence has already established—in the morning of 12 July there was a meeting at Bojna with Krstić, the “town [...] [was] full of soldiers”, the “crowd of refugees; [who] fled to the woods,” and Krstić came to the Viogor village—cumulatively indicating this could only have occurred on 12 July.<sup>1251</sup> Page 0648-6798 is a logical follow-up to the last entry on the previous page—Krstić arrives, Trivić talks to him, and he then notes down his reflections on what was said.<sup>1252</sup>

371. Moving on to pages 0648-6799 to 0648-6801, the Trial Chamber is of the opinion that these also follow logically. On page 0648-6799, Trivić records the orders Krstić gives him, including that the Brigade Commanders were to go to the Bratunac Brigade Command that night at 9 p.m. These are events that clearly took place on 12 July, and most importantly, it is clear that with the entry “General Mladić came at 2200”, Trivić is describing the contested Bratunac Brigade Command

<sup>1248</sup> See Decision on Prosecution Motion to Reopen its Case, 26 Jan 2010; Ex. 7D01240, “Stipulations between OTP and the Defence on Trivić’s Diary”.

<sup>1249</sup> The Trial Chamber notes that there is a reasonable possibility that this could be a continuation of what happened on 11 July and not 10 July. See Ex. P04630, “Trivić’s Diary”.

<sup>1250</sup> See *supra*, paras. 260, 264, 266; Vinko Pandurević, T. 32166–32167 (26 Feb 2009) (stating that the Bratunac Brigade did have problems in the attack on 10 July). The date of 11 July appears on page 0648-6789. See Ex. P04630, “Trivić’s Diary”.

<sup>1251</sup> Mirko Trivić, T. 11832–11833, 11853–11854 (21 May 2007); Ex. PIC00116, “Map 02116 marked by Mirko Trivić”; Vinko Pandurević, T. 30897 (30 Jan 2009). See also *supra*, paras. 266, 272, 342–343, 365.

<sup>1252</sup> Even if this page were to have been misplaced, and the discussion on the Birač Brigade were to fall in the section related to 11 July, the Trial Chamber is satisfied that page 0648-6798 still flows into page 0648-6799, and does not

meeting.<sup>1253</sup> This description flows from page 0648-6798 to page 0648-6800. At the top of page 0648-6800, Trivić notes that Mladić would address the troops in the morning of 13 July. The remaining entries relate to the late hours of 12 July and the first entry on page 0648-6801 begins with the planned Mladić address at the Viogor village to the troops who were about to set off to Žepa on 13 July.<sup>1254</sup>

372. The Trial Chamber has considered the diary with the testimony given by Trivić, and finds the diary reliable.<sup>1255</sup> In particular, the Trial Chamber has also looked at certain important indicators, such as the fact that Trivić testified that at around 8:30 p.m., he passed through Potočari on his way to the Bratunac Brigade Command meeting, where he saw large crowds of people and VRS and MUP units.<sup>1256</sup> This goes to prove that Trivić passed through Potočari on 12 July. The Trial Chamber has also considered **Pandurević's** submission that Mladić went to boost the troops' morale on 13 July, even though he ordered the move to Žepa allegedly on 11 July.<sup>1257</sup> The Trial Chamber is not persuaded, as this would mean that the troops marched all day on 12 July before getting their morale speech at Viogor on 13 July, which is not a credible possibility.

373. The Trial Chamber has also looked at the evidence of Jevđević, Bajagić and **Pandurević**, also noting the arguments made with respect to the fish meal which was traditionally eaten on the eve of St Peter's day, 11 July, purportedly indicative that the Bratunac Brigade Command meeting took place on 11 July.<sup>1258</sup> Given the attendees and the content of the meeting, and in the light of other credible evidence, it is clear that Jevđević, Trivić and **Pandurević** all attended the same meeting. However, the Trial Chamber finds that the evidence of **Pandurević**, Jevđević, and Bajagić on the fish meal cannot be determinative of the date of this meeting.<sup>1259</sup>

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affect the placing of the entry on the Bratunac Brigade Command meeting that evening which appears on page 0648-6799. See Ex. P04630, "Trivić's Diary".

<sup>1253</sup> See also Mirko Trivić, T. 11839–11842 (21 May 2007).

<sup>1254</sup> See also *Ibid.*, T. 11853–11854 (21 May 2007); Vinko Pandurević, T. 30904–30905 (30 Jan 2009).

<sup>1255</sup> In this context, the Trial Chamber has considered the testimony of PW-109 and found that while his recollection of times, dates and events somewhat inaccurate, in the light of the evidence from Trivić, it finds that his evidence on the date of the Bratunac Brigade Command meeting is correct. PW-109, T. 14591 (private session), 14594–14595 (private session) (31 Aug 2007). See also *Ibid.*, T. 14586 (private session) (31 Aug 2007).

<sup>1256</sup> Mirko Trivić, T. 11837–11838, 11853 (21 May 2007). See also *Ibid.*, T. 11981–11982 (23 May 2007).

<sup>1257</sup> Vinko Pandurević, T. 30897 (30 Jan 2009), T. 32153 (26 Feb 2009). See Mirko Trivić, T. 11832–11833, 11843 (21 May 2007).

<sup>1258</sup> Zvonko Bajagić, T. 32513, 32516–32519, 32527–32535 (9 Mar 2009); *Ibid.*, Ex. 7D01092, "92 ter statement", p. 2; Milenko Jevđević, T. 29607–29609, 29649–29650 (12 Dec 2008), T. 29754–29762 (15 Dec 2008), T. 29766–29777, 29799–29814, 29824–29830 (16 Dec 2008), T. 29914, 29918–29928 (17 Dec 2008). Exs. 7DP00438, 4D00079, "Order by Milenko Zivanović to the Drina Corps, 11 July 1995", p. 2; Ex. 6DP00439, "Order to block, the linking up of 28th Division, 11 July 1995", p. 2; Ex. P04418, "Vehicle log for VW Gold P-7105 for July 1995", with regard to which Bajagić denied that he refuelled the car on 12 July; Ex. 7D01090, "Interview of Svetozar Andrić", p.1.

<sup>1259</sup> See Ex. P04535, "Footage of St. Peter's day on 12 July 1995" (showing that fish was also served for the St. Peter's Day celebratory lunch).



374. Similarly, the Trial Chamber has assessed the evidence of Gilleece, who, based on her notes, testified that **Pandurević** told her that on the evening of 11 July, he attended a meeting with Krstić and Mladić in Bratunac and told her that on 12 July the Drina Corps moved on to Žepa.<sup>1260</sup> Based on reliable evidence showing that the move to Žepa took place on 13 July, the Trial Chamber finds this evidence unreliable. Further, it has also looked at the evidence of Dragutinović, and notes that it does not find it convincing.<sup>1261</sup>

375. Looking at the totality of the evidence before it, and placing particular weight on Trivić's testimony and diary, the Trial Chamber finds that the Bratunac Brigade Command meeting took place on 12 July.

376. In the evening of 12 July 1995, Mladić, Živanović, Krstić, Trivić, and **Pandurević**,<sup>1262</sup> amongst others, met at the Bratunac Brigade Command, where Mladić arrived at about 10 p.m. and congratulated the commanders on their successes.<sup>1263</sup> He ordered Krstić to prepare for the liberation of Žepa.<sup>1264</sup> Trivić and **Pandurević** suggested that their troops be sent to rest and be replaced, but they were overruled.<sup>1265</sup> At the end of the meeting, Mladić agreed to address their troops himself the following day, to boost their morale, since they would not be relieved.<sup>1266</sup> Mladić agreed to do this on 13 July before the move to Žepa.<sup>1267</sup> Further, the Bratunac and Milići Brigades, in co-operation with the MUP forces, were ordered to secure the Bratunac-Konjević Polje Road and the Konjević Polje-Milići Road.<sup>1268</sup> The VRS had security concerns about this route since they believed several thousand armed ABiH soldiers were trying to break through VRS defence lines, heading for Tuzla and Kladanj.<sup>1269</sup>

(b) Further Deployment of Bosnian Serb Forces in the Bratunac Area (12–13 July)

377. During the night of 12 July, about 50 people from the 1st Company of Jahorina Recruits were assigned to secure a section of the Bratunac-Konjević Polje Road, approximately up to

<sup>1260</sup> Eileen Gilleece, T. 6728 (1 Feb 2007); Ex. P02408, "Redacted notes of an interview with Milenko Živanović and Vinko Pandurević, 2 Oct 2001", p. 3.

<sup>1261</sup> Miodrag Dragutinović, T. 12579–12580, 12583–12584 (13 June 2007) (stating that on the morning of 12 July he saw **Pandurević** in Zeleni Jadar, who told him he had gone to Bratunac to attend a meeting convened by Krstić).

<sup>1262</sup> Mirko Trivić, T. 11837–11841 (21 May 2007). Jevđević was also present at the meeting, Milenko Jevđević, T. 29607 (12 Dec 2008); Vinko Pandurević, T. 32151 (26 Feb 2009).

<sup>1263</sup> Mirko Trivić, T. 11841–11842, 11844 (21 May 2007).

<sup>1264</sup> *Ibid.*, T. 11841–11842 (21 May 2007).

<sup>1265</sup> *Ibid.*, T. 11842 (21 May 2007).

<sup>1266</sup> *Ibid.*, T. 11843 (21 May 2007).

<sup>1267</sup> *Ibid.*, T. 11843 (21 May 2007). The next morning on 13 July, between 10 and 11 a.m., Mladić and Krstić addressed Trivić's troops. *Ibid.*, T. 11853–11854 (21 May 2007). *See also* Vinko Pandurević, T. 30904–30905 (30 Jan 2009).

<sup>1268</sup> Mirko Trivić, T. 11844 (21 May 2007). Trivić more specifically referred to the "roads from Srebrenica towards Vlasenica via Bratunac." The Trial Chamber will refer to these roads as the Bratunac-Konjević Polje Road and the Konjević Polje-Milići Road.

<sup>1269</sup> Mirko Trivić, T. 11844–11845, 11847–11848 (21 May 2007), T. 11984–11985, 11989 (23 May 2007).

Glogova<sup>1270</sup> During the night of 13 July, a larger group from the 1st Company of the Jahorina Recruits, together with the 2nd Company of the Jahorina Recruits, was deployed to cover a longer section of the road: from Glogova right up to the entrance to Kravica.<sup>1271</sup>

378. During the night between 12 and 13 July, there was fighting along the Bratunac-Konjević Polje Road. The column attacked the VRS forces stationed there. A member of the 1st PJP Company from Zvornik was killed and several were injured.<sup>1272</sup>

379. Further, VRS orders to block the column in the areas of responsibility of Bratunac, Zvornik and Vlasenica were issued on 13 July. For instance, the VRS Main Staff ordered the commands of the Drina Corps, the Zvornik Brigade, the Birač Brigade and the Vlasenica Brigade, to “detect, block, disarm, and capture detected Muslim groups and prevent them from crossing over to the Muslim territory [and] [s]et up ambushes around the clock on the Zvornik-Crni Vrh-Šekovići-Vlasenica road.”<sup>1273</sup> Further implementation orders were issued at the Drina Corps level.<sup>1274</sup>

### 3. Searching the Terrain for Bosnian Muslim Men from the Column (12–13 July)

380. The column was ambushed by the VRS on 12 July 1995, at about 8 a.m., below the hill of Buljim near Bare, approximately three kilometres from Jaglići in the direction of the Bratunac-Konjević Polje Road.<sup>1275</sup> Approximately 30 individuals from the column were killed and at least 45 were injured.<sup>1276</sup> The front of the column was heavily shelled around 10:30 a.m. between Buljim and Kamenica, a short distance south of the Bratunac-Konjević Polje Road in a southerly direction from Sandići;<sup>1277</sup> 15 to 20 Bosnian Muslim men were killed.<sup>1278</sup> At around noon, a two-hour ambush killed four men.<sup>1279</sup> Fifteen minutes later, an additional ten individuals were killed and 20 were wounded, some of whom were ABiH soldiers carrying rifles.<sup>1280</sup>

<sup>1270</sup> Mendeljev Đurić, T. 10812–10813, 10819, 10865–10866, 10868–10870 (2 May 2007).

<sup>1271</sup> *Ibid.*, T. 10819–10824, 10868–10869 (2 May 2007).

<sup>1272</sup> Milenko Pepić, T. 13594–13595 (9 July 2007); Nenad Filipović, T. 27001, 27003 (10 Oct 2008); Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 79; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 33–34, 41.

<sup>1273</sup> Ex. P00045, “VRS Main Staff Order to the Drina Corps type-signed Milan Gvero, 13 July 1995”, p.1.

<sup>1274</sup> Ex. 4D00080, “Order of the Drina Corps Command, 13 July 1995”; Ex. P00116, “Drina Corps Order, 13 July 1995.”

<sup>1275</sup> PW-139, Ex. P02288, “confidential - 92 *ter* statement” (28 May 2000), p. 2; Ex. 7D01066, “Map of engagement of TG-1”.

<sup>1276</sup> PW-139, Ex. P02288, “confidential - 92 *ter* statement” (28 May 2000), p. 2 para. 5. *See also* PW-156, T. 7083 (8 Feb 2007); PW-127, T. 3512–3513 (2 Nov 2006); Mevludin Orić, T. 876 (28 Aug 2006).

<sup>1277</sup> Osman Salkić, Ex. P02225, “92 *bis* statement” (4 Dec 2004), p. 4; Ex. 7D01066, “Map of engagement of TG-1”.

<sup>1278</sup> Osman Salkić, Ex. P02225, “92 *bis* statement” (4 Dec 2004), p. 4. *See also* PW-156, T. 7083 (8 Feb 2007).

<sup>1279</sup> Ramiz Husić, Ex. P02203, “92 *bis* statement” (9 June 1999), p. 4; PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3243 (23 May 2000).

<sup>1280</sup> Ramiz Husić, Ex. P02203, “92 *bis* statement” (9 June 1999), p. 4.

381. At around 6 p.m. on 12 July, after having regrouped and collected the wounded, members of the column were heavily shelled as they were crossing the Bratunac-Konjević Polje Road.<sup>1281</sup> During this 20-minute attack, some people were killed and some were badly wounded.<sup>1282</sup> The column was shelled by Bosnian Serb Forces throughout the night<sup>1283</sup> and ambushed several times,<sup>1284</sup> including near Kravica.<sup>1285</sup> Bosnian Serb Forces fired with anti-aircraft guns and threw hand-grenades from the Bratunac-Konjević Polje Road into the woods.<sup>1286</sup> During the night of 12 to 13 July, there was an exchange of fire between the Bosnian Serb Forces and members of the column.<sup>1287</sup> In addition, some people in the column committed suicide using hand-grenades.<sup>1288</sup> The dead and some of the wounded were left behind.<sup>1289</sup> At different times on 12 and 13 July, members of the column split into various groups either by choice or because they found themselves cut off from the main group.<sup>1290</sup>

382. In addition to ambushing and shelling the column, other tactics were used by members of the Bosnian Serb Forces to stop the advancing column. For instance, the Bosnian Serb Forces called into the forest with loudspeakers, telling the men from the column they would be shelled if they did not surrender, promising that the Geneva Conventions would be complied with and indicating that the men would be transported to ABiH-controlled territory.<sup>1291</sup> In other places, Bosnian Serb Forces fired into the woods with anti-aircraft guns and other weapons, or used stolen UN equipment to deceive the Bosnian Muslim men into believing that the UN was present to monitor the treatment afforded to them upon capture.<sup>1292</sup> At around 2 or 3 p.m. on 13 July, the Bosnian Serb Forces issued

<sup>1281</sup> Osman Salkić, Ex. P02225, “92 bis statement” (4 Dec 2004), p. 4. *See also* PW-113, T. 3363–3365 (31 Oct 2006).

<sup>1282</sup> Osman Salkić, Ex. P02225, “92 bis statement” (4 Dec 2004), p. 4.

<sup>1283</sup> PW-113, Ex. P02280, “92 ter transcript”, BT. 1383 (21 July 2003); PW-113, T. 3347, 3354–3357, 3364–3365 (31 Oct 2006). *See also, Ibid.*, T. 3356 (31 Oct 2006); PW-139, Ex. P02288, “confidential - 92 ter statement” (28 May 2000), p. 3; PW-139, T. 3732–3734 (7 Nov 2006).

<sup>1284</sup> PW-113, T. 3354–3355 (31 Oct 2006); Mevludin Orić, T. 877 (28 Aug 2006). *See also* PW-116, Ex. P02205, “92 bis transcript”, KT. 2946–2947, 2991, 3003–3004 (14 Apr 2000).

<sup>1285</sup> PW-111, T. 7040 (7 Feb 2007).

<sup>1286</sup> *Ibid.* *See also* PW-106, T. 3956–3957 (15 Nov 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 260.

<sup>1287</sup> PW-111, T. 7039–7040 (7 Feb 2007); PW-139, Ex. P02288, “confidential - 92 ter statement”, (28 May 2000), para. 5.

<sup>1288</sup> PW-113, T. 3342–3346 (31 Oct 2006); PW-139, Ex. P02288, “confidential - 92 ter statement”, (28 May 2000), p. 3; PW-139, T. 3732–3734 (7 Nov 2006); PW-110, T. 797–798 (25 Aug 2006); Marinko Jevđević, T. 23848–23849 (23 July 2008); PW-116, Ex. P02205, “92 bis transcript”, KT. 2946 (14 Apr 2000).

<sup>1289</sup> PW-111, T. 7040 (7 Feb 2007). *See also* PW-113, Ex. P02280, “92 ter transcript”, BT. 1383–1384 (21 July 2003); PW-106, T. 3957, 3959 (15 Nov 2006), T. 4009 (16 Nov 2006); Ex. 2D00233, “Official Note from the Srebrenica Police Station, Kadija Avdić, 24 Aug 2003”.

<sup>1290</sup> PW-116, Ex. P02205, “92 bis transcript”, KT. 2945–2946 (14 Apr 2000); Ramiz Husić, Ex. P02203, “92 bis statement” (9 June 1999), p. 4; Osman Salkić, Ex. P02225, “92 bis statement” (4 Dec 2004), p. 4; PW-106, T. 3958 (15 Nov 2006); Mevludin Orić, T. 876 (28 Aug 2006), T. 975–976 (29 Aug 2006); *see also* Prosecution Adjudicated Facts Decision, Annex, Fact 261.

<sup>1291</sup> PW-106, T. 3956 (15 Nov 2006); Osman Salkić, Ex. P02225, “92 bis statement” (4 Dec 2004), p. 4; PW-111, T. 6974–6475 (6 Feb 2007); PW-113, Ex. P02280, “92 ter transcript”, BT. 1384 (21 July 2003); PW-110, T. 650 (24 Aug 2006); PW-116, Ex. P02205, “92 bis transcript”, KT. 2946 (14 Apr 2000). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 264.

<sup>1292</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 265. *See also* Ex. P02047, “Srebrenica Trial Video”, 02:50:13.

an ultimatum to the Bosnian Muslims in the woods, to either surrender or be killed,<sup>1293</sup> in response to which large numbers of Bosnian Muslim men surrendered.<sup>1294</sup>

4. Detention of Surrendered and Captured Bosnian Muslim Men from the Column along the Bratunac–Konjević Polje Road and the Nova Kasaba–Konjević Polje Road (13 July)

383. The two main axes along which large groups of Bosnian Muslim men from the column were captured by members of the Bosnian Serb Forces or surrendered on 13 July were the Bratunac–Konjević Polje Road and the Nova Kasaba–Konjević Polje Road.<sup>1295</sup> A conversation intercepted at 5:30 p.m. on 13 July indicates that approximately 6,000 Bosnian Muslim prisoners were detained in the Bratunac area at three locations, with about 1,500 to 2,000 men in each location.<sup>1296</sup> One of the locations appears to be the football field at Nova Kasaba, another was “up there where the checkpoint at the intersection is,” and a third was “halfway between the checkpoint and the loading place.”<sup>1297</sup> In this context, the Trial Chamber is of the view that one of the places is Sandići Meadow and the other Nova Kasaba.

(a) Sandići Meadow

384. Along the Bratunac–Konjević Polje Road, approximately one and a half kilometres from the Kravica Warehouse in the direction of Konjević Polje, there was a large open patch of land in the forest—Sandići Meadow.<sup>1298</sup> Over the course of 13 July, it is estimated that between 1,000 and 2,000 Bosnian Muslims from the column who had surrendered or been captured were detained there.<sup>1299</sup>

<sup>1293</sup> PW-113, Ex. P02280, “92 *ter* transcript”, KT. 1384 (21 July 2003); PW-110, T. 650 (24 Aug 2006).

<sup>1294</sup> *Ibid.*

<sup>1295</sup> With regard to the Bratunac–Konjević Polje Road, *see* PW-111, T. 6973 (6 Feb 2007); PW-100, T. 14837–14838 (5 Sept 2007), T. 1488214883 (6 Sept 2007); PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3245–3247 (23 May 2000); PW-110, T. 648–650 (24 Aug 2006); PW-120, Ex. P02220, “92 *bis* transcript”, KT. 2766–2767 (12 Apr 2000); Prosecution Adjudicated Facts Decision, Annex, Fact 268; Ex. P02215, “Map of PW-119’s route to Nezuk”.

<sup>1296</sup> Ex. P01143a, “Intercept, 13 July 1995, 17:30 hours.”

<sup>1297</sup> *Ibid.*

<sup>1298</sup> Ex. P02986, “Road Book - Still frames from the Petrović video and images of locations found in the Petrović video”, p. 21; Ex. PIC00132, “Aerial Image marked by the witness”; *See infra* Ex. P02111, “Map–Zvornik Area”; PW-100, T. 14822 (5 Sept 2007).

<sup>1299</sup> Estimates of the number of prisoners detained at the meadow ranged from 900 to 2,000. PW-110, T. 657–658 (24 Aug 2006); PW-127, T. 3516–3517, 3524 (2 Nov 2006), T. 3557–3558 (3 Nov 2006); PW-111, T. 6975 (6 Feb 2007), T. 7052 (7 Feb 2007); Ramiz Husić, Ex. P02203 “92 *bis* statement” (9 June 1999), p. 64; PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1386, 1391 (21 July 2003); PW-156, T. 7086 (8 Feb 2007). The Trial Chamber notes that although PW-156 testified that he heard the meadow where he was detained was in Lolići, Lolići and Sandići are close and finds that PW-156 was detained in the same meadow in Sandići described by the other witnesses who were there. *See* Tomasz Blaszczyk, T. 18637 (3 Dec 2007) (noting a location in the Lolići “area” approximately 900 metres from Sandići Meadow). *See also* Zoran Petrović, T. 18791–18792, 18795–18796 (5 Dec 2007), T. 18857–18858 (6 Dec 2007); Ex. P02011, “Video by Zoran Petrović, Studio B version”; Ex. P02986, “Road Book - Still frames from the Petrović video and images of locations found in the Petrović video”, p. 56; Ex. P02047, “Srebrenica Trial Video,” 02:47:45–02:48:12.

385. Upon surrender, some Bosnian Muslim men were ordered to raise their hands behind their heads, drop their belongings onto a pile and hand over their money.<sup>1300</sup> In some instances, those who had carried weapons had thrown them away before surrendering.<sup>1301</sup> While the prisoners were provided with water, they were given neither food nor medical treatment.<sup>1302</sup> Some members of the Bosnian Serb Forces insulted the prisoners and asked them for money.<sup>1303</sup> However, some women, young girls, and about a dozen boys who were younger than 15 years of age, were allowed to leave Sandići Meadow and get on the buses and trucks heading to ABiH-held territory.<sup>1304</sup>

386. Several units of the Bosnian Serb Forces were present in the Sandići Meadow area on 13 July.<sup>1305</sup> Both the SBP 2nd Šekovići Detachment<sup>1306</sup> and the 1st PJP Company from Zvornik<sup>1307</sup> remained deployed along the Bratunac-Konjević Polje Road in and around Sandići Meadow that day.<sup>1308</sup> Members of the 1st Company of the Jahorina Recruits were also deployed in and around Sandići Meadow.<sup>1309</sup> At a certain point during the afternoon of 13 July, another group of Bosnian

<sup>1300</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 270; PW-111, T. 6972–6973 (6 Feb 2007).

<sup>1301</sup> PW-111, T. 7038–7039 (7 Feb 2007).

<sup>1302</sup> PW-110, T. 660 (24 Aug 2006). *See also* PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1396-1397 (21 July 2003); PW-127, T. 3533–3534 (2 Nov 2006); PW-156, T. 7088 (8 Feb 2007).

<sup>1303</sup> PW-111, E. P02280, “92 *ter* transcript”, KT. 1386 (21 July 2003); PW-110, T. 651 (24 Aug 2006), T. 804–805 (25 Aug 2006) (stating that the prisoners were told to lie down and shout “Long live the King”).

<sup>1304</sup> PW-110, T. 656, 658–659 (24 Aug 2006); PW-111, T. 6976–6977, 6981 (6 Feb 2007). *See also* PW-127, T. 3535 (2 Nov 2006).

<sup>1305</sup> PW-127, T. 3530–3531 (2 Nov 2006), T. 3566 (private session) (3 Nov 2006); PW-156, T. 7089 (8 Feb 2007); PW-110, T. 759, 802–803 (25 Aug 2006); PW-111, T. 6973–6974 (6 Feb 2007); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 54–56.

<sup>1306</sup> Ex. P02000, “Video footage shot by Zoran Petrović during July 1995, provided by the BBC”, at 00:09:51 (showing Milenko Trifunović, a member of the SBP 2nd Sekovići Detachment); Predrag Celić, T. 13489–13490 (28 June 2007) (identifying Trifunović); Dobrisav Stanojević, T. 12894–12896 (19 June 2007) (identifying Trifunović, “Dugi”, a member of the 1st PJP Company from Zvornik, standing next to his brother, also nicknamed “Dugi”, a member of the SBP 2nd Sekovići Detachment); Milenko Pepić, T. 13549–13551, 13555–13556, 13589–13590, 13594 (9 July 2007); Zoran Petrović, T. 18855 (6 Dec 2007); Ex. P01936, “Video stills taken from the Srebrenica Trial Video”, p. 66 (showing a man nicknamed “Dugi”, a member of the 1st PJP Company from Zvornik, standing next to his brother, also called “Dugi”, a member of the SBP 2nd Sekovići Detachment).

<sup>1307</sup> Ex. P02000, “Video footage shot by Zoran Petrović during July 1995, provided by the BBC”, 00:22:25–00:24:05 (showing Predrag Krstić, a member of the 1st Company PJP from Zvornik); Ex. P02047, “Srebrenica Trial Video, “02:49’15.27””; Dobrisav Stanojević, T. 12896–12897 (19 June 2007) (identifying Predrag Krstić, Vasić, a member of the 1st PJP Company from Zvornik with a black bandana and a policeman from Skelani, and “Dugi”, a member of the SBP 2nd Sekovići Detachment); Ex. P02832, “Still of man in military uniform with a black bandana near Sandići Meadow taken from Srebrenica Trial Video at 02:49:15–02:49:27 (showing an individual in a black headband with the last name “Vasić” who was a member of the 1st PJP Company from Zvornik and a policeman from Skelani); Ex. P01936. “Video stills taken from the Srebrenica Trial Video”, p. 65 (showing a man nicknamed “Dugi”, a member of the 1st PJP Company from Zvornik, standing next to his brother, also called “Dugi”, a member of the SBP 2nd Sekovići Detachment).

<sup>1308</sup> Zoran Petrović, T. 18782–18784, 18786 (5 Dec 2007), T. 18855 (6 Dec 2007); Ex. P00062, “Document from Zvornik CJB signed by Dragomir Vasić, 13 July 1995”; Ex. P00886, “Document from the Zvornik CJB to the RS MUP type-signed Vasić, 13 July 1995”; Ex. P03112, “CJB Zvornik Dispatch regarding the activities of various PJP units, Dragomir Vasić, 14 July 1995”; Mendeljev Đurić, T. 10822–10824 (2 May 2007); Ex. P02054, “A high quality copy of the Zoran Petrović’s roll material in 8 mm standard,” 00:16:25–00:22:14; Ex. P02985, “Transcript of the Petrović video”, pp. 10–14.

<sup>1309</sup> Mendeljev Đurić, T. 10812–10813, 10819, 10822, 10826, 10865–10866, 10869–10871 (2 May 2007); PW-160, T. 8586 (9 Mar 2007), T. 8642–8644 (12 Mar 2007); Ex. P02047, “Srebrenica Trial Video”, 02:47:20–02:47:22, 02:47:51, 02:49:37, 02:49:45; Ex. P02000, “Video footage shot by Zoran Petrović during July 1995, provided by the BBC”, at 00:18:45–00:21:32; PW-100, T. 14813–14818, 14820–14827, 14843–14844 (5 Sept 2007), T. 14908–14909 (6 Sept 2007). Combining PW-100’s testimony and other circumstantial evidence, such as the fact that

Serb Forces, wearing black uniforms, arrived at Sandići Meadow to guard the Bosnian Muslim prisoners.<sup>1310</sup> A black tank positioned near the meadow had its machine-gun pointed at the Bosnian Muslim prisoners.<sup>1311</sup> Two or three APCs were also located nearby.<sup>1312</sup>

387. **Borovčanin** was at Sandići Meadow during the afternoon of 13 July.<sup>1313</sup> At some point in the afternoon,<sup>1314</sup> Mladić came to the meadow and told the detained men that they would not be hurt but would be exchanged as POWs, and that their families had been transported safely to ABiH-held territory.<sup>1315</sup>

388. During the afternoon, groups of prisoners were transported out of Sandići Meadow.<sup>1316</sup> While some were put on buses or marched towards the nearby Kravica Warehouse,<sup>1317</sup> others were put on buses and trucks and taken to Bratunac town.<sup>1318</sup> Meanwhile, there were also episodes of beatings and killings of Bosnian Muslim prisoners<sup>1319</sup> by some members of the Bosnian Serb Forces.<sup>1320</sup>

(b) Konjević Polje

389. On 13 July 1995, a number of Bosnian Muslim men from the column surrendered or were captured at the intersection of the Bratunac-Konjević Polje Road and the Nova Kasaba-Konjević

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Bosnian Muslims were bused out of Potočari on 12 July, the Trial Chamber finds that PW-100 was describing Sandići Meadow and that he was present at the meadow on 13 July.

<sup>1310</sup> PW-110, T. 804–805 (25 Aug 2006); PW-111, T. 6976 (6 Feb 2007).

<sup>1311</sup> PW-127, T. 3524 (2 Nov 2006); PW-111, T. 6976 (6 Feb 2007); Ramiz Husić, Ex. P02203, “92 bis statement” (9 June 1999), p. 7; Ex. P02986, “Road Book-Still Frames from the Petković Video and Images of Locations found in the Petković Video”, p. 28.

<sup>1312</sup> PW-110, T. 804 (25 Aug 2006), *See also* Dobrisav Stanojević, T. 12882 (19 June 2007).

<sup>1313</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 47–51; Zoran Petrović, T. 18783, 18793 (5 Dec 2007), T. 18855 (6 Dec 2007). *See also* PW-160, T. 8585–8586 (9 Mar 2007).

<sup>1314</sup> PW-110, T. 748–749 (25 Aug 2006); PW-111, T. 6977–6978 (6 Feb 2007).

<sup>1315</sup> PW-110, T. 661–662 (24 Aug 2006), T. 748–749 (25 Aug 2006); PW-111, T. 6977–6978 (6 Feb 2007); PW-160, T. 8585–8586 (9 Mar 2007); Prosecution Adjudicated Facts Decision, Annex, Fact 271.

<sup>1316</sup> PW-111, T. 6978–6979, 6981 (6 Feb 2007), T. 7056 (7 Feb 2007); PW-156, T. 7094, 7112–7113 (8 Feb 2007). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 272.

<sup>1317</sup> PW-111, T. 6978–6979, 6981 (6 Feb 2007), T. 7056 (7 Feb 2007); PW-156, T. 7094, 7112–7113 (8 Feb 2007). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 272.

<sup>1318</sup> PW-110, T. 663 (24 Aug 2006); PW-113, T. 3337–3338 (31 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 272.

<sup>1319</sup> PW-127 identified Dulan Tabaković, Tabaković’s two-sons, Ahmo Tihic and Džemo Tihic, and another man who was the brother of Sead Krdžić at Sandići Meadow. PW-127, T. 3531–3532 (private session) (2 Nov 2006). PW-127 identified Tabaković’s two sons in Ex. P02407, “Srebrenica Trial Video” at 02:50:48; PW-127 T. 3540 (private session) (2 Nov 2006); Ramiz Husić, Ex. P02203, “92 bis statement” (9 June 1999), p. 7 (stating that he saw Dulan Tabaković being taken to a cornfield and did not see him return). None of the prisoners came back and PW-127 never saw these prisoners again. PW-127, T. 3532 (2 Nov 2006). The Trial Chamber notes that there is no Dulan Tabaković found on the 2009 ICMP List of Deceased. However, there is an Ahmo Tihic and a Džemo Tihic. There is also a Sejad Krdžić, who appears to have two brothers: Seid Krdžić, and Adem Krdžić. *See* Ex. P04494 (confidential).

<sup>1320</sup> PW-127 T. 3530–3531, 3533–3534 (2 Nov 2006); PW-156, T. 7088 (8 Feb 2007); PW-111, T. 6976 (6 Feb 2007), T. 7054–7055 (7 Feb 2007).

Polje Road.<sup>1321</sup> The Bosnian Muslim men were told to lie face down and to put their hands behind their heads while they were searched and everything was taken away from them.<sup>1322</sup> Some of the Bosnian Muslims were taken to a warehouse in Konjević Polje and held in a guarded room.<sup>1323</sup> The captured Bosnian Muslims were provided with water, albeit not enough for everyone, as well as with some beer and cigarettes.<sup>1324</sup> They were guarded by three military policemen.<sup>1325</sup> One group of around 30 captured Bosnian Muslims, including PW-116, was transported from the warehouse to the Nova Kasaba Football Field in three or four civilian trucks.<sup>1326</sup> Another group of captured Bosnian Muslims, including Mevludin Orić, was loaded onto two buses at around 9 or 10 p.m. and, together with the military policemen who had guarded them, transported from the warehouse to Bratunac town.<sup>1327</sup>

390. Three Bosnian Muslim men and a boy of approximately 15 years from the column were also captured on the Bratunac-Konjević Polje Road near Konjević Polje on 13 July 1995.<sup>1328</sup> One of them, PW-112, was captured by members of the MUP.<sup>1329</sup> He was stripped of his identification documents and personal belongings,<sup>1330</sup> and brought to a first location of detention, where he met

<sup>1321</sup> Mevludin Orić, T. 883–885, 902–903 (28 Aug 2006); Željko Kerkez, T. 24090 (25 July 2008); PW-116, Ex. P02205, “92 bis transcript”, KT. 2949 (14 Apr 2000). Orić stated that they were 13 people in total at the time and some of them went down to surrender, thinking that they were safe when they saw the vehicles. Mevludin Orić, T. 884–885 (28 Aug 2006). Mevludin Orić further stated that he was no longer an ABiH soldier when he headed off from Jagličić towards Tuzla. *Ibid.* The members of the Bosnian Serb Forces—one of whom was a certain “Gligić” or “Simić”—were armed and wore camouflage uniforms. Orić indicated the location where he was captured on Ex. PIC00002, “Map marked by Mevludin Orić”. It is close to an intersection in Konjević Polje. Mevludin Orić, T. 886–887, 904 (28 Aug 2006).

<sup>1322</sup> Mevludin Orić, T. 885–889 (28 Aug 2006). Orić remembers that, in the *Blagojević* case, he mentioned the last name of the individual who told them to lie down but does not recall whether he stated Gligić or Simić. The man was from Studenić near Potočari. Mevludin Orić, T. 1002 (30 Aug 2006). Mevludin Orić stated that many of the Bosnian Muslim captives had thrown away their identification documents before they were captured. Mevludin Orić, T. 889–890 (28 Aug 2006).

<sup>1323</sup> Mevludin Orić, T. 889 (28 Aug 2006); PW-116, Ex. P02205, “92 bis transcript”, KT. 2949 (14 Apr 2000) (referring to a “hangar” where they were kept for 20 minutes).

<sup>1324</sup> Mevludin Orić, T. 888 (28 Aug 2006); PW-116, Ex. P02205, “92 bis transcript”, KT. 2949 (14 Apr 2000) (testifying that although water was provided, it was insufficient).

<sup>1325</sup> Mevludin Orić, T. 890–894 (28 Aug 2006), T. 1123 (31 Aug 2006) (also stating that the guards were wearing blue flak jackets with round patches bearing big letters “VP” which stand for the “Military Police” on their arms).

<sup>1326</sup> PW-116, Ex. P02205, “92 bis transcript”, KT. 2948–2950 (14 Apr 2000) (stating that the group of 30 men with whom he had been held in the warehouse were ordered to board three or four civilian trucks which had been parked at the Konjević Polje intersection).

<sup>1327</sup> Mevludin Orić, T. 889 (28 Aug 2006) (stating he was told that the buses that were transporting civilians from Potočari to Kladanj would transport the prisoners, including himself, to Bratunac on their return), 890–894 (28 Aug 2006), T. 1123 (31 Aug 2006).

<sup>1328</sup> PW-112, Ex. P02272, “confidential - 92 ter transcript”, KT. 3245, 3250, 3252–3253, 3263 (23 May 2000).

<sup>1329</sup> PW-112, Ex. P02272, “confidential - 92 ter transcript”, KT. 3245–3250, 3251–3253 (private session) (23 May 2000). PW-112 described the Bosnian Serb Forces who captured him and took his identification away as having on “[...] dark blue uniforms and slightly multicoloured. They weren’t all blue, they were the mass type of blue uniform and they were all in one. They had a belt around their waist in front.” *Ibid.*, KT. 3247. PW-112 recognised one of the men involved in his capture as Milisav Gavrić from Srebrenica. *Ibid.*, KT. 3253. The Trial Chamber has heard evidence that Milisav Gavrić was a policeman. PW-126, T. 3602, 3625 (private session) (6 Nov 2006).

<sup>1330</sup> PW-112, Ex. P02272, “confidential - 92 ter transcript”, KT. 3246 (23 May 2000).

the two other Bosnian Muslim men.<sup>1331</sup> The three men were guarded by members of the Bosnian Serb Forces,<sup>1332</sup> at least one of whom was an MUP member.<sup>1333</sup> The three men were taken to another location where they were interrogated by four members of the Bosnian Serb Forces.<sup>1334</sup> After the interrogation, the three men were taken to the third detention site, where they were joined by the boy.<sup>1335</sup> They were all later taken to a warehouse on the banks of the Jadar River where they were detained with 12 other Bosnian Muslim prisoners, ordered to take off their clothes, lined up against the wall, and beaten.<sup>1336</sup> The Bosnian Serb Forces guarding and beating the prisoners at the warehouse wore military camouflage uniforms.<sup>1337</sup> Nenad Deronjić, a member of the MUP,<sup>1338</sup> was one of them.<sup>1339</sup>

(c) Bratunac Brigade Headquarters<sup>1340</sup>

391. At approximately 10 or 11 a.m. on 13 July, Nazif Avdić,<sup>1341</sup> Munib Dedić,<sup>1342</sup> Aziz Husić,<sup>1343</sup> Mujo Husić<sup>1344</sup> and Hasib Ibišević,<sup>1345</sup> were brought to Zlatan Čelanović, a desk officer for legal, religious, and moral affairs in the Bratunac Brigade,<sup>1346</sup> in his office in the Bratunac

<sup>1331</sup> PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3250 (23 May 2000); Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, p. 32; Jean-René Ruez, T. 1378 (8 Sept 2006).

<sup>1332</sup> PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3250–3251 (partially private session) (23 May 2000).

<sup>1333</sup> *Ibid.* PW-112 knew this man from before the war and identified him as Dragiša Žekić. PW-112 testified that when he saw Žekić at Konjević-Polje, he was wearing a dark blue one-piece camouflage uniform like the MUP members that arrested him, PW-112, T. 3251–3252 (private session) (23 May 2000). The Trial Chamber has not heard other evidence regarding Dragiša Žekić’s position, but concludes, given the colour of his uniform, that he was in fact a member of the MUP.

<sup>1334</sup> PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3255–3261 (23 May 2000); PW-112, T. 3222 (30 Oct 2006); Ex. P02275, “Photograph” (indicating the house where PW-112 and two other Bosnian Muslim men were interrogated).

<sup>1335</sup> PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3262–3263 (23 May 2000); PW-112, T. 3221 (30 Oct 2006); Ex. P01935, “Photograph” (indicating the house where PW-112 and the two other Bosnian Muslim men were brought after the interrogation). The boy was beaten by a policeman while they were being held at this location. PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3263 (23 May 2000).

<sup>1336</sup> PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3264–3271 (partially private session) (23 May 2000).

<sup>1337</sup> *Ibid.* KT. 3268 (private session) (23 May 2000).

<sup>1338</sup> *See infra*, para. 408.

<sup>1339</sup> PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3267 (private session) (23 May 2000).

<sup>1340</sup> The Indictment alleges that on 13 July 1995, six Bosnian Muslim men from Srebrenica were captured by MUP forces and then interrogated at the Bratunac Brigade Headquarters. The Indictment further alleges that after interrogation these six men were detained along with other Bosnian Muslim prisoners in Bratunac and thereafter summarily executed. Indictment, para. 30.1.

<sup>1341</sup> Zlatan Čelanović, T. 6658 (31 Jan 2007); Ex. P00249, “Notes regarding interrogation of Nazif Avdić, Munib Dedić, Aziz Husić, and Hajrudin Begzadić”. The Indictment refers to a “Zazif Avdić, son of Ramo, date of birth: 15 September 1954,” Indictment, para. 30.1(a). The Trial Chamber notes, however, that Zlatan Čelanović’s handwritten notes of the interrogation refer to Nazif Avdić, with the same father and date of birth specified in the Indictment and considers the spelling of his first name in the Indictment to be a typographical error.

<sup>1342</sup> Zlatan Čelanović, T. 6658 (31 Jan 2007); Ex. P00249, “Notes regarding interrogation of Nazif Avdić, Munib Dedić, Aziz Husić, and Hajrudin Begzadić”. The Indictment lists Munib Dedić’s date of birth as 26 April 1956. Indictment, para. 30.1(b). The Trial Chamber notes that Zlatan Čelanović’s handwritten notes of the interrogation list Munib Dedić’s date of birth as 26 April 1966, but considers this reference to be a typographical error.

<sup>1343</sup> Zlatan Čelanović, T. 6658 (31 Jan 2007); Ex. P00249, “Notes regarding interrogation of Avdić, Nazif, Dedić, Munib, Husić, Aziz, and Begzadić, Hajrudin”.

<sup>1344</sup> Zlatan Čelanović, T. 6655 (31 Jan 2007); Ex. P00247, “Notes regarding interrogation of Mujo Husić”.

<sup>1345</sup> Zlatan Čelanović, T. 6659 (31 Jan 2007); Ex. P00250, “Notes regarding interrogation of Hasib Ibišević”.

<sup>1346</sup> Zlatan Čelanović, T. 6626, 6630 (31 Jan 2007).



Brigade Headquarters, by “members of special forces” or “specials”.<sup>1347</sup> At some point thereafter, Rešid Sinanović, the former chief of the Bratunac police<sup>1348</sup> was brought to Čelanović’s office by Momir Nikolić.<sup>1349</sup> Following their interrogation, the six Bosnian Muslim men were taken by the “a special military unit or a special police” to the Vuk Karadžić School in Bratunac town.<sup>1350</sup>

(d) Nova Kasaba Football Field<sup>1351</sup>

392. On 13 July 1995, a group of approximately 300 Bosnian Muslim men who had surrendered or been captured in the area of the Nova Kasaba-Konjević Polje Road was transported by members of the Bosnian Serb Forces in trucks with canvas covers that a witness described as “civilian trucks from the Boksit Company.”<sup>1352</sup> They were taken in the direction of Nova Kasaba, after their money and gold were taken away from them.<sup>1353</sup> The Bosnian Serb Forces on board the trucks were wearing dark blue camouflage uniforms.<sup>1354</sup>

393. The group of prisoners, which included PW-116, was ordered to get out of the trucks at a football field just outside Nova Kasaba, the Nova Kasaba Football Field.<sup>1355</sup> A group of 15 to 20 armed military policemen of the 65th Protection Regiment stationed in a school building in the vicinity of the Nova Kasaba Football Field just outside Nova Kasaba were already present at the entrance of the field.<sup>1356</sup> They swore at the prisoners and ordered them to enter the field.<sup>1357</sup> Upon

<sup>1347</sup> Zlatan Čelanović, T. 6628, 6632, 6645, 6647 (31 Jan 2007). Čelanović described the men who brought the prisoners as wearing new uniforms consisting of black or dark blue military overalls, although two were dressed in multicoloured camouflage, which indicated that they were part of an elite unit, as Čelanović’s unit had old, worn-out uniforms. *Ibid.*, T. 6645, 6647, 6671 (31 Jan 2007).

<sup>1348</sup> PW-162, T. 9219 (22 Mar 2007); Zlatan Čelanović, T. 6632–6633 (31 Jan 2007).

<sup>1349</sup> Zlatan Čelanović, T. 6632–6635 (31 Jan 2007); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 4; T. 32932 (21 Apr 2009). Momir Nikolić also told PW-138 that he had taken Rešid Sinanović to Bratunac. PW-138, T. 3826–3827 (8 Nov 2006). Momir Nikolić suspected Sinanović of having participated in an attack on the village of Bjelovac. Zlatan Čelanović, T. 6634 (31 Jan 2007).

<sup>1350</sup> Zlatan Čelanović, T. 6645 (31 Jan 2007). Čelanović called the school to which the men were taken the “Branko Radičević School” but stated that he was unsure of the name of this school in July 1995. *Ibid.*, T. 6638–6639 (31 Jan 2007). Čelanović also told PW-162, who visited Sinanović that day, that Sinanović would be transferred to the Branko Radičević School in the afternoon. PW-162, T. 9219, 9226–9227 (22 Mar 2007). The Trial Chamber has heard evidence that this school was formerly the Vuk Karadžić School. *See* PW-162, T. 9221 (22 Mar 2007). After speaking to Sinanović for an hour, Čelanović felt that there were no grounds for suspecting him of having harmed Bosnian Serbs in any way. Čelanović also questioned the five other Bosnian Muslims out in the front yard of the building, and came to the conclusion that at least most of them were not soldiers but civilians. Čelanović questioned the men about people and events mentioned in the book *The Chronicle of our Cemetery*. Zlatan Čelanović, T. 6634–6635, 6637, 6657–6658 (31 Jan 2007).

<sup>1351</sup> The Trial Chamber will refer to the location in Nova Kasaba where Bosnian Muslim prisoners were held as the “Nova Kasaba Football Field” although witnesses have referred to it interchangeably as a “football field,” *see* Vincent Egbers, T. 2726 (18 Oct 2006), PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2950 (14 Apr 2000), Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, pp. 27–28.

<sup>1352</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2948, 2950 (14 Apr 2000).

<sup>1353</sup> *Ibid.*, KT. 2950 (14 Apr 2000). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 274.

<sup>1354</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2948 (14 Apr 2000).

<sup>1355</sup> *Ibid.* KT. 2950–2951 (14 Apr 2000); Ex. P01664, “Video Still of football field taken from helicopter”.

<sup>1356</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2950, 2952–2953 (14 Apr 2000); Mirko Trivić, T. 11860–11861 (21 May 2007), T. 12002 (23 May 2007); Martijn Anne Mulder, Ex. P02199, “92 *bis* statement” (24 and 25 Oct

arrival of PW-116's group of prisoners, the field was already full with several hundred Bosnian Muslim prisoners, sitting in rows.<sup>1358</sup> They were not given any food or water.<sup>1359</sup> The prisoners were guarded by a total of about 100 military policemen of the 65th Protection Regiment in camouflage uniforms, some of whom had their guns pointed at the prisoners.<sup>1360</sup>

394. At some point, an olive-green coloured APC arrived from which Mladić alighted.<sup>1361</sup> Mladić shouted at the prisoners, and told them that their authorities in ABiH-held territory did not want them, that his troops would give them water and food, "and then we'll see whether we'll send you to Krajina, to Fikret Abdić or [...] to the Batkovići camp in Bijeljina."<sup>1362</sup> Bosnian Serb Forces with dogs were covering the woods in order to prevent anyone from crossing the Nova Kasaba-Konjević Polje Road.<sup>1363</sup>

395. About an hour after Mladić left, the prisoners were boarded onto trucks and buses.<sup>1364</sup> In reply to one of the prisoners commenting that they should take their bags, one of the Bosnian Serb soldiers said that they would no longer need them; later on, the Bosnian Muslim prisoners' belongings were burnt.<sup>1365</sup> By around 7 p.m. on 13 July 1995, all the Bosnian Muslim men who were detained at the Nova Kasaba Football Field had been transported to Bratunac by the Military Police of the 65th Protection Regiment and handed over to the civilian police in Bratunac who were awaiting them at the Vuk Karadžić School in Bratunac town.<sup>1366</sup> The prisoners were transported in buses and large civilian trucks, which arrived from the direction of Zvornik and Milići.<sup>1367</sup> In total, eight military policemen of the 65th Protection Regiment accompanied the convoy of buses and

1995, 12 May 2000), pp. 4–5 (12 May 2000); Bojan Subotić, T. 24976, 24984 (1 Sept 2008); Vincent Egbers, T. 2758 (19 Oct 2006); Ex. P01688, "Photograph of school at Nova Kasaba".

<sup>1357</sup> PW-116, Ex. P02205, "92 bis transcript", KT. 2952 (14 Apr 2000).

<sup>1358</sup> Vincent Egbers, T. 2756 (19 Oct 2006); Martijn Anne Mulder, Ex. P02199, "92 bis statement" (24 and 25 Oct 1995, 12 May 2000), pp. 14–15 (24 and 25 Oct 1995); Bojan Subotić, T. 24980, 25018–25019 (1 Sept 2008). *See also* Ex. P01130a, "Intercept, 13 July 1995, 10:09 hours"; Ex. P02103, "Documents tendered with statement of Jean-René Ruez", pp. 27–28 (showing the Nova Kasaba Football Field with prisoners at 2 p.m. on 13 July 1995)." *See also* PW-116, Ex. P02205, "92 bis transcript", KT. 2950–2952 (14 Apr 2000); Mirko Trivić, T. 11859–11860 (21 May 2007), T. 12002 (23 May 2007).

<sup>1359</sup> PW-116, Ex. P02205, "92 bis transcript", KT. 2955 (14 Apr 2000).

<sup>1360</sup> Mirko Trivić, T. 11860–11861 (21 May 2007), T. 12002 (23 May 2007); Martijn Anne Mulder, Ex. P02199, "92 bis statement" (24 and 25 Oct 1995, 12 May 2000), pp. 4–5 (12 May 2000); Bojan Subotić, T. 24976, 24984 (1 Sept 2008); Vincent Egbers, T. 2758 (19 Oct 2006); Ex. P01688, "Photograph of Nova Kasaba School"; PW-116, Ex. P02205, "92 bis transcript", KT. 2952–2953 (14 Apr 2000).

<sup>1361</sup> PW-116, Ex. P02205, "92 bis transcript", KT. 2953 (14 Apr 2000); Prosecution Adjudicated Facts Decision, Annex, Fact 278.

<sup>1362</sup> PW-116, Ex. P02205, "92 bis transcript", KT. 2954 (14 Apr 2000).

<sup>1363</sup> *Ibid.* KT. 2953–2954, 2992 (14 Apr 2000).

<sup>1364</sup> *Ibid.* KT. 2954–2955 (14 Apr 2000); Bojan Subotić, T. 24987–24989, 24991 (1 Sept 2008).

<sup>1365</sup> PW-116, Ex. P02205, "92 bis transcript", KT. 2954–2955 (14 Apr 2000); Prosecution Adjudicated Facts Decision, Annex, Fact 277.

<sup>1366</sup> Bojan Subotić, T. 24971, 24985, 24988, 24990–24993, 24995, 25011, 25025–25026, 25029, 25033–25034 (1 Sept 2008). *See also* Chapter III, Section F.5.

<sup>1367</sup> *Ibid.*, T. 24987–24991 (1 Sept 2008).

trucks, which was headed by an armoured vehicle and at the rear, a Praga.<sup>1368</sup> They stopped frequently on the way because the prisoners were restless due to the overcrowded vehicles and the heat, allowing them to drink when they passed a creek.<sup>1369</sup> For this reason, they only arrived in Bratunac town around 9 p.m.<sup>1370</sup>

396. On 13 July, five DutchBat officers, attempting to escort convoys of Bosnian Muslim women, children and the elderly from Potočari to ABiH-held territory, were captured by VRS soldiers, and held at a school building in the vicinity of the Nova Kasaba Football Field by the Military Police of the 65th Protection Regiment.<sup>1371</sup> They were held there, overnight, and only released the following afternoon.<sup>1372</sup> While at the school, Martijn Anne Mulder, one of the DutchBat soldiers, saw about 30 prisoners in civilian clothes accompanied by armed VRS soldiers being brought into an annex of the school, and subsequently heard pistol shots.<sup>1373</sup>

(e) Trucks near Kravica Supermarket

397. On 13 July 1995, PW-116, a member of the column of Bosnian Muslim men, surrendered to Bosnian Serb police officers<sup>1374</sup> near Kravica, and was detained at the Nova Kasaba Football Field before being made to board one of three or four trucks with 118 other Bosnian Muslim men.<sup>1375</sup> The trucks all stopped near Kravica Supermarket, and remained there overnight with the Bosnian Muslim men on board.<sup>1376</sup>

<sup>1368</sup> Bojan Subotić, T. 24991, 25025 (1 Sept 2008) (stating that there were not enough military policemen to accompany the convoy).

<sup>1369</sup> *Ibid.* T. 24992–24993 (1 Sept 2008).

<sup>1370</sup> *Ibid.* T. 24993 (1 Sept 2008).

<sup>1371</sup> Martijn Anne Mulder, Ex. P02199, “92 *bis* statement” (24 and 25 Oct 1995, 12 May 2000), pp. 4–5 (24 and 25 Oct 1995), 14–15 (12 May 2000); Vincent Egbers, T. 2756–2758, 2784–2788, 2799–2800 (19 Oct 2006); Bojan Subotić, T. 24976, 24984, 24995, 25014 (1 Sept 2008); Ex. P01688, “Photograph of school at Nova Kasaba” *See also* paras. 333, 337.

<sup>1372</sup> Vincent Egbers, T. 2760–2761, 2773–2776, 2817, 2819–2831 (19 Oct 2006), T. 2848–2851, 2854–2856 (20 Oct 2006). *See also* Milomir Savčić, T. 15249 (12 Sept 2007).

<sup>1373</sup> Martijn Anne Mulder, Ex. P02199, “92 *bis* statement” (24 and 25 Oct 1995, 12 May 2000), p. 5 (24 and 25 Oct 1995).

<sup>1374</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2949 (14 Apr 2000). PW-116 testified that the men were wearing dark blue camouflage uniforms, but at the time of the events, he could not tell the difference between police and army camouflage uniforms. PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2949 (14 Apr 2000). PW-112 saw police in blue uniforms near Kravica on 13 July 1995. PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3244–3247 (23 May 2000). Simanić also testified that police officers wore blue uniforms “in the region of Konjević Polje”. Mile Simanić, T. 14721 (4 Sept 2007). The Trial Chamber is satisfied that the Bosnian Serb soldiers to whom PW-116 surrendered were police officers.

<sup>1375</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2946–2951, 2954–2956, 2959–2960 (14 Apr 2000). The men in PW-116’s truck counted themselves. *Ibid.*, KT. 2956 (14 Apr 2000). PW-116 also indicated the location of the football field (between Nova Kasaba and Konjević Polje) and Kravica on a map. *Ibid.*, KT. 2958–2959 (14 Apr 2000). *See infra*, paras. 446–449.

<sup>1376</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2956, 2958–2959, 2961–2962 (14 Apr 2000). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 276.

398. The Bosnian Muslim men in the truck were calling for help and some water.<sup>1377</sup> They received no food and only one bucket of water in the whole time they were on the truck.<sup>1378</sup> Some of the prisoners were drinking their own urine because of the extreme heat under the truck's canvas.<sup>1379</sup>

##### 5. Detention of Bosnian Muslim Men in Bratunac Town (12–14 July)<sup>1380</sup>

399. In the evening hours of 12 July, vehicles carrying Bosnian Muslim men began to arrive in Bratunac town,<sup>1381</sup> and continued to arrive on 13 July.<sup>1382</sup> At around 7 p.m. on 13 July, about fifteen vehicles arrived at the Nova Kasaba Football Field on their return journey from Kladanj, to transport the prisoners to Bratunac.<sup>1383</sup> The Bosnian Muslim men taken to Bratunac town were detained in different buildings, such as the Vuk Karadžić School<sup>1384</sup> and the hangar located between the Vuk Karadžić School and the old civil engineering school.<sup>1385</sup> Bosnian Muslim prisoners were also detained in vehicles<sup>1386</sup> parked near the Vuk Karadžić School,<sup>1387</sup> the town hall,<sup>1388</sup> the

<sup>1377</sup> PW-116, Ex. P02205, “92 bis transcript”, KT. 2961 (14 Apr 2000).

<sup>1378</sup> *Ibid.* KT. 2959 (14 Apr 2000). On 14 July, PW-116, together with other prisoners, was taken to the Petković School. While in the trucks, they were again beaten and threatened with death if any of them tried to escape. *See infra*, paras. 495–498.

<sup>1379</sup> PW-116, Ex. P02205, “92 bis transcript”, KT. 2961 (14 Apr 2000).

<sup>1380</sup> The Indictment alleges that between 12 and 15 July 1995 Bosnian Muslim men, who had been separated from their families in Potočari, and Bosnian Muslim men, who had surrendered to or had been captured by Bosnian Serb Forces along the road between Bratunac, Konjević Polje and Milići, were held temporarily in buildings and vehicles in Bratunac. Indictment, paras. 28–29.

<sup>1381</sup> PW-162, T. 9214–9215 (22 Mar 2007); PW-169, T. 17307, 17315, 17330 (1 Nov 2007). *See also* PW-161, T. 9494, 9513 (27 Mar 2007).

<sup>1382</sup> Mevludin Orić, T. 889 (28 Aug 2006), T. 931 (29 Aug 2006); PW-110, T. 648, 663 (24 Aug 2006); Miroslav Deronjić, Ex. P03139a, “confidential - 92 quater transcript”, BT. 6422 (22 Jan 2004); Zlatan Čelanović, T. 6638, 6694–6695 (31 Jan 2007); PW-117, Ex. P02207, “92 bis transcript”, KT. 3017–3018, 3027–3028 (14 Apr 2000); PW-113, Ex. P02280, “92 ter transcript”, BT. 1397–1398 (21 July 2003); PW-113, T. 3369 (31 Oct 2006); Bojan Subotić, T. 24991, 25025 (1 Sept 2008); Vincent Egbers, T. 2749–2753 (19 Oct 2006), T. 2884–2885 (20 Oct 2006). *See also* Mile Janjić, Ex. P02963, “92 ter transcript”, BT. 9798, 9805–9806 (24 May 2004); Mile Janjić, T. 18016–18017 (21 Nov 2007); Dobrisav Stanojević, T. 12886 (19 June 2007); Jean-René Ruez, T. 1474 (11 Sept 2006); Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, pp. 11, 119, 121 (showing an overview of Bratunac town with convoys of buses and detention sites on 12 and 13 July 1995).

<sup>1383</sup> Bojan Subotić, T. 24989–24990 (1 Sept 2008).

<sup>1384</sup> Ahmo Hasić, T. 1178–1179 (6 Sept 2006), T. 1259–1260 (7 Sept 2006); Zlatan Čelanović, T. 6653 (31 Jan 2007); PW-138, T. 3833 (private session) (8 Nov 2006); PW-162, T. 9218, 9221 (22 Mar 2007); Miroslav Deronjić, Ex. P03139a, “confidential - 92 quater transcript”, BT. 6418 (22 Jan 2004); Mevludin Orić, T. 931 (29 Aug 2006); Ex. P02094, “Hand-drawn sketch of a map of Bratunac, drawn and signed by Mevludin Orić”. Mile Janjić, Ex. P02963, “92 ter transcript”, BT. 9808 (24 May 2004). The Trial Chamber notes that several witnesses called the school Branko Radičević School, and finds that the Vuk Karadžić School and the Branko Radičević School are the same schools. PW-162, T. 9218, 9221 (22 Mar 2007); Zlatan Čelanović, T. 6638–6639 (31 Jan 2007).

<sup>1385</sup> PW-169, T. 17315–17318, 17330 (1 Nov 2007); PW-138, T. 3833 (private session) (8 Nov 2006). *See also* Miroslav Deronjić, Ex. P03139a, “confidential - 92 quater transcript”, BT. 6418 (22 Jan 2004); PW-113, Ex. P02280, “92 ter transcript”, BT. 1392 (21 July 2003); PW-170, T. 17866, 17868–17869 (19 Nov 2007); Ex. PIC00187, “Aerial image of Bratunac town (Ex. P01552) marked by PW-170”; Ex. PIC00188, “Photograph of hangar at Vuk Karadžić School (Ex. P02103 p. 13) marked by PW-170”; Ex. P01553, “Aerial image of Bratunac town - annotated with various key locations”.

<sup>1386</sup> Mevludin Orić, T. 908–909 (28 Aug 2006); PW-138, T. 3833 (private session) (8 Nov 2006); Zlatan Čelanović, T. 6639, 6645 (31 Jan 2007); PW-117, Ex. P02207, “92 bis transcript”, KT. 3027–3028 (14 Apr 2000); PW-113, Ex. P02280, “92 ter transcript”, BT. 1397–1398 (21 July 2003); PW-113, T. 3369 (31 Oct 2006), T. 3386 (1 Nov 2006).

stadium,<sup>1389</sup> and the Vihor garage.<sup>1390</sup> On 12 July 1995, three buses were parked outside the municipal building of Bratunac town,<sup>1391</sup> another three buses were parked in a nearby street,<sup>1392</sup> and between 20 and 25 buses were parked at the stadium.<sup>1393</sup> Furthermore, on 13 July 1995, about 20 buses and trucks were parked in the street leading to the Vuk Karadžić School,<sup>1394</sup> and at least 20 buses were parked near the Vihor garage.<sup>1395</sup>

400. The conditions inside the buildings and vehicles where the Bosnian Muslim prisoners were detained were cramped.<sup>1396</sup> For instance, between 150 and 200 Bosnian Muslims were held in one room of the Vuk Karadžić School,<sup>1397</sup> the hangar located behind the Vuk Karadžić School was filled with approximately 400 prisoners,<sup>1398</sup> and in the vehicles, Bosnian Muslims were crowded together.<sup>1399</sup>

401. At the Vuk Karadžić School, the prisoners were forced to leave their bags, including food, outside the building.<sup>1400</sup> During their time there, they were not asked to give their names, nor were they interviewed by anyone.<sup>1401</sup> Hardly any food was distributed and while water was given, it was not sufficient.<sup>1402</sup> No medical aid was provided there,<sup>1403</sup> although the Trial Chamber heard evidence that Bosnian Muslim prisoners in Bratunac received some medical treatment.<sup>1404</sup>

<sup>1387</sup> Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9805, 9808 (24 May 2004); Zlatan Čelanović, T. 6638 (31 Jan 2007); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3028 (14 Apr 2000); PW-115, Ex. P02200, “92 *bis* transcript”, BT. 6093 (17 Dec 2003); Mevludin Orić, T. 908–909 (28 Aug 2006), T. 931 (29 Aug 2006); Ex. P02094, “Sketch of a map of Bratunac, by Mevludin Orić”; Ex. P02202, “Ex. P-677 in the *Blagojević* and *Jokić* Trial - Aerial of Bratunac town”; Ex. PIC00077, “Aerial image, Ex. P01553 (Vuk Karadžić School) marked by PW-161”.

<sup>1388</sup> Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9809 (24 May 2004).

<sup>1389</sup> Zlatan Čelanović, T. 6642, 6651 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović”; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 35–36, 82–83.

<sup>1390</sup> PW-110, T. 663–666 (24 Aug 2006), T. 810 (25 Aug 2006). PW-110 testified that when the vehicles stopped, one of the prisoners told him that they were close to the Vihor garage. PW-110, T. 663, 665–666 (24 Aug 2006). Moreover, PW-110 testified that he saw a column of vehicles parked there. PW-110, T. 666–667 (24 Aug 2006). *See also* Ex. P01553, “Aerial image of Bratunac town - annotated with various key locations.” The Trial Chamber finds that PW-110 was detained in a vehicle that was parked near the Vihor garage.

<sup>1391</sup> PW-161, T. 9494 (27 Mar 2007); PW-162, T. 9212–9215 (22 Mar 2007).

<sup>1392</sup> PW-162, T. 9214–9215 (22 Mar 2007).

<sup>1393</sup> *Ibid.*, T. 9215 (22 Mar 2007).

<sup>1394</sup> Zlatan Čelanović, T. 6638, 6652 (31 Jan 2007). *See also* Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9798, 9805 (24 May 2004).

<sup>1395</sup> PW-110, T. 676 (24 Aug 2006).

<sup>1396</sup> Ahmo Hasić, T. 1178–1179, 1222 (6 Sept 2006); PW-169, T. 17315–17316, 17319 (1 Nov 2007); PW-110, T. 666 (24 Aug 2006); PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1398, 1402 (21 July 2003); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3027 (14 Apr 2000); Mevludin Orić, T. 898, 907 (28 Aug 2006).

<sup>1397</sup> Ahmo Hasić, T. 1178–1179, 1222 (6 Sept 2006).

<sup>1398</sup> PW-169, T. 17315–17316, 17319 (1 Nov 2007).

<sup>1399</sup> PW-110, T. 666 (24 Aug 2006); PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1398 (21 July 2003); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3027 (14 Apr 2000); Mevludin Orić, T. 898, 907 (28 Aug 2006).

<sup>1400</sup> Ahmo Hasić, T. 1179–1180 (6 Sept 2006).

<sup>1401</sup> *Ibid.*, T. 1179, 1222 (6 Sept 2006).

<sup>1402</sup> *Ibid.*, T. 1189–1190 (6 Sept 2006). Ahmo Hasić, testified that only after the second night at the school, before leaving Bratunac, and after being put into a bus, Bosnian Serb soldiers and drivers gave the prisoners a couple of slices of bread each. *Ibid.*, T. 1190 (6 Sept 2006).

402. In the morning of 13 July, the prisoners who were detained at the hangar behind the Vuk Karadžić School were ordered to hand over their identity cards, wallets and watches.<sup>1405</sup> The prisoners were given some water and no food and when they complained, the guards fired over their heads and threatened to kill them.<sup>1406</sup> In the afternoon, Mladić came to the hangar and told the prisoners that they would be exchanged in Kalesija.<sup>1407</sup> While at the hangar, Mladić was observed giving instructions to about ten members of the Bosnian Serb Forces.<sup>1408</sup>

403. In the vehicles parked in various locations throughout Bratunac town, the prisoners were provided with little or no food,<sup>1409</sup> and when water was provided, it was not sufficient.<sup>1410</sup> The prisoners did not receive medical treatment there.<sup>1411</sup>

404. Some prisoners detained in various locations in Bratunac town were beaten by members of the Bosnian Serb Forces.<sup>1412</sup> Screams, moans, and bursts of fire were heard in the vicinity of the places of detention.<sup>1413</sup> On some occasions, on a bus parked near the Vuk Karadžić School, a military policeman intervened and stopped the beatings.<sup>1414</sup> Some of the prisoners who were taken outside the rooms and vehicles did not return.<sup>1415</sup> When one of the prisoners asked whether he

<sup>1403</sup> Ahmo Hasić, T. 1189–1190 (6 Sept 2006).

<sup>1404</sup> Bojan Subotić, a member of the Military Police Battalion of the 65th Motorised Protection Regiment, testified that he dressed the wounds of the prisoners who were later taken to Bratunac. Bojan Subotić, T. 24980–24981 (1 Sept 2008). The Trial Chamber also heard evidence that a large number of wounded, sick and infirm were taken to the local medical centre in Bratunac, and that on 11 or 12 July 1995, the Executive Board directed the civilian protection to secure 42 Bosnian Muslim prisoners who had been taken to a medical centre in Bratunac. The prisoners stayed at the Bratunac medical centre for a day or two, and were later taken away by a doctor and a DutchBat representative. Miroslav Deronjić, Ex. P03139a, “confidential - 92 *quater* transcript”, BT. 6202 (19 Jan 2004); PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT.7867–7868, 7919 (20 Apr 2004); PW-170, T. 17877–17878 (closed session) (19 Nov 2007).

<sup>1405</sup> PW-169, T. 17326 (1 Nov 2007), T. 17379–17380 (2 Nov 2007).

<sup>1406</sup> *Ibid.*, T. 17319, 17326 (1 Nov 2007)

<sup>1407</sup> *Ibid.*, T. 17324–17325 (1 Nov 2007).

<sup>1408</sup> *Ibid.*, T. 17325 (1 Nov 2007).

<sup>1409</sup> Mevludin Orić, T. 919 (28 Aug 2006); PW-110, T. 668 (24 Aug 2006). The Trial Chamber notes that the small amount of food provided was not sufficient. Furthermore, it was provided on an individual basis and not as part of an organised system. Mile Janjić testified that following a request by the Bosnian Muslim prisoners, he and the other two military policemen gave them some bread. Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9848 (25 May 2004).

<sup>1410</sup> PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1399, 1402 (21 July 2003). *See also* PW-161, T. 9494 (27 Mar 2007); PW-162, T. 9213–9214 (22 Mar 2007); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3030 (14 Apr 2000); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9848 (25 May 2004); PW-110, T. 668, 674 (24 Aug 2006); Mevludin Orić, T. 919 (28 Aug 2006).

<sup>1411</sup> PW-110, T. 668 (24 Aug 2006).

<sup>1412</sup> PW-169, T. 17319–17323 (1 Nov 2007); Ahmo Hasić, T. 1189 (6 Sept 2006); PW-110, T. 663, 666–667 (24 Aug 2006), T. 808 (25 Aug 2006), T. 835–836 (28 Aug 2006); Mevludin Orić, T. 910–911, 914–918 (28 Aug 2006); Ahmo Hasić, T. 1180–1181, 1187–1189, 1223 (6 Sept 2006), T. 1253 (7 Sept 2006). *See also infra*, paras. 452–454, 460.

<sup>1413</sup> PW-169, T. 17320 (1 Nov 2007), T. 17387–17388 (2 Nov 2007); PW-110, T. 666–667 (24 Aug 2006); Ahmo Hasić, T. 1180–1181, 1187, 1222 (6 Sept 2006); Mevludin Orić, T. 918–919 (28 Aug 2006).

<sup>1414</sup> Mevludin Orić, T. 910–911, 914 (28 Aug 2006).

<sup>1415</sup> PW-169, T. 17320–17321 (1 Nov 2007), T. 17385–17386 (2 Nov 2007); Ahmo Hasić, T. 1180, 1187–1188, 1223 (6 Sept 2006); Mevludin Orić, T. 915–919 (28 Aug 2006); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3029 (14 Apr 2000). *See also infra*, paras. 453, 460–461.

should take his bag with him, he was told that he would not need anything anymore.<sup>1416</sup> Others were brought back by the members of the Bosnian Serb Forces after they had been beaten, and were shown to the other prisoners.<sup>1417</sup> In the Vuk Karadžić School, prisoners were beaten on their way to the toilet and therefore chose to relieve themselves where they were.<sup>1418</sup>

405. On the evening of 13 July, PW-110 was detained in a vehicle parked near the Vihor garage.<sup>1419</sup> Throughout the night, PW-110 heard people he assumed were soldiers calling for Bosnian Muslims from certain villages to identify themselves.<sup>1420</sup> Those Bosnian Muslims who responded were taken out of the vehicles and beaten with rifle butts. PW-110 heard screaming and yelling and bursts of fire.<sup>1421</sup> The members of the Bosnian Serb Forces did not seem to have a list with the names of the prisoners, and at no point during that night did they ask the prisoners for their names.<sup>1422</sup>

406. The Bosnian Muslim prisoners in Bratunac town were guarded by members of the Bosnian Serb Forces,<sup>1423</sup> including military policemen of the Bratunac Brigade.<sup>1424</sup> The military police had received instructions from Momir Nikolić to take the prisoners to Bratunac.<sup>1425</sup> MUP members were also seen around the Vuk Karadžić School,<sup>1426</sup> and outside the municipal building on 12 July 1995.<sup>1427</sup> At a meeting held in the evening of 13 July, at the Bratunac Brigade Headquarters, it was decided that the Bosnian Muslim men in and around Bratunac should continue “to be guarded by

<sup>1416</sup> PW-169, T. 17320 (1 Nov 2007).

<sup>1417</sup> *Ibid.*, T. 17320–17321 (1 Nov 2007).

<sup>1418</sup> Ahmo Hasić, T. 1189 (6 Sept 2006).

<sup>1419</sup> PW-110, T. 663 (24 Aug 2006), T. 749 (25 Aug 2006).

<sup>1420</sup> *Ibid.*, T. 663, 667 (24 Aug 2006), T. 808 (25 Aug 2006), T. 835–836 (28 Aug 2006).

<sup>1421</sup> *Ibid.*, T. 666–667 (24 Aug 2006), T. 810–811 (25 Aug 2006).

<sup>1422</sup> *Ibid.*, T. 677–678 (24 Aug 2006). PW-110 mentioned only one incident in which a prisoner was asked for his name, or his father’s name. In this incident, which took place on 14 July 1995, the prisoner provided a first name only. *Ibid.*, T. 668–669 (24 Aug 2006). Mile Janjić testified that he almost had no contact with the prisoners. Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9848 (25 May 2004). *See also* Zlatan Čelanović, T. 6639–6640 (31 Jan 2007) (who testified that he told **Beara** that “only a few people were brought in front of the police building, [a]nd that there are no results in terms of looking at the [identity cards]”).

<sup>1423</sup> Mevludin Orić, T. 908–909 (28 Aug 2006); Ahmo Hasić, T. 1181 (6 Sept 2006); PW-169, T. 17315 (1 Nov 2007). PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3027–3029 (14 Apr 2000); PW-115, Ex. P02200, “92 *bis* transcript”, BT. 6093–6095 (17 Dec 2003). *See also* Ex. P00220, “Bratunac Brigade Military Police logbook”, p. 13; Zlatan Čelanović, T. 6691 (31 Jan 2007); Milomir Savčić, T. 15292–15293 (12 Sept 2007).

<sup>1424</sup> Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9804, 9808–9809 (24 May 2004). *See also* PW-138, T. 3834–3836 (private session) (8 Nov 2006), T. 3907–3908 (private session) (9 Nov 2006); Zlatan Čelanović, T. 6689–6690 (31 Jan 2007).

<sup>1425</sup> Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9804, 9807–9808, 9811 (24 May 2004); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 4; Momir Nikolić, T. 33170 (24 Apr 2009).

<sup>1426</sup> Bojan Subotić, T. 24971, 24987–24988, 24991–24993, 24995, 25006–25008, 25029, 25033–25034 (1 Sept 2008).

<sup>1427</sup> PW-161, T. 9494, 9526–9527 (27 Mar 2007); PW-162, T. 9213 (22 Mar 2007). *See also* Ahmo Hasić, T. 1178–1181 (6 Sept 2006), T. 1253 (7 Sept 2006).

elements of the Bratunac Brigade Military Police, various civilian MUP forces and armed volunteers from Bratunac town.”<sup>1428</sup>

407. The large concentration of Bosnian Muslim prisoners in the town raised concerns amongst the Bosnian Serbs, especially since ABiH forces were still operating in the area.<sup>1429</sup> On the evening of 13 July, Zlatan Čelanović met **Beara** in Bratunac town and walked with him to the Vuk Karadžić School<sup>1430</sup> and the stadium,<sup>1431</sup> where they saw the vehicles with detained Bosnian Muslim men.<sup>1432</sup>

## 6. Killings of Bosnian Muslim Men (12–14 July)

### (a) Around Konjević Polje

#### (i) Jadar River (13 July)<sup>1433</sup>

408. On the morning of 13 July 1995, PW-112 was interrogated by members of the Bosnian Serb Forces.<sup>1434</sup> He was later taken to a warehouse near the banks of the Jadar River where he and other Bosnian Muslim men were beaten by members of the Bosnian Serb Forces, including Nenad Deronjić, who was an MUP member.<sup>1435</sup> These were different than the MUP members who had captured and detained him earlier that morning close to Konjević Polje.<sup>1436</sup> PW-112 heard Nenad Deronjić say that the prisoners were not going to be exchanged, but that he was going to “kill them all”.<sup>1437</sup> Eventually, PW-112 and 15 other prisoners—among them an about fifteen-year-old boy—were ordered onto a bus guarded by four members of the Bosnian Serb Forces and driven to a

<sup>1428</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6.

<sup>1429</sup> Zoran Petrović T. 18814–18815 (5 Dec 2007); Miroslav Deronjić, Ex. P03139a, “confidential-92 *quater* transcript”, BT. 6418–6419, 6437 (22 Jan 2004); PW-162, T. 9215–9216 (22 Mar 2007); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 93. The Trial Chamber, however, also heard different testimony, according to which the situation in Bratunac was safe with no incidents between the Bosnian Muslim prisoners and Bosnian Serb citizens living in town. PW-170, T. 17877 (closed session) (19 Nov 2007).

<sup>1430</sup> Zlatan Čelanović, T. 6640–6641, 6650 (31 Jan 2007). *See infra*, paras. 1207–1249 for a discussion of **Beara**’s whereabouts on 13 July 1995.

<sup>1431</sup> Zlatan Čelanović, T. 6641–6642 (31 Jan 2007) (where Zlatan Čelanović testified that **Beara** looked inside the stadium from the gate, while he stayed behind).

<sup>1432</sup> Zlatan Čelanović, T. 6640–6642, 6650 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović”.

<sup>1433</sup> The Indictment alleges that 16 Bosnian Muslims were taken from Konjević Polje to an isolated area on the banks of the Jadar River, where 15 of them were summarily executed. Indictment, para. 30.2.

<sup>1434</sup> PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3245, 3250, 3252–3253, 3255–3261 3263 (23 May 2000), T. 3222 (30 Oct 2006).

<sup>1435</sup> *Ibid.*, KT. 3267, 3269–3270, 3287 (private session) (23 May 2000), T. 3215–3216 (private session) (30 Oct 2006) (identifying Nenad Deronjić as a member of the MUP, as he had known him for a few years). *See also* Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 4; Momir Nikolić, T. 32931 (21 Apr 2009); Slavisa Simić, T. 27535 (29 Oct 2008). The Trial Chamber also notes the evidence of Richard Butler stating that Nenad Deronjić was a member of the 2nd PJP Company from Zvornik. Richard Butler, T. 19829 (16 Jan 2008). As Butler did not provide any basis for arriving at this conclusion, it will not consider his evidence as reliable. While the Trial Chamber is satisfied that Nenad Deronjić was an MUP member, it cannot find he was a Bratunac police officer and a member of the 2nd PJP Company from Zvornik, as alleged in the Indictment. *See* Indictment, para. 123 (d).

<sup>1436</sup> *See supra*, paras. 383, 389–390.

<sup>1437</sup> PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3270 (23 May 2000).



widening of the road above Konjević Polje.<sup>1438</sup> There, the prisoners were lined up against the river bank and fired upon by the members of the Bosnian Serb Forces, amongst whom was Nenad Deronjić.<sup>1439</sup> PW-112 saw that the man standing in front of him was shot.<sup>1440</sup> PW-112 was also hit by a bullet in the left hip and threw himself into the river. As he floated away, the members of the Bosnian Serb Forces continued to fire at him.<sup>1441</sup> Eventually, although bleeding heavily, he managed to draw himself out of the water.<sup>1442</sup> Later, he met with a separate group of Bosnian Muslim men fleeing from Srebrenica close to the Drinjaca River and continued moving with them.<sup>1443</sup> On 15 July 1995, he was admitted to the Gradina clinical centre in Zvornik.<sup>1444</sup>

409. The Trial Chamber finds that, on 13 July 1995, members of the Bosnian Serb Forces, including Nenad Deronjić, transported 16 Bosnian Muslim men from the column to an area on the banks of the Jadar River and shot them. The Trial Chamber further finds that 15 of them were killed.

(ii) Cerska Valley (13 July)<sup>1445</sup>

410. On 13 July 1995, PW-120, a Bosnian Muslim man who was fleeing from Srebrenica, was on a hill less than 500 meters from the Konjević Polje-Nova Kasaba Road.<sup>1446</sup> Looking down into Cerska Valley, PW-120 saw two or three buses turn right off this asphalt road, driving in the direction of Cerska.<sup>1447</sup> These buses were followed by an APC and a green vehicle that carried soldiers in camouflage uniforms.<sup>1448</sup> In turn, the buses and the APC were followed by a yellow backhoe.<sup>1449</sup> Approximately ten minutes after these vehicles had driven out of PW-120's sight, he

<sup>1438</sup> PW-112, Ex. P02272, "confidential - 92 *ter* transcript", KT. 3272, 3274–3276, 3286–3287; Ex. P01470, "Map" (depicting the area between Zvornik and Nova Kasaba indicating with a yellow dot the location where the bus stopped).

<sup>1439</sup> PW-112, Ex. P02272, "confidential - 92 *ter* transcript", KT. 3274–3276, 3279–3280, 3287 (private session) (23 May 2000); Ex. P01923, "Photograph" (showing the edge of the Jadar River where the shooting took place). *See supra*, para. 390.

<sup>1440</sup> PW-112, Ex. P02272, "confidential - 92 *ter* transcript", KT. 3276–3277 (23 May 2000).

<sup>1441</sup> *Ibid.*, KT. 3277, 3280 (23 May 2000).

<sup>1442</sup> *Ibid.*, KT. 3278 (23 May 2000).

<sup>1443</sup> *Ibid.*, T. 3277–3278 (30 Oct 2006).

<sup>1444</sup> *Ibid.*, T. 3277–3278, 3280 (30 Oct 2006).

<sup>1445</sup> The Indictment alleges that "[o]n 13 July 1995, in the early afternoon hours, VRS and/or MUP soldiers transported about 150 Bosnian Muslim men to an area along a dirt road in the Cerska Valley about three (3) kilometers from Konjević Polje, summarily executed them and, using heavy equipment, covered them with dirt." Indictment, para. 30.3.

<sup>1446</sup> PW-120, Ex. P02220, "92 *bis* transcript", KT. 2733–2737, 2741–2742, 2769–2770 (12 Apr 2000); *see also* Ex. 7D01066, "Map of engagement of TG-1 in actions" (showing the villages of Jelah and Krke east of the Konjević Polje-Nova Kasaba Road, described by PW-120 as the two villages surrounding the Dolina Hill, his viewpoint on 13 July).

<sup>1447</sup> PW-120, Ex. P02220, "92 *bis* transcript", KT. 2738–2739, 2772, 2784 (12 Apr 2000). From his viewpoint, PW-120 also observed trucks and buses moving from Konjević Polje towards Nova Kasaba throughout the day. *Ibid.*, KT. 2737, 2785 (12 Apr 2000).

<sup>1448</sup> *Ibid.*, KT. 2738–2739 (12 Apr 2000).

<sup>1449</sup> *Ibid.*, KT. 2737, 2739 (12 Apr 2000).

heard heavy small arm and machine gun fire echoing along the valley.<sup>1450</sup> The shooting lasted for about 15 to 30 minutes.<sup>1451</sup> The buses returned empty along the same road and continued in the direction of Konjević Polje, followed somewhat later by the backhoe.<sup>1452</sup>

411. In September 1995, PW-120 found what he took to be a large grave along the road leading through Cerska Valley to the junction with the Nova Kasaba-Konjević Polje-Zvornik Road.<sup>1453</sup> PW-120 saw excavated earth and visible tracks from an excavator, and smelled a stench from the ground.<sup>1454</sup> Forensic anthropologists later exhumed a mass grave to the southwest of the narrow, unpaved road through Cerska Valley.<sup>1455</sup>

412. Forensic evidence has established that this grave was a primary, undisturbed grave.<sup>1456</sup> Among the remains exhumed from that grave, 142 individuals have been identified as persons reported missing following the fall of Srebrenica, based upon DNA analysis.<sup>1457</sup> 150 male individuals were exhumed; all but one had died as a result of gunshot wounds.<sup>1458</sup> Cartridges found in the grave matched cartridges found along the road and in the vicinity of the gravesite.<sup>1459</sup> Based upon this evidence, William Haglund, the forensic anthropologist who led the exhumation, concluded that the victims were lined up along the southern side of the road, while the individuals

<sup>1450</sup> PW-120, Ex. P02220, "92 bis transcript", KT. 2739, 2781 (12 Apr 2000).

<sup>1451</sup> *Ibid.*

<sup>1452</sup> *Ibid.*, KT. 2739, 2780, 2785–2787 (12 Apr 2000).

<sup>1453</sup> *Ibid.*, KT. 2751–2754, 2758–2759, 2777 (12 Apr 2000).

<sup>1454</sup> *Ibid.*, KT. 2751–2754, 2777 (12 Apr 2000).

<sup>1455</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 309; Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", cover page, vii, p. 16. Examinations were conducted between 31 July and 22 August 1996. For the location of the Cerska mass grave, *see* Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", p. 16. The Trial Chamber is satisfied that the location identified by PW-120 is the same as the location of the grave exhumed in 1996. *Compare* Ex. P02221, "Ex P-120 in *Krstić* and part of Ex. P-801 in *Blagojević and Jokić*" with Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", p. 6.

<sup>1456</sup> William Haglund, Ex. P02150, "92 ter transcript", KT. 3737 (29 May 2000). A "primary grave" is the original location in which individuals were buried. *Ibid.*, KT. 3742 (29 May 2000). The conclusion that a grave is undisturbed is based on the fact that the remains are relatively intact and that, in these types of graves decomposition is more accelerated. *Ibid.*, KT. 3737–3738 (29 May 2000).

<sup>1457</sup> Ex. P04490, "Summary of forensic evidence by Dušan Janc, 13 March 2009", Annex A, p. 2. The Trial Chamber finds that there is no discrepancy with the adjudicated fact from the *Krstić* case that nine of the individuals had been identified at that time, given the passage of time and the subsequent identification. Prosecution Adjudicated Facts Decision, Annex, Fact 315. Prosecution Investigator Dušan Janc testified that DNA identification is an ongoing process. Dušan Janc, T. 33524 (1 May 2009).

<sup>1458</sup> William Haglund, Ex. P02150, "92 ter transcript", KT. 3734 (29 May 2000). The cause of death for one individual was undetermined. Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", p. 52.

<sup>1459</sup> Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", pp. 9–10. The cartridges were found by the exhumation team. Ex. P00611 "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", *Ibid.*

who shot them were on the northern side of the road shooting the victims in a spraying-type fashion.<sup>1460</sup>

413. Of the 150 bodies recovered from the grave at Cerska, the oldest were in their fifties and the youngest between 11 and 15.<sup>1461</sup> A total of 48 ligatures were found in the grave, 24 of them still binding the arms of the victims behind their backs.<sup>1462</sup> 147 bodies were dressed in civilian clothing and items of Muslim affiliation, such as prayer beads and pouches and Islamic community papers, were found on nine individuals.<sup>1463</sup>

414. The Trial Chamber concludes that on 13 July 1995, unidentified members of the Bosnian Serb Forces transported approximately 150 Bosnian Muslim men to an area along a dirt road in the Cerska Valley and killed them there.

(iii) Nova Kasaba (13 July)<sup>1464</sup>

415. On 13 July 1995, approximately 2,000 to 3,000 Bosnian Muslims from the column were trapped between Nova Kasaba and Konjević Polje as the Nova Kasaba-Konjević Polje Road was blocked by members of the Bosnian Serb Forces.<sup>1465</sup> While some hid in the surrounding woods,<sup>1466</sup> others surrendered to the Bosnian Serb Forces.<sup>1467</sup> Others were surrounded at around 1 p.m. by members of the Bosnian Serb Forces and pushed towards the asphalt road.<sup>1468</sup> By then, PW-119 had moved away from the column of Bosnian Muslim men and was hiding in the surrounding woods.<sup>1469</sup> At around this time, from his vantage point 300 to 500 metres away from the Nova Kasaba-Konjević Polje Road, PW-119 saw members of Bosnian Serb Forces surrounding the

<sup>1460</sup> William Haglund, Ex. P02150, "92 *ter* transcript", KT. 3734–3737 (29 May 2000). For a general analysis of Haglund's work throughout Srebrenica, *see infra*, paras. 612–620.

<sup>1461</sup> Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", pp. viii, 25, 28; Prosecution Adjudicated Facts Decision, Annex, Facts 311–312; William Haglund, Ex. P02150, "92 *ter* transcript", KT. 3734 (29 May 2000). Haglund clarified that in determining the minimum and maximum age range, there is always a margin of error of minus or plus one. William Haglund, T. 9007–9008 (15 Mar 2007).

<sup>1462</sup> William Haglund, Ex. P02150, "92 *ter* transcript", KT. 3734 (29 May 2000); Prosecution Adjudicated Facts Decision, Annex, Fact 314; Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", p. viii.

<sup>1463</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 313. One military jacket and two military-type trousers were found. *See* Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", pp. 50, 53.

<sup>1464</sup> The Indictment alleges that "[o]n 13 July 1995, in the early afternoon hours, VRS and/or MUP soldiers, supported by approximately 4 APCs, escorted approximately 100 Bosnian Muslim men to a location on a hill near the road between Konjević Polje and Nova Kasaba, lined up the prisoners in several ranks and executed them with heavy machine guns. A short time later, a second group of approximately 30 prisoners arrived, were lined up, and also executed. A third group arrived soon thereafter and was similarly executed." Indictment, para. 30.3.1.

<sup>1465</sup> PW-119, Ex. P02212, "92 *bis* transcript", KT. 3190–3191 (23 May 2000); Ex. P02215, "Map of PW-119's route to Nezuk". *See* paras. 382–383, 389.

<sup>1466</sup> PW-119, Ex. P02212, "92 *bis* transcript", KT. 3188–3189, 3191–3192 (23 May 2000).

<sup>1467</sup> PW-120, Ex. P02220, "92 *bis* transcript", KT. 2766–2769 (12 Apr 2000).

<sup>1468</sup> PW-119, Ex. P02212, "92 *bis* transcript", KT. 3192–3193 (23 May 2000).

<sup>1469</sup> *Ibid.*, KT. 3188–3189, 3191–3193 (23 May 2000).

Bosnian Muslims<sup>1470</sup> and watched as the Bosnian Serbs killed about 200 to 300 Bosnian Muslims, who, after having decided to surrender, were standing at a distance from the main group which totalled approximately 2,000 Bosnian Muslims.<sup>1471</sup>

416. During excavations conducted between 22 and 26 July 1996, four shallow graves were located near the Nova Kasaba-Konjević Polje-Zvornik Road, north of Nova Kasaba.<sup>1472</sup> These four graves were all primary, undisturbed graves, and the condition of the bodies indicated that they had been buried for about a year.<sup>1473</sup> Among the remains exhumed from these graves, 32 individuals have been identified as persons reported missing following the fall of Srebrenica, based upon DNA analysis.<sup>1474</sup> The individuals in one of these graves were killed in the grave itself.<sup>1475</sup> Of the remains found in these graves, 27 individuals had ligatures binding their arms behind their backs,<sup>1476</sup> and all but one individual died of gunshot wounds.<sup>1477</sup> 31 of them wore civilian clothing<sup>1478</sup> and Islamic “zapis”<sup>1479</sup> were found on two individuals.<sup>1480</sup>

417. Approximately one and a half kilometres from the four primary graves exhumed in 1996, four additional primary graves in close proximity to each other were excavated near the Nova Kasaba-Konjević Polje-Zvornik Road between 18 August and 6 September 1999.<sup>1481</sup> Among the

<sup>1470</sup> *Ibid.*, KT. 3192–3193 (23 May 2000).

<sup>1471</sup> *Ibid.*, KT. 3192–3193, 3221, 3226–3227 (23 May 2000).

<sup>1472</sup> William Haglund, Ex. P02150, “92 *ter* transcript”, KT. 3738–3739 (29 May 2000); William Haglund, T. 8910 (15 Mar 2007); Ex. P00621, “Report by William Haglund – Forensic Investigation of Four Graves in the Area of Nova Kasaba, 15 June 1998”, pp. vii, 5, 26. According to Dean Manning, these gravesites were located using aerial imagery. Dean Manning, T. 19056–19057 (11 Dec 2007).

<sup>1473</sup> William Haglund, Ex. P02150, “92 *ter* transcript”, KT. 3742 (29 May 2000); Ex. P00621, “Report by William Haglund – Forensic investigation of four graves in Nova Kasaba, 15 June 1998”, p. 48. Examinations of the bodies in the graves were carried out between 27 August and 1 Sept 1996. Ex. P00621, “Report by William Haglund – Forensic investigation of four graves in Nova Kasaba, 15 June 1998”, pp. viii, 1.

<sup>1474</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, p. 2.

<sup>1475</sup> William Haglund, T. 8910–8911 (15 Mar 2007). When asked how he knew that individuals in the grave known as Nova Kasaba 2 were killed in the grave itself, forensic anthropologist William Haglund said: “They were in kneeling positions with their torsos bent forward, [with] their heads forward. Many of them were still in that position, some had fallen over sideways in that position. And the majority of those individuals [...] 95 per cent of them received gun-shots to the head.” William Haglund, T. 8911 (15 Mar 2007). *See also* Ex. P00621, “Report by William Haglund – Forensic investigation of four graves in Nova Kasaba, 15 June 1998”, pp. viii, 14, 25.

<sup>1476</sup> William Haglund, T. 8910 (15 Mar 2007). *See also* William Haglund, Ex. P02150, “92 *ter* transcript”, KT. 3740 (29 May 2000).

<sup>1477</sup> William Haglund, Ex. P02150, “92 *ter* transcript”, KT. 3740 (29 May 2000). The person who did not die of gunshot wounds died of massive head wounds, caused by an unknown instrument. *Ibid.*, KT. 3740 (29 May 2000).

<sup>1478</sup> Ex. P00621, “Report by William Haglund – Forensic investigation of four graves in Nova Kasaba, 15 June 1998”, p. 40 (stating that these two individuals each wore a military-type jacket and military-type trousers).

<sup>1479</sup> Haglund defines a “zapis” as a small piece of paper with a verse or phrase from the Koran written in Arabic. The paper is wrapped into a triangle in a small piece of red cloth which has been oiled or waxed to make it more resistant. Ex. P00621, “Report by William Haglund – Forensic investigation of four graves in Nova Kasaba, 15 June 1998”, p. 45.

<sup>1480</sup> Ex. P00621, “Report by William Haglund – Forensic Investigation of four graves in Nova Kasaba, 15 June 1998”, p. 45. These graves were exhumed by forensic anthropologist William Haglund. For a general analysis of Haglund’s work throughout Srebrenica, *see infra*, paras. 612–620.

<sup>1481</sup> Ex. P00560, “Report on the exhumation of gravesites in Eastern Bosnia, August-Oct 1999,” pp. 3 (stating that three of the graves were located in the front and back garden of a house and that the fourth was in a neighbouring field to the east), 7, 12, 15, 18, 44 (with map showing location of the graves near the road); Ex. P00575, “ICTY Operations

remains exhumed from these graves, 51 individuals have been identified as persons reported missing following the fall of Srebrenica, based upon DNA analysis.<sup>1482</sup> As far as could be determined all of the victims were male, aged between 13 and 85, with the majority over 25 years old.<sup>1483</sup> One of the buried individuals carried 54 live rounds of Kalashnikov ammunition on a clip close to his body.<sup>1484</sup> None of the bodies had blindfolds or ligatures<sup>1485</sup> and sets of prayer beads were found in two graves.<sup>1486</sup> Of the bodies, 48 showed evidence of gunshot injuries.<sup>1487</sup> Of those shot, 60 per cent were shot from behind or the side.<sup>1488</sup> Pathologist John Clark testified that there was an overall pattern of execution-type injuries and “there’s every indication that these were people who were executed”.<sup>1489</sup>

418. An aerial photograph taken on 27 July 1995 shows areas of disturbed earth at the location of each of both sets of gravesites,<sup>1490</sup> while an aerial image taken on 13 July 1995 shows no disturbed earth at this location.<sup>1491</sup> In 1999, Prosecution investigators discovered bullets, bullet fragments, shell cases and apparent shrapnel in this concentrated area.<sup>1492</sup>

419. The point at which PW-119 crossed the Nova Kasaba-Konjević Polje Road coincides with the location of the graves exhumed in both 1996 and 1999, though the information is insufficiently precise to allow an inference to be drawn as to which of the two sets of graves is closer to where PW-119 was when he observed the killings.<sup>1493</sup>

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in Bosnia-Herzegovina in 1999, Report of the Chief Pathologist”, p. 1; Jose Pablo Baraybar, Ex. P02474, “92 *ter* transcript”, KT. 3810, 3815, 3819, 3822, 3823 (30 May 2000).

<sup>1482</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, pp. 2–3.

<sup>1483</sup> John Clark, Ex. P02128, “92 *ter* transcript”, KT. 3925 (31 May 2000).

<sup>1484</sup> Jose Pablo Baraybar, Ex. P02474, “92 *ter* transcript”, KT. 3818, 3857, 3884–3885 (30 May 2000); Ex. P00560, “Report on the exhumation of gravesites in Eastern Bosnia, August-Oct 1999,” p. 11, Baraybar testified that the package of bullets was literally attached to the body, but not with a belt. Jose Pablo Baraybar, Ex. P02474, “92 *ter* transcript”, KT. 3884–3885 (30 May 2000).

<sup>1485</sup> Ex. P00575, “ICTY Operations in Bosnia-Herzegovina 1999 Season; Report of the Chief Pathologist 1999”, p. 13 (raising the possibility of a ligature binding the wrists in one case).

<sup>1486</sup> Ex. P00560, “Report on the Exhumation of Mass Gravesites in Eastern Bosnia, August-Oct 1999,” p. 21.

<sup>1487</sup> Ex. P00575, “ICTY Operations in Bosnia-Herzegovina 1999 Season: Report of the Chief Pathologist 1999”, p. 13.

<sup>1488</sup> *Ibid.*, p. 14.

<sup>1489</sup> John Clark, Ex. P02128, “92 *ter* transcript”, KT. 3968–3971 (31 May 2000). Clark’s opinion on this point was in regard to all the post-mortems carried out in 1999 at Kozluk, Nova Kasaba, Konjević Polje, and Glogova. *Ibid.*

<sup>1490</sup> Jean-René Ruez, T. 1427–1430 (11 Sept 2006); Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, p. 64; William Haglund, Ex. P02150, “92 *ter* transcript”, KT. 3738–3739 (29 May 2000) (referring to Exhibit 14/4 from the *Krstić* case, identical to Ex. P00649, “Summary of Forensic Evidence – Execution points and mass graves, 16 May 2000”, Annex A, p. 12).

<sup>1491</sup> Jean-René Ruez, T. 1424–1425 (11 Sept 2006); Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, p. 61.

<sup>1492</sup> Ex. P00649, “Summary of Forensic Evidence – Execution points and mass graves, 16 May 2000”, Annex A, p. 8. *See also* Jean-René Ruez, T. 1426 (11 Sept 2006); Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, p. 63. The location of the meadow referred to in relation to the two sets of gravesites is shown on Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, p. 64. Jean-René Ruez, T. 1427–1430 (11 Sept 2006).

<sup>1493</sup> PW-119, Ex. P02212, “92 *bis* transcript”, KT. 3190–3191 (23 May 2000); Ex. P02215, “Map of PW-119’s route to Nezuk”; Ex. P00560, “Report on the exhumation of gravesites in Eastern Bosnia, August-Oct 1999,” pp. 44–45;

420. Looking at the evidence before it, the Trial Chamber finds that the killings at Nova Kasaba alleged in the Indictment do not match in some key details with those described by PW-119.<sup>1494</sup> In addition, there is nothing to materially link the graves exhumed to the incident described by PW-119. There is no other evidence on this particular incident and nothing to link the evidence of PW-119 to any other incident charged in the Indictment or to a gravesite. However, the Trial Chamber finds that the DNA and forensic evidence does link the remains found at these gravesites to the mass killings that followed the fall of Srebrenica.<sup>1495</sup>

(b) Along the Bratunac-Konjević Polje Road

(i) Sandići Meadow (13 July)<sup>1496</sup>

421. By late afternoon or early evening on 13 July, all except 10 to 15 of the Bosnian Muslim prisoners held at the Sandići Meadow had been transported to Bratunac or the Kravica Warehouse.<sup>1497</sup> The Jahorina Recruits were told that no more buses would come and they needed to get rid of the prisoners by shooting them.<sup>1498</sup> The order to shoot the remaining prisoners came through a person called “Aleksa” who was the Deputy Commander of a platoon of an SBP company.<sup>1499</sup> PW-100 and two Jahorina Recruits refused to follow the order to execute the

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Ex. P00621, “Report by William Haglund – Forensic investigation of four graves in Nova Kasaba, 15 June 1998”, p. 5.

<sup>1494</sup> The allegation that approximately 100 Bosnian Muslim men were escorted to a hill where they were lined up and executed, that a short time later a second group of 30 prisoners arrived, were lined up and executed, and that soon thereafter a third group arrived and were similarly executed, does not correspond to the account given by PW-119 of the killings that he observed. *See* Indictment, para. 30.3.1; PW-119, Ex. P02212, “92 bis transcript”, KT. 3192–3193, 3221, 3226–3227 (23 May 2000). The Trial Chamber notes that the Prosecution does not rely upon PW-119’s testimony in its final brief to support the allegation that executions took place at Nova Kasaba. PW-119 is only referred to with regard to the Nezuk execution. *See* Prosecution Final Brief, paras. 1006–1019.

<sup>1495</sup> *See infra*, Chapter III, Section J.1–3, 5–7.

<sup>1496</sup> The Indictment alleges that on the evening of 13 July, 10–15 Bosnian Muslim prisoners who had been detained by MUP forcés at Sandići Meadow and had remained there while the other prisoners had been taken to other locations were summarily executed by members of a unit of RS police officers from the Jahorina Training Facility. Indictment, para. 30.4.1.

<sup>1497</sup> PW-100, T. 14830 (5 Sept 2007); *see also infra*, Chapter III, Section F.6(b)(ii) on killing at the Kravica Warehouse.

<sup>1498</sup> *Ibid.*, T. 14830–14831 (5 Sept 2007).

<sup>1499</sup> PW-100, T. 14830–14831 (5 Sept 2007) (stating that Aleksa was the deputy commander of a platoon of the 1st Company of the Jahorina Recruits or the SBP). Aleksa was the deputy of a man named Goran and Aleksa’s company commander was named Mane. Though unsure, PW-100 also said that Aleksa was a member of the SBP. Aleksa was already in Sandići Meadow when the Jahorina Recruits were sent there in the late afternoon. The Jahorina Recruits would report to members of the SBP who had a two-way radio and were stationed about half a kilometer away whenever they had prisoners that needed to be taken away. PW-100 also said that Aleksa had a two-way radio. *Ibid.*, T. 14829–14831 (5 Sept 2007), T. 14906–14907 (6 Sept 2007). PW-100 was in the 1st Company of the Jahorina Recruits and his commander was “Mane”. PW-100, T. 14797, 14801 (5 Sept 2007). Mendeljev Đurić, a.k.a. “Mane” testified before this Trial Chamber that on 13 July in the late afternoon, he received an order from his superior commander, Jević, to deploy along the Bratunac-Konjević Polje Road, up to around Glogova. Mendeljev Đurić, T. 10812–10813, 10819, 10865–10866, 10869–10870 (2 May 2007). There is no conclusive evidence before the Trial Chamber to place him in command of Aleksa however. There is considerable evidence showing that the SBP 2nd Šekovići Detachment and the 1st PJP Company from Zvornik were also deployed around Sandići Meadow throughout the day and early evening on 13 July. *See supra*, paras. 384–388.

prisoners.<sup>1500</sup> Two other Jahorina Recruits, however, agreed to carry out the order and found other volunteers to kill the Bosnian Muslim prisoners.<sup>1501</sup> The prisoners were taken away, PW-100 then heard bursts of gunshots, and subsequently Aleksa returned to where PW-100 had remained on the road near Sandići Meadow with the members of the Jahorina Recruits who had volunteered to kill the Bosnian Muslims.<sup>1502</sup>

422. Between 14–21 June 2004, the Bosnian Federal Commission on Missing Persons exhumed a grave near Sandići Meadow.<sup>1503</sup> Among the remains exhumed from these graves, 17 individuals have been identified as persons reported missing following the fall of Srebrenica, based upon DNA analysis.<sup>1504</sup> The location of the grave and the sparse evidence on this exhumation preclude the Trial Chamber from finding that this grave is linked to the killings that are charged in the Indictment, however.<sup>1505</sup>

423. The Trial Chamber finds that 10 to 15 Bosnian Muslims who had been detained at Sandići Meadow were killed by members of the Jahorina Recruits, upon the order of Aleksa, the Deputy Commander of a platoon of an SBP company.

(ii) Kravica Warehouse (13–14 July)<sup>1506</sup>

424. Kravica Warehouse is the agricultural cooperative located on the Bratunac-Konjević Polje Road.<sup>1507</sup> It consisted of a west room, (“West Room,”) an east room, (“East Room”) and a centre room.<sup>1508</sup> From the direction of Bratunac, going west towards Nova Kasaba, Kravica Warehouse is between Žuti Most,<sup>1509</sup> located to the east and Sandići Meadow to the west.<sup>1510</sup> On 13 July, the 2nd

<sup>1500</sup> Jahorina Recruits who refused to kill the Bosnian Muslim men were put in isolation without food for one day. PW-100, T. 14833–14834 (5 Sept 2007).

<sup>1501</sup> PW-100, T. 14832–14833 (5 Sept 2007).

<sup>1502</sup> *Ibid.*

<sup>1503</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, pp. 28–29.

<sup>1504</sup> *Ibid.*

<sup>1505</sup> See also Borovčanin Final Brief, para. 406 (stating that several persons identified from this grave were seen alive after 13 July). The 2007 List of Missing and Deceased records four people who were identified in the Sandići Meadow grave, but have a date of disappearance after 13 July 1995. Ex. P03006 (confidential), pp. 16, 76, 94, 133; Dean Manning, T. 19116–19118 (private session) (12 Dec 2007); Ewa Tabeau, T. 21065–21068 (private session) (5 Feb 2008); Dušan Dunjić, T. 27823–27824 (private session) (4 Nov 2008); Ex. 4D00540, “Prof. Dušan Dunjić’s Forensic Expert Report re Potočari and Sandići”, p. 67.

<sup>1506</sup> The Indictment alleges that on 13 July 1995, MUP Special Police Forces captured and detained hundreds of Bosnian Muslim men in a large warehouse in Kravica. The Indictment further alleges that “VRS and/or MUP Special Police Forces” summarily executed over 1,000 Bosnian Muslim men detained in the warehouse, whose bodies were buried in mass graves located nearby in Glogova and Ravnice. Indictment, para. 30.4.

<sup>1507</sup> Milenko Pečić, T. 13555, 13559–13561 (9 July 2007); Miladin Jovanović, Ex. 2D00554, “92 *ter* statement,” 24 April 2007, p. 1; Miladin Jovanović, T. 24219–24220 (28 July 2008); Ex. P01563, “Still taken from aerial film of Kravica Warehouse”; Ex. P04529, “Sketch with measurements of Kravica Warehouse, with marked copy of Ex. P01563 and attached declaration of Tomasz Blaszczyk, 4 May 2009”.

<sup>1508</sup> Jean-René Ruez T. 1142–1445, 1149, 1451–1455 (11 Sept 2006); Ex. P02103, “Documents tendered with statement of Jean-René Ruez,” pp. 91, 93, 103, 112, 114.

<sup>1509</sup> The Trial Chamber notes that this Žuti Most is different from the one in Potočari. See Milenko Pečić, T. 13557 (9 July 2007).

Platoon of the SBP 2nd Šekovići Detachment was deployed along the road closest to the Kravica Warehouse, approximately one kilometre from it, directly on the border that divided Sandići and Kravica villages.<sup>1511</sup> In the afternoon, at around 4:50 p.m., **Borovčanin** who was in a car along the Bratunac-Konjević Polje Road, was informed that the column of prisoners from Sandići Meadow was moving,<sup>1512</sup> and ordered Čturić, the Commander of the SBP 2nd Šekovići Detachment, to stop the traffic on the Bratunac-Konjević Polje Road.<sup>1513</sup>

425. Meanwhile, Čturić informed Milenko Pepić, a subordinate member of the 2nd Platoon, that a large group of Bosnian Muslim prisoners was to be escorted along the road from Sandići Meadow to Kravica Warehouse.<sup>1514</sup> Čturić gave Pepić a radio and drove him to Žuti Most, about 700 metres from Kravica Warehouse in the direction of Bratunac.<sup>1515</sup> He eventually radioed Pepić an instruction to stop a convoy of buses carrying Bosnian Muslim women, children and the elderly travelling from Potočari to Konjević Polje and then on to ABiH-held territory, so that the Bosnian Muslim prisoners being marched from Sandići Meadow to Kravica Warehouse could pass unhindered.<sup>1516</sup> Pepić stopped the convoy when it arrived at his location.<sup>1517</sup>

426. PW-111 and PW-156 were among other Bosnian Muslim men detained in Sandići Meadow who were taken by unidentified members of Bosnian Serb Forces to Kravica Warehouse on 13 July on foot or by bus.<sup>1518</sup> PW-156 and many other Bosnian Muslim men were ordered to form a column and march from Sandići Meadow to Kravica, arriving in front of Kravica Warehouse between 3 and 5 p.m.<sup>1519</sup> The Bosnian Serb Forces accompanying them were in military uniform, with automatic

<sup>1510</sup> Milenko Pepić, T. 13555-13557, 13570-13571 (9 July 2007); Ex. PIC00137, "Map marked by Milenko Pepić". See *infra* Ex. P02111, "Map-Zvornik Area".

<sup>1511</sup> Milenko Pepić, T. 13550-13551, 13589-13590, 13594-13595 (9 July 2007); Predrag Čelić, T. 13472 (28 June 2007). See *also supra*, paras. 384, 386.

<sup>1512</sup> Ex. P02047, "Srebrenica Trial Video", at 02:45:25-02:45:53; Ex. P02048, "Srebrenica Trial Video Transcript", p. 70; Ex. P02054, "Copy of the Zoran Petrović's roll material in 8 mm", at 00:16:48-00:16:58; Ex. P02985, Transcript of Petrović video, pp. 10-11. See *infra*, paras. 1454, 1514.

<sup>1513</sup> Ex. P02047, "Srebrenica Trial Video", at 02:45:25-02:45:53; Ex. P02048, "Srebrenica Trial Video Transcript", p. 70; Ex. P02054, "Copy of the Zoran Petrović's roll material in 8 mm" at 00:16:48-00:16:58; Ex. P02985, Transcript of Petrović video, pp. 10-11; Milenko Pepić, T. 13559-13560 (9 July 2007). See *infra*, paras. 1454, 1514.

<sup>1514</sup> Milenko Pepić, T. 13538-13539, 13555-13556, 13561-13562 (9 July 2007).

<sup>1515</sup> Milenko Pepić, T. 13555-13557, 13570-13571 (9 July 2007); Ex. PIC00137, "Map marked by Milenko Pepić taken from P02111. Čturić drove him towards "Žuti Most" in Kravica, This "Žuti Most" is not the yellow bridge that was above the DutchBat compound in Potočari. Milenko Pepić, T. 13557 (9 July 2007).

<sup>1516</sup> Milenko Pepić, T. 13555-13557, 13559, 13595-13596 (9 July 2007).

<sup>1517</sup> Milenko Pepić, T. 13559-13561 (9 July 2007).

<sup>1518</sup> PW-156, T. 7094, 7112-7113, 7123 (8 Feb 2007); PW-111, T. 6978-6979, 6981 (6 Feb 2007), T. 7056 (7 Feb 2007). See *also* Milenko Pepić, T. 13556-13557, 13559 (9 Jul 2007).

<sup>1519</sup> PW-156, T. 7090-7091, 7094, 7106 (private session), 7123 (8 Feb 2007). See *also* Ex. P02103, "Documents tendered with statement of Jean-René Ruez," p. 92 (aerial image showing that at approximately 2 p.m. on 13 July, two buses were parked beside the entrance to the east room of the Kravica Warehouse); Jean-René Ruez, T. 1443-1444 (11 Sept 2006); Mevludin Orić, T. 897-898 (28 Aug 2006), T. 1061-1062 (30 Aug 2006).



rifles and wearing ammunition belts.<sup>1520</sup> A Bosnian Serb man in civilian clothes and accompanied by a German shepherd dog headed the column as it walked to Kravica Warehouse.<sup>1521</sup>

427. PW-111 was ordered into the first of two buses that came to Sandići Meadow.<sup>1522</sup> The bus was tightly packed.<sup>1523</sup> PW-111 was one of the first Bosnian Muslim prisoners to arrive at Kravica Warehouse.<sup>1524</sup> He arrived in the afternoon when it was still sunny and very hot.<sup>1525</sup> He was taken to the East Room of Kravica Warehouse.<sup>1526</sup> It took about one and a half to two hours for the room to be filled with the Bosnian Muslim prisoners.<sup>1527</sup> Meanwhile, PW-156 was detained in the West Room.<sup>1528</sup> Kravica Warehouse was packed with Bosnian Muslim men who were guarded by members of Bosnian Serb Forces, including members of the SBP 2nd Šekovići Detachment,<sup>1529</sup> and members of the Military Police, the 1st Infantry Battalion and the Red Berets of the Bratunac Brigade,<sup>1530</sup> wearing green camouflage, multi-coloured uniforms.<sup>1531</sup> One of them had a UN blue helmet.<sup>1532</sup> Money, gold, and watches were taken from the prisoners.<sup>1533</sup> The Bosnian Muslim prisoners were provided with some water in a bucket but this was insufficient given the number of prisoners.<sup>1534</sup>

428. The account of PW-111 and PW-156, the two survivors, on how the shootings started differs, but this may be partly due to the fact that they were detained in different rooms of Kravica Warehouse.<sup>1535</sup> According to PW-156, the shootings started in the West Room of Kravica Warehouse.<sup>1536</sup> He recalls that as the last of the Bosnian Muslim prisoners entered the West Room, one protested to a Bosnian Serb guard that he had nowhere to sit and the guard opened fire on him

<sup>1520</sup> PW-156, T. 7113 (8 Feb 2007); Predrag Čelić, T. 13477–13478, 13503–13504 (28 June 2008).

<sup>1521</sup> *Ibid.*, T. 7090, 7112–7113 (8 Feb 2007).

<sup>1522</sup> PW-111, T. 6978–6979, 6981, 6987 (6 Feb 2007).

<sup>1523</sup> *Ibid.*, T. 6978–6979 (6 Feb 2007).

<sup>1524</sup> *Ibid.*, T. 6987 (7 Feb 2007).

<sup>1525</sup> *Ibid.*, T. 6987, 7056 (7 Feb 2007).

<sup>1526</sup> *Ibid.*, T. 6987–6988 (7 Feb 2007); Ex. PIC00063, “Aerial image marked by PW-111 taken from P01563”; Ex. P02103, “Documents tendered with statement of Jean-René Ruez,” pp. 103, 114.

<sup>1527</sup> PW-111, T. 6990 (7 Feb 2007).

<sup>1528</sup> PW-156, T. 7101–7104 (8 Feb 2007); Ex. PIC00065, “Photograph 01565 marked by PW-156”; Ex. PIC00066, “Photograph 01565 marked by PW-156”; Ex. P02103, “Documents tendered with statement of Jean-René Ruez,” pp. 93, 112.

<sup>1529</sup> *See infra*, paras. 1522–1523.

<sup>1530</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5 (stating that after looking into the matter, he found out that among those who participated in the execution at Kravica Warehouse, apart from the MUP members, were: Nikola Popović from Kravica, who was attached to the Bratunac Brigade Military Police; Milovan Matić, who was attached to the 1st Infantry Battalion of the Bratunac Brigade; Ilija Nikolić, who was attached to the 1st Infantry Battalion of the Bratunac Brigade; and Rašo Milanović, who was the Commander of the Police Unit in Kravica.); Ex. 4DP01892, “Bratunac Health Centre patient log” (noting the Red Beret member, Miroslav Stanojević, who was injured).

<sup>1531</sup> PW-156, T. 7094, 7089, 7128 (private session) (8 Feb 2007); PW-111, T. 6990, 6992 (7 Feb 2007).

<sup>1532</sup> PW-111, T. 6992 (7 Feb 2007).

<sup>1533</sup> *Ibid.*, T. 6990–6991, 7057 (7 Feb 2007).

<sup>1534</sup> *Ibid.*, T. 6992, 7058 (7 Feb 2007).

<sup>1535</sup> *See infra*, paras. 1516, 1529.

<sup>1536</sup> PW-156, T. 7095, 7123 (8 Feb 2007).

and on the other prisoners.<sup>1537</sup> In a corner of the West Room, PW-156 bent his head and closed his eyes.<sup>1538</sup> The shooting continued, with pauses, almost until it became dark.<sup>1539</sup> When night fell, the shooting quieted down.<sup>1540</sup>

429. Meanwhile, PW-111, who was in the East Room, stated that “after a certain period of time,”<sup>1541</sup> the Bosnian Serb Forces guarding the prisoners in the East Room became agitated and angry.<sup>1542</sup> PW-111 then heard and saw shooting outside the East Room in the direction of the West Room.<sup>1543</sup> The members of the Bosnian Serb Forces guarding them also looked frightened.<sup>1544</sup> Two of them—the one in the blue UN helmet and another one with curly, shoulder-length hair and black glasses—wanted to shoot at the prisoners.<sup>1545</sup> They were stopped by a third who told them that these prisoners were not to blame for anything.<sup>1546</sup> The shooting outside lasted for about half an hour.<sup>1547</sup> After it calmed down, members of the Bosnian Serb Forces ordered two Bosnian Muslims to go out to bring in the wounded Bosnian Serb “soldier”.<sup>1548</sup> Things then calmed down and became very quiet.<sup>1549</sup>

430. Later, five to ten members of the Bosnian Serb Forces entered the East Room and the one with the curly, shoulder-length hair with the black glasses and the one in the blue UN helmet were the first two that started shooting at the prisoners.<sup>1550</sup> PW-111 immediately lay down on his stomach, believing that all the prisoners were to be killed.<sup>1551</sup> There was a lot of noise, smoke and shooting from various types of weapons.<sup>1552</sup>

431. Some time after Pepić had stopped the convoy of buses, from their position on the Bratunac-Konjević Polje Road, he and Čelić, another member of the 2nd Platoon of the SBP 2nd Šekovići Detachment, heard loud and intense gunfire, “as if fire was being opened from one side alone”

<sup>1537</sup> PW-156, T. 7095, 7123 (8 Feb 2007).

<sup>1538</sup> *Ibid.*

<sup>1539</sup> *Ibid.*

<sup>1540</sup> *Ibid.*, T. 7095, 7123–7124 (8 Feb 2007). PW-156 could not identify the members of the Bosnian Serb Forces shooting. *Ibid.*, T. 7124 (8 Feb 2007).

<sup>1541</sup> PW-111, T. 6992 (7 Feb 2007).

<sup>1542</sup> *Ibid.*, T. 6992–6995, 7059, 7065 (7 Feb 2007).

<sup>1543</sup> *Ibid.*, T. 6992–6995, 6997–6999 (7 Feb 2007); Ex. PIC00063, “Aerial image marked by PW-111, taken from P01563” (showing PW-111’s arrow mark indicating that the guards were firing in the direction of the West Room and the forest).

<sup>1544</sup> PW-111, T. 6998 (7 Feb 2007).

<sup>1545</sup> *Ibid.*, T. 6992 (7 Feb 2007).

<sup>1546</sup> *Ibid.*, T. 6992 (7 Feb 2007).

<sup>1547</sup> *Ibid.*, T. 6995–6996, 7060 (7 Feb 2007). *See also* Miloš Đukanović, T. 11768 (18 May 2007).

<sup>1548</sup> PW-111, T. 6993 (7 Feb 2007).

<sup>1549</sup> *Ibid.*, T. 6999 (7 Feb 2007).

<sup>1550</sup> *Ibid.*, T. 6999–7000, 7060–7062 (7 Feb 2007). *See also* PW-158, T. 7095, 7123 (8 Feb 2007).

<sup>1551</sup> PW-111, T. 6999–7000 (7 Feb 2007).

<sup>1552</sup> *Ibid.*, T. 6999 (7 Feb 2007). *See also* PW-156, T. 7095, 7123 (8 Feb 2007).

coming from the direction of Kravica Warehouse.<sup>1553</sup> He also heard voice traffic over the radio, including Čuturić calling out to **Borovčanin**<sup>1554</sup> and reporting that the “hairpin had happened”, meaning that someone had been killed or wounded.<sup>1555</sup>

432. Meanwhile, **Borovčanin** arrived at Kravica Warehouse some time between 5:15 p.m. and 5:30 p.m., after receiving a message from Stupar to go there urgently.<sup>1556</sup> **Borovčanin** saw a pile of bodies in front of the West and Centre Rooms of the Kravica Warehouse and a large number of bullet holes on the outside walls.<sup>1557</sup> The door of the West Room of Kravica Warehouse was closed.<sup>1558</sup> **Borovčanin** said that he had a short conversation with Stupar and then left the scene.<sup>1559</sup>

433. At around 5:30 p.m., Čuturić drove past Žuti Most from the direction of Kravica Warehouse towards Bratunac with a bandaged arm.<sup>1560</sup> He stopped briefly and told Pepić that he had just come from Kravica Warehouse where a Bosnian Muslim prisoner had taken the rifle of Krsto Dragičević, a member of the 3rd Platoon, the “Skelani” Platoon, of the SBP 2nd Šekovići Detachment, shot, and killed him.<sup>1561</sup> Čuturić had grabbed the barrel of the rifle from the Bosnian Muslim prisoner, burnt his hand, and was on his way to the Bratunac Health Centre.<sup>1562</sup> Čuturić told Pepić that “they were shooting at Muslims” at Kravica Warehouse.<sup>1563</sup> Miroslav Stanojević, a member of the Red Berets of the Bratunac Brigade was also injured in this “burnt-hands” incident.<sup>1564</sup> When Čuturić left, Pepić continued holding up the convoy.<sup>1565</sup>

434. Čuturić passed by Pepić again, on his way back from the Bratunac Health Centre.<sup>1566</sup> After a while, Čuturić ordered Pepić to re-open the Bratunac-Konjević Polje Road and let the convoy pass

<sup>1553</sup> Milenko Pepić, T. 13560–13561 (9 July 2007). *See also* Predrag Čelić, T. 113478–3479 (28 June 2007).

<sup>1554</sup> *Ibid.*, T. 13558 (9 July 2007).

<sup>1555</sup> *Ibid.*, T. 13561 (9 July 2007).

<sup>1556</sup> Ex P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 63; Zoran Petrović, T. 18797–18798 (5 Dec 2007). **Borovčanin** generally agrees with this time-line, stating however that it was more likely that he was there between 5:20 and 5:30 p.m. Borovčanin Closing Arguments, T. 34563 (9 Sept 2009). *See also* Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 65, 72.

<sup>1557</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 64, 66; Ex. P02047, “Srebrenica Trial Video”, at 02:56:14–02:56:17, 02:56:24–02:56:49; Ex. P02011, “Video by Zoran Petrović, Studio B Version”, at 18:08–18:11. *See infra*, paras. 1516–1519.

<sup>1558</sup> In its closing arguments, the Prosecution offered to enter an agreement of facts that the doors of Kravica Warehouse that are seen on the video footage were closed when **Borovčanin** was there. Prosecution Closing Arguments, T. 34232 (4 Sept.2009). *See* Borovčanin Final Brief, para. 150.

<sup>1559</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 64–65.

<sup>1560</sup> Milenko Pepić, T. 13561 (9 July 2007); Ex 4DP01892, “Bratunac Health Centre patient log” (showing Čuturić being admitted at 5:40 p.m. and the arrival of Krsto Dragičević’s body at 7 p.m.).

<sup>1561</sup> Milenko Pepić, T. 13561–13565, 13577, 13599 (9 July 2007); Ex. 4DP01892, “Bratunac Health Centre patient log.”

<sup>1562</sup> Milenko Pepić, T. 13562 (9 July 2007).

<sup>1563</sup> *Ibid.*, T. 13563 (9 July 2007).

<sup>1564</sup> Ex. 4DP01892, “Bratunac Health Centre patient log”.

<sup>1565</sup> Milenko Pepić, T. 13566 (9 July 2007).

<sup>1566</sup> *Ibid.*, T. 13566 (9 July 2007).

through, which he did.<sup>1567</sup> Pepić remained at his position until the SBP 2nd Šekovići Detachment bus passed by to pick him up and take him to Konjević Polje, some time in the evening hours or at dusk.<sup>1568</sup> Piles of hay which had not been there earlier that day were visible outside Kravica Warehouse.<sup>1569</sup> There were also armed members of the Bosnian Serb Forces in front of Kravica Warehouse.<sup>1570</sup>

435. Throughout the night between 13 and 14 July, members of the Bosnian Serb Forces would periodically enter Kravica Warehouse, shoot, and throw hand grenades through the windows.<sup>1571</sup> PW-111 managed to escape from Kravica Warehouse by squeezing through a narrow window during a lull in the shooting.<sup>1572</sup> When he dropped on the ground, PW-111 heard a voice saying: “There is another one jumping out”.<sup>1573</sup> As PW-111 lay on his stomach waiting to be killed, a soldier approached him and shot him in his right shoulder.<sup>1574</sup> Without reacting, PW-111 lay still for the rest of the night, pretending to be dead.<sup>1575</sup> PW-156 also pretended to be dead as he lay amongst the dead in Kravica Warehouse.<sup>1576</sup> At one point, PW-156 moved through the dead and found a neighbour of his who was still alive.<sup>1577</sup> When this man got up, he was shot down by a burst of fire.<sup>1578</sup> PW-156 then placed two bodies over himself and stayed there throughout 14 July.<sup>1579</sup> During the night between 14 and 15 July, PW-156 eventually managed to escape from Kravica Warehouse.<sup>1580</sup>

436. On the morning of 14 July, members of the Bosnian Serb Forces called out to the wounded to come out of Kravica Warehouse to be taken to the hospital.<sup>1581</sup> Those who went out were made to sing nationalistic Serb songs about Draza Mihajlović and were then killed.<sup>1582</sup> The wounded who shouted out with pain or for water were cursed for their “Turkish mother” or their “Islam[ic] tribe” before they were also shot dead.<sup>1583</sup>

<sup>1567</sup> Milenko Pepić, T. 13566–13567, 13598–13599 (9 July 2007).

<sup>1568</sup> Milenko Pepić, T. 13567, 13572, 13600–13601 (9 July 2007); Predrag Čelić, T. 13480, 13505 (28 Jun 2007).

<sup>1569</sup> Milenko Pepić, T. 13573 (9 July 2007).

<sup>1570</sup> *Ibid.*, T. 13575, 13599 (9 July 2007).

<sup>1571</sup> PW-111, T. 6999–7000 (7 Feb 2007).

<sup>1572</sup> *Ibid.*, T. 7001 (7 Feb 2007).

<sup>1573</sup> *Ibid.*, T. 7003 (7 Feb 2007).

<sup>1574</sup> *Ibid.*, T. 7003–7005 (7 Feb 2007).

<sup>1575</sup> *Ibid.*, T. 7005 (7 Feb 2007).

<sup>1576</sup> PW-156, T. 7095–7096 (8 Feb 2007).

<sup>1577</sup> *Ibid.*, T. 7095–7096, 7106–7107 (private session) (8 Feb 2007).

<sup>1578</sup> *Ibid.*

<sup>1579</sup> *Ibid.*, T. 7095–7096 (8 Feb 2007).

<sup>1580</sup> *Ibid.*, T. 7097–7098 (8 Feb 2007).

<sup>1581</sup> *Ibid.*, T. 7005 (7 Feb 2007); PW-156, T. 7096 (8 Feb 2007).

<sup>1582</sup> PW-111, T. 7006 (7 Feb 2007).

<sup>1583</sup> PW-156, T. 7096–7097 (8 Feb 2007).

437. Forensic examination of Kravica Warehouse later revealed not only clear evidence of human blood, bones, and tissue adhering to the walls, floor and ceiling, but also evidence of damage caused by arms, grenades and explosives.<sup>1584</sup> Hand grenade handles and samples of explosive residues were also found.<sup>1585</sup>

438. On 14 and 15 July 1995, excavators were brought to Kravica Warehouse to load the dead bodies.<sup>1586</sup> On the morning of 14 July, graves were prepared in Glogova<sup>1587</sup> and over the next three days, further pits were dug while trucks arrived with bodies.<sup>1588</sup> On 14 July, Ostoja Stanojević—a driver in the engineering company of the Zvornik Brigade— was ordered by Dragan Jokić to report to the civilian protection unit building in Zvornik for a garbage clean-up assignment.<sup>1589</sup> He was ordered to load bodies at Kravica Warehouse and drive them to the burial site near Glogova, delivering two loads on 15 July.<sup>1590</sup> A small group of civilian protection personnel from Bratunac was sent to Glogova to dig the graves and a larger group to Kravica to load the bodies.<sup>1591</sup> Momir Nikolić told the civilian protection workers that they were to go to Kravica and the Bratunac Brigade Military Police escorted them there in vehicles.<sup>1592</sup>

439. Primary graves<sup>1593</sup> at two different locations were found to have forensic links to the events at Kravica Warehouse: two graves at Ravnice—Ravnice 1 and Ravnice 2—were found to have building materials including foam, concrete and plaster linking them to Kravica Warehouse,<sup>1594</sup> and two graves at Glogova—Glogova 1 and Glogova 2— were found to have broken masonry and door frames indistinguishable from those located at Kravica Warehouse.<sup>1595</sup>

<sup>1584</sup> Dean Manning, T. 18979–18980 (10 Dec 2007); Ex. P00649, “Summary of Forensic Evidence – Execution points and mass graves, 16 May 2000”, p. 5, Annex A, pp. 4–7. Investigation revealed a significant number of bullet strikes to Kravica Warehouse, both internally and externally. Dean Manning, T. 18979 (10 Dec 2007). Investigation of the interior of Kravica Warehouse also revealed explosive residue and impact damage. Ex. P00649, “Summary of Forensic Evidence – Execution points and mass graves, 16 May 2000”, p. 5, Annex A, p. 6; Dean Manning, T. 18979–18980 (10 Dec 2007); Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, pp. 94–99, 102, 104–106, 112–118.

<sup>1585</sup> Ex. P00649, “Summary of Forensic Evidence – Execution Points and Mass Graves, 16 May 2000”, p. 5, Annex A, p. 6. Grenade handles were also found grouped around two windows at the western end of Kravica Warehouse. *Ibid.*, Annex A, p. 4.

<sup>1586</sup> PW-111, T. 7006 (7 Feb 2007); PW-156, T. 7097–7098, 7103–7104, 7106–7107 (private session), 7124 (8 Feb 2007); Ex. PIC00066, “Picture 01565 marked by PW-156”; PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7909 (20 Apr 2004); PW-170, T. 17862–17863 (closed session) (19 Nov 2007).

<sup>1587</sup> PW-161, T. 9370–9371 (23 Mar 2007); PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7876, 7879 (20 Apr 2004); PW-170, T. 17862 (closed session) (19 Nov 2007).

<sup>1588</sup> PW-161, T. 9391–9392 (26 Mar 2007).

<sup>1589</sup> Ostoja Stanojević, T. 13656–13657 (10 July 2007).

<sup>1590</sup> Ostoja Stanojević, Ex. P02260, “92 *ter* transcript”, BT. 5685, 5688–5691 (4 Dec 2003).

<sup>1591</sup> PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7876, 7879, (20 Apr 2004); PW-170, T. 17862 (closed session) (19 Nov 2007).

<sup>1592</sup> Krsto Simić, Ex. 4D00608, “92 *bis* transcript”, BT. 7321–7322 (23 Feb 2004).

<sup>1593</sup> *See infra*, para. 608.

<sup>1594</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, p. 7.

<sup>1595</sup> *Ibid.*, p. 6. *See also* Dean Manning, T. 18981 (10 Dec 2007); Ex. P01565, “Panoramic photo of Kravica Warehouse”; Ex. P02993, “Summary of Forensic Evidence by Dean Manning, 27 November 2007”, pp. 5–7, 16;

440. In addition, forensic evidence links secondary graves<sup>1596</sup> at three different locations to the events at Kravica Warehouse. At Zeleni Jadar, seven gravesites can be linked to Kravica Warehouse: in Zeleni Jadar 5 and 6, concrete, plaster and other building materials located in the grave established a link;<sup>1597</sup> in Zeleni Jadar 2, body parts located in the grave were matched with a tooth found at Kravica Warehouse.<sup>1598</sup> Furthermore, in all of the Zeleni Jadar graves—Zeleni Jadar 1A, 1B, 2, 3, 4, 5, and 6—links with the Glogova 1 primary grave were established through the identification of body parts belonging to the same individuals in both the Glogova 1 grave and the relevant secondary grave.<sup>1599</sup>

441. Meanwhile, two secondary graves at Blječeva were linked to the Glogova 2 primary grave, and one secondary grave at Blječeva was linked to the Glogova 1 primary grave. The links were established through the identification of body parts belonging to the same individuals in both the primary and the relevant secondary graves.<sup>1600</sup>

442. Furthermore, at Budak, two secondary graves were also linked to the Glogova 1 primary grave. These links were again established through the identification of body parts belonging to the same individuals in both the primary and the relevant secondary grave.<sup>1601</sup>

443. Prosecution investigator Dušan Janc prepared an expert report in which he concluded that the remains of 1,319 individuals have been found in primary and secondary graves associated with the Kravica Warehouse killings.<sup>1602</sup> Janc subsequently filed a corrigendum to his report in which he stated that some of these 1,319 persons may have died in circumstances unrelated to the Kravica Warehouse events.<sup>1603</sup> Janc does not explicitly state by how many the number should be reduced, however he indicates that the following bodies were buried in graves related to Kravica Warehouse, but cannot be linked to the Kravica Warehouse killings: (a) 12 individuals who were returned to the VRS from Serbia;<sup>1604</sup> (b) up to 80 bodies from the area around the Vuk Karadžić School;<sup>1605</sup> (c) 6–7

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Ex. P00674, “Report on excavations and exhumations at the Glogova 1 in 2000”, pp. 18–19; Prosecution Adjudicated Facts Decision, Annex, Fact 329.

<sup>1596</sup> See *infra*, para. 608.

<sup>1597</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, p. 21.

<sup>1598</sup> Dušan Janc, T. 33394–33395 (28 Apr 2009), T. 33486–33490 (1 May 2009); Ex. P04525, “Report of the examination and recovery of evidence from Kravica Warehouse, in Sep, Oct 2000, by Michael J. Hedley, 9 Mar 2001”, p. 9. This connection is not listed in Janc’s report, as he was not aware of it at the time of drafting. Dušan Janc, T. 33495 (1 May 2009).

<sup>1599</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, pp. 21–25. DNA connections linking each secondary grave to other secondary graves were also established.

<sup>1600</sup> *Ibid.*, pp. 26–27. DNA connections linking each secondary grave to other secondary graves were also established.

<sup>1601</sup> *Ibid.*, p. 27–28. DNA connections linking each secondary grave to other secondary graves were also established.

<sup>1602</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 Mar 2009”, Annex A, pp. 34–36. These individuals have been identified through DNA analysis as persons reported missing following the fall of Srebrenica. *Ibid.*

<sup>1603</sup> Ex. P04492, “Corrigendum to the ‘Update to the Summary of Forensic Evidence – exhumation of the graves related to Srebrenica – March 2009 prepared by Dušan Janc’, 9 April 2009”.

<sup>1604</sup> See Dušan Janc, T. 33664–33665 (5 May 2009).

bodies from Potočari;<sup>1606</sup> (d) 10–15 bodies from Konjević Polje;<sup>1607</sup> and (e) one truck load of bodies from the area along the Bratunac-Konjević Polje Road.<sup>1608</sup> Further, the Trial Chamber notes that there is evidence before it regarding three persons buried in the Glogova grave, which indicates that they were not victims of the Kravica Warehouse killings.<sup>1609</sup> In addition, one individual from the Blječeva secondary grave was last seen on 18 July and therefore cannot be linked to the Kravica Warehouse execution.<sup>1610</sup> As stated below, the Trial Chamber accepts the evidence presented by Janc regarding the DNA and forensic links established between the primary and secondary graves.<sup>1611</sup> Taking the evidence outlined above into account, the Trial Chamber concludes that at least 1,000 people were killed in Kravica Warehouse.

444. Many Bosnian Serbs heard contemporaneous accounts of the “burnt-hands” incident and how prisoners were shot dead at Kravica Warehouse.<sup>1612</sup> The Trial Chamber has considered the various testimony, the circumstances of the “burnt-hands” incident and of the full-scale execution that clearly also occurred there, and which members of the Bosnian Serb Forces participated in these two incidents extensively below.<sup>1613</sup>

445. The Trial Chamber is of the view that the only reasonable inference is that the full-scale execution of the Bosnian Muslim men at Kravica Warehouse was part of the common plan to murder the able-bodied males of Srebrenica and of the genocidal plan. The Trial Chamber is also satisfied that the prisoners were detained there temporarily, most likely to be moved to another detention site, as was the pattern throughout, to ultimately be killed. However, as a reaction to the

<sup>1605</sup> See PW-161 T. 9538, 9555–9556 (27 Mar 2007); PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7883, 7916–7918, 7920 (20 Apr 2004); PW-170, T. 17863–17864 (closed session) (19 Nov 2007); Dušan Janc, T. 33638–33639 (4 May 2009) (where a portion of the statement of Desmir Dukanović was read into the record in which Dukanović stated that bodies from the Vuk Karadžić School were buried in Glogova. Janc accepted that this testimony was correct).

<sup>1606</sup> See PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7886, 7925 (20 Apr 2004).

<sup>1607</sup> See PW-161, T. 9372 (23 Mar 2007), T. 9455 (26 Mar 2007).

<sup>1608</sup> See *Ibid.*, T. 9389 (26 Mar 2007).

<sup>1609</sup> One individual disappeared on 11 July 1995 in Udrc-Zvornik, a long way from Kravica; another disappeared on 18 July 1995, after the incident at Kravica Warehouse; a third had no date of disappearance recorded. Dušan Janc, T. 33675–33676 (5 May 2009); Ex. 4D00535 (confidential), “Extract from the ‘Srebrenica Missing’ - The 2007 Progress Report by ICMP, (Glogova Only)”. Janc agreed that these persons could not have been victims of the Kravica Warehouse killings, although he stated that the data for the date of disappearance is not always reliable. Dušan Janc, T. 33675–33676 (5 May 2009).

<sup>1610</sup> *Ibid.*

<sup>1611</sup> See *infra*, paras. 653–658, 660.

<sup>1612</sup> See PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7873 (20 Apr 2004); PW-170, T. 17909 (closed session) (19 Nov 2007); Miladin Jovanović, Ex. 2D00554, “92 *ter* statement” (24 Apr 2007), p. 2; Mendeljev Đurić, T. 10829 (2 May 2007); Dragan Nešković, T. 27440 (28 Oct 2008); Miloš Đukanović, T. 11767–11768, 11791 (18 May 2007); PW-160, T. 8622, 8624–8626 (partially private session) (12 Mar 2007); Predrag Čelić, T. 13480–13483 (28 June 2007); Slaviša Simić, T. 27515 (29 Oct 2008); Ljubisav Simić, Ex. 4D00606, “92 *ter* transcript”, BT. 7629–7630 (15 Apr 2004); Ljubisav Simić, T. 27206–27207 (22 Oct 2008); PW-100, T. 14835 (5 Sept 2007), T. 14888 (6 Sept 2007); PW-168, T. 15877–15878 (closed session) (26 Sep 2007), T. 16527–16528 (closed session) (18 Oct 2007); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5. See *infra*, paras. 1516–1526.

<sup>1613</sup> See *infra*, paras. 1516–1536.

unexpected “burnt-hands” incident, the Trial Chamber finds that the plan to murder the Bosnian Muslim prisoners detained in Kravica Warehouse was moved forward and they were killed on the spot.

(iii) “Opportunistic” Killings at Kravica Supermarket<sup>1614</sup>

446. During the night between 13 and 14 July 1995, members of the Bosnian Serb Forces who were guarding the trucks near the Kravica Supermarket, which had arrived from the Nova Kasaba Football Field,<sup>1615</sup> struck the prisoners with rifle butts and asked people from certain villages around Srebrenica to identify themselves.<sup>1616</sup> They then removed these particular prisoners from the truck.<sup>1617</sup> Five Bosnian Muslim men were individually taken from PW-116’s truck during the night.<sup>1618</sup> In relation to these men, PW-116 stated: “I didn’t see them being killed there on the spot, but they didn’t come back to the truck”.<sup>1619</sup> PW-116 heard bursts of gunfire, screams, moaning and cries for help in the vicinity of his truck throughout the night.<sup>1620</sup>

447. A member of the Bosnian Serb Forces threatened to kill PW-116 and ten other prisoners if he heard any noise coming from the truck.<sup>1621</sup> At around 2 or 3 p.m. on 14 July, PW-116’s truck left in the direction of Zvornik, and the Bosnian Muslim men were warned that if any of them tried to jump out of the truck, ten of them would be killed.<sup>1622</sup> Behind his truck, PW-116 saw another truck begin to move which had two armed members of the Bosnian Serb Forces riding in the cabin.<sup>1623</sup> One was pointing his rifle out of the window towards the truck in which PW-116 was travelling.<sup>1624</sup>

448. The Trial Chamber notes that PW-116’s testimony was admitted pursuant to the former Rule 92 *bis* (D) of the Rules without cross-examination by the Accused in this case. This statement is the only evidence before the Trial Chamber of specific beatings and killings taking place near the

<sup>1614</sup> The Indictment alleged that “[d]uring the night between 13 July and 14 July near the Kravica Supermarket, a VRS or MUP soldier placed his rifle barrel into the mouth of a Bosnian Muslim prisoner and summarily executed the man. Also during this period, VRS and/or MUP soldiers struck, beat with rifle butts and summarily executed Bosnian Muslim prisoners who had surrendered or been captured from the column of men retreating from the Srebrenica enclave or had been separated at Potočari and were detained on trucks near the Kravica Supermarket.” Indictment, para. 31.3. The Trial Chamber notes that on 2 Sept 2009, the Prosecution filed a “Corrigendum to the Prosecution Final Trial Brief,” in which it dropped the allegation that a Bosnian Serb soldier placed his rifle barrel into the mouth of a Bosnian Muslim and killed him. The Prosecution maintained the other allegations in para. 31.3 of the Indictment. Corrigendum to the Prosecution Final Trial Brief, 2 Sept 2009, para. 9.

<sup>1615</sup> See *supra*, paras. 397–398.

<sup>1616</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2957 (14 Apr 2000).

<sup>1617</sup> *Ibid.*, KT. 2957, 2992 (14 Apr 2000).

<sup>1618</sup> *Ibid.*, KT. 2957 (14 Apr 2000).

<sup>1619</sup> *Ibid.*, KT. 2957 (14 Apr 2000).

<sup>1620</sup> *Ibid.*, KT. 2957 (14 Apr 2000).

<sup>1621</sup> *Ibid.*, KT. 2961 (14 Apr 2000).

<sup>1622</sup> *Ibid.*, KT. 2961–2962 (14 Apr 2000). See also *infra*, paras. 470, 473–474, 1061, 1063.

<sup>1623</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2962 (14 Apr 2000).

<sup>1624</sup> *Ibid.*, KT. 2962 (14 Apr 2000).



Kravica Supermarket, as alleged in the Indictment.<sup>1625</sup> However, it should be noted that the circumstances described by PW-116 are analogous to those in other locations where “opportunistic” killings have been found to have occurred. This incident forms one of several allegations contained in the Indictment of “opportunistic” killings which were the natural and foreseeable consequence of the JCE to Forcibly Remove and the JCE to Murder.<sup>1626</sup> These killings form a part of the factual allegations, underlying the murder and persecution counts with reference to Milić and Gvero. In the case of the other accused, it is the combined allegation of summary executions of thousands and several “opportunistic” killings which underlie the murder, extermination and persecution counts. Thus, these specific factual allegations related solely to “opportunistic” killings under JCE III, testified to by PW-116, could never form the basis for a conviction of any of the Accused for genocide, crimes against humanity or war crimes as alleged in the Indictment. It follows that PW-116’s uncorroborated evidence, in the context of the facts of this case, cannot be classified as evidence which could form the sole or even a decisive basis for the conviction of any of the Accused. No Accused faces the prospect of conviction exclusively or to a large part on this evidence, which has not been tested by cross-examination and is uncorroborated. The Trial Chamber, by majority, Judge Kwon dissenting,<sup>1627</sup> therefore is prepared to accept it as a basis for concluding that the alleged beatings and killings have been established by the Prosecution.

449. In the light of all the evidence before it, the Trial Chamber, by majority, Judge Kwon dissenting, finds that during the night of 13 to 14 July, members of the Bosnian Serb Forces threatened, beat and summarily executed an unknown number of Bosnian Muslim prisoners who were detained on trucks near the Kravica Supermarket.

(iv) Bratunac Brigade Headquarters<sup>1628</sup>

450. After their interrogation at the Bratunac Brigade headquarters on 13 July, Nazif Avdić, Munib Dedić, Aziz Husić, Mujo Husić, Hasib Ibišević, and Resid Sinanović were taken by members of the special police or a special platoon of the VRS to the Vuk Karadžić School in Bratunac.<sup>1629</sup> With the exception of Ibišević and Sinanović,<sup>1630</sup> the remains of these men were found at the primary gravesite of Kozluk and in a linked secondary gravesite.<sup>1631</sup>

<sup>1625</sup> See Indictment para. 31.3.

<sup>1626</sup> See Indictment, para. 31.

<sup>1627</sup> See *supra*, paras. 62–63. See Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

<sup>1628</sup> The Indictment alleges that on 13 July 1995, after their interrogation, six Bosnian Muslim men from Srebrenica were detained along with other Bosnian Muslim prisoners in Bratunac and thereafter summarily executed. Indictment, para. 30.1.

<sup>1629</sup> See *supra*, para. 391.

<sup>1630</sup> Ex. P03159a (confidential), p. 165. Rešid Sinanović does not appear on the 2009 ICMP List of Deceased. See Ex. P04494 (confidential). A letter, dated 5 March 2003, from Dr. Milenko Marin of a health centre in Loznica,

451. Given the similar circumstances in which these men were captured, interrogated, and detained, and what the Trial Chamber has heard happened to the Bosnian Muslim prisoners detained in the Vuk Karadžić School, the Trial Chamber finds that Nazif Avdić, Munib Dedić, Aziz Husić, Mujo Husić, and Hasib Ibišević, were killed by members of the Bosnian Serb Forces. Rešid Sinanović survived but there is some evidence that he was subsequently killed in another execution.

(v) “Opportunistic” Killings in Bratunac Town

a. Bosnian Muslim Men from the Hangar (12–13 July)<sup>1632</sup>

452. By the morning of 13 July 1995, at least 400 Bosnian Muslim men were detained in a hangar behind the Vuk Karadžić School, some of whom were taken out by members of the Bosnian Serb Forces and beaten.<sup>1633</sup> Some of the prisoners did not return, while others were brought back to the room by the members of the Bosnian Serb Forces after they were beaten. They were shown to the other prisoners, and then dragged to the sides of the hangar.<sup>1634</sup> After a person named Hamed Efendić was taken out, PW-169 heard a gunshot, followed by people saying: “You can drag him away. He’s finished. He’s dead. Drag him off.”<sup>1635</sup> The body of a person by the name Hamed Efendić was exhumed in 1998 and identified from the grave site in Zeleni Jadar, south of Srebrenica.<sup>1636</sup>

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Serbia to Veselin Londrović, at the time counsel for Momir Nikolić, is attached to Ex. P02407. Appended to the letter is a register from a hospital in Banja Koviljača, Serbia, in which the name of a person named “Rešid” with the date 15 July 1995 appears. Although the English translation marks as illegible all the other identifying information, Čelanović testified that in the original document it is clear that the surname Sinanović also appears. According to Čelanović, this entry constitutes proof that Sinanović was in the hospital on 15 July 1995 receiving treatment. Ex. P02407, “Letter and photocopy of Medical Register”, p. 3; Zlatan Čelanović, T. 6660–6661 (31 Jan 2007). See also Momir Nikolić, T. 33073–33074 (23 Apr 2009), T. 33352–33353 (28 Apr 2009).

<sup>1631</sup> Ex. P04494 (confidential), p. 102 (Nazif Avdić), p. 42 (Munib Dedić), p. 7 (Aziz Husić), p. 82 (Mujo Husić). The Trial Chamber notes that in Ex. P04494, Nazif Avdić’s date of birth is listed as 10 September 1954, whereas the Indictment refers to Zazif Avdić, born on 15 September 1954. The Trial Chamber finds that this disparity is not material. Hasib Ibišević’s sister-in-law testified that his body was exhumed in Pilica and identified. Šehra Ibišević, Ex. P03235, “92 bis statement”, p. 5 (21 June 2001). Hasib Ibišević’s name does not appear on the 2009 ICMP List of Deceased, however it does appear on the 2005 List of missing and deceased. See Ex. P04494 (confidential); Ex. P03159a (confidential), p. 76.

<sup>1632</sup> The Indictment alleges that, between 12 and 13 July 1995, more than 50 Bosnian Muslim men were taken from a hangar behind the Vuk Karadžić School in Bratunac and summarily executed. Indictment, para. 31.2.a.

<sup>1633</sup> See *supra*, para. 402, 404.

<sup>1634</sup> PW-169, T. 17320–17321 (1 Nov 2007).

<sup>1635</sup> *Ibid.*, T. 17321 (1 Nov 2007). See also *ibid.*, T. 17388 (2 Nov 2007).

<sup>1636</sup> Ex. P04494 (confidential). The graves at Želeni Jadar 2, 5 and 6 are secondary graves situated south of Bratunac and Srebrenica. Forensic evidence links the primary grave at Glogova 1 to the secondary graves at Zeleni Jadar 5 and 6. Richard Wright, Ex. P02162, “92 ter transcript”, KT. 3666–3667 (26 May 2000); Ex. P00666, “Report by Richard Wright on exhumations in Eastern Bosnia in 1998” pp. 24–25; Ex. P00561, “Report on the Anthropology Examination of Human Remains from Eastern Bosnia in 2000”, p. 4; Ex. P02475, “Report on Excavations at Glogova 2 1999–2001, 25 August 2003”, p. 20; Ex. P02476, “Report on Excavations at the Site of Želeni Jadar 6, Bosnia and Herzegovina 2001”, pp. 12–13. Glogova is located approximately 8 kilometres east of Kravica, in the direction of Bratunac. Jean-René Ruez, T. 1540 (12 Sept 2006).

453. PW-169 did not see any killings during the night from 12 to 13 July.<sup>1637</sup> However, he heard screams, moans, and one gunshot.<sup>1638</sup> He assumed that those prisoners who did not return to the hangar were killed.<sup>1639</sup> On the morning of 13 July 1995, the bodies of five of the prisoners who had been beaten were dragged out of PW-169's room by other prisoners.<sup>1640</sup> Those who dragged the bodies out of the room told PW-169 that they saw a pile of bodies behind the hangar.<sup>1641</sup> PW-169 estimated that approximately 40 prisoners were killed.<sup>1642</sup>

454. The process of taking prisoners out of the hangar continued on 13 July 1995.<sup>1643</sup> Men were beaten and some killed.<sup>1644</sup> In the afternoon of 13 July, prior to their transportation out of Bratunac, the number of Bosnian Muslim prisoners at the hangar was counted and reached 296.<sup>1645</sup> PW-169 estimated that an additional 40 prisoners were killed during that day.<sup>1646</sup>

455. The Trial Chamber is satisfied that approximately between 40 and 80 Bosnian Muslim prisoners were taken from the hangar behind the Vuk Karadžić School and killed on 12 and 13 July 1995.

b. A Mentally Handicapped Bosnian Muslim Man in front of the Vuk Karadžić School (13 July)<sup>1647</sup>

456. On 13 July 1995, one of the prisoners detained on a bus parked outside the Vuk Karadžić School fell asleep.<sup>1648</sup> One of the VRS military policemen got into the bus and hit the man on the shoulder. The man, who was mentally handicapped, hit back.<sup>1649</sup> After the military policeman cursed him, two other military policemen stepped onto the bus and took him off. Outside the bus, he was surrounded by VRS military policemen and soldiers, and taken towards the school.<sup>1650</sup>

<sup>1637</sup> PW-169, T. 17387–17388 (2 Nov 2007).

<sup>1638</sup> *Ibid.*, T. 17387–17388 (2 Nov 2007).

<sup>1639</sup> PW-169, T. 17389 (2 Nov 2007).

<sup>1640</sup> PW-169, T. 17321–17322 (1 Nov 2007).

<sup>1641</sup> *Ibid.*, T. 17322 (1 Nov 2007).

<sup>1642</sup> *Ibid.*, T. 17320, 17324 (1 Nov 2007), T. 17385 (2 Nov 2007).

<sup>1643</sup> *Ibid.*, T. 17320, 17322–17323 (1 Nov 2007).

<sup>1644</sup> *Ibid.*, T. 17323 (1 Nov 2007), T. 17387 (2 Nov 2007).

<sup>1645</sup> *Ibid.*, T. 17324–17325 (1 Nov 2007).

<sup>1646</sup> *Ibid.*, T. 17322–17324, 17346 (1 Nov 2007).

<sup>1647</sup> The Indictment alleges that in the evening of 13 July 1995 a mentally handicapped Bosnian Muslim man was taken off a bus parked in front of the Vuk Karadžić School in Bratunac and summarily executed. Indictment, para. 31.2.c.

<sup>1648</sup> Mevludin Orić, T. 889, 908–909, 911 (28 Aug 2006).

<sup>1649</sup> Mevludin Orić, T. 911–912 (28 Aug 2006), T. 1071–1072 (30 Aug 2006). Mevludin Orić stated: “People who were sitting next to [the mentally handicapped man] and who probably know [sic] him said that he was not entirely normal, that he was crazy. Probably because they knew him. This is what they were saying.” *Ibid.*, T. 911 (28 Aug 2006).

<sup>1650</sup> Mevludin Orić, T. 911–914 (28 Aug 2006), T. 927 (29 Aug 2006), T. 1071–1072 (30 Aug 2006); Ex. P02094, “Hand-drawn sketch of a map of Bratunac, drawn and signed by witness Mevludin Orić.”

Mevludin Orić heard a short burst of fire and the man's screams.<sup>1651</sup> He described the event as follows: "When they took him off, they dragged him towards the school. He was fighting them. Then I heard a short burst of fire, I heard him utter a faint sound, somebody said, 'Drag him toward the school' and that was it".<sup>1652</sup>

457. The Trial Chamber finds that the mentally handicapped man was killed on 13 July by VRS military policemen and soldiers.

c. Two Bosnian Muslim Men Taken off a Truck and Brought to a Garage<sup>1653</sup>

458. On the morning of 14 July, just before departure, a soldier recognised two Bosnian Muslim prisoners in PW-110's vehicle parked near the Vihor garage,<sup>1654</sup> and they were ordered to get off.<sup>1655</sup> No shooting was heard after the two prisoners were taken away. PW-110 heard the soldiers shouting: "take them to Fikret and [A]lija and have them exchanged", and the vehicles departed, without the two prisoners.<sup>1656</sup>

459. In light of the insufficient evidence before it, the Trial Chamber is not satisfied beyond reasonable doubt that these two Bosnian Muslim men were killed.

d. Bosnian Muslim Males inside and outside the Vuk Karadžić School (13–15 July)<sup>1657</sup>

460. On 13 and 14 July 1995, members of the Bosnian Serb Forces took six to seven Bosnian Muslim prisoners out of a room in the Vuk Karadžić School.<sup>1658</sup> The prisoners did not return to the room.<sup>1659</sup> Prisoners were also beaten.<sup>1660</sup> One man was taken outside the School, after which moans

<sup>1651</sup> Mevludin Orić, T. 913 (28 Aug 2006), T. 1072–1073 (30 Aug 2006).

<sup>1652</sup> Mevludin Orić, T. 913 (28 Aug 2006). *See also ibid.*, T. 1073 (30 Aug 2006).

<sup>1653</sup> The Indictment alleges that in the evening of 13 July 1995 two Bosnian Muslim men were taken off a truck in Bratunac town to a nearby garage and summarily executed. Indictment, para. 31.2.b.

<sup>1654</sup> PW-110, T. 668, 671–673 (24 Aug 2006).

<sup>1655</sup> *Ibid.*, T. 809, 811 (25 Aug 2006).

<sup>1656</sup> *Ibid.*, T. 668–669, 673 (24 Aug 2006), T. 809, 811 (25 Aug 2006).

<sup>1657</sup> The Indictment alleges that between the evening of 13 July and the morning of 15 July 1995 Bosnian Muslim men were continuously killed both inside and outside the Vuk Karadžić School in Bratunac by VRS and/or MUP forces. Indictment, para. 31.2.d.

<sup>1658</sup> Ahmo Hasić, T. 1180–1181, 1187–1188, 1223 (6 Sept 2006). Ahmo Hasić testified: "[The soldiers] did whatever they wanted. There was nobody to say, 'stop', to prevent that." *Ibid.*, T. 1188 (6 Sept 2006).

<sup>1659</sup> *Ibid.*, T. 1180, 1187–1188, 1223 (6 Sept 2006).

<sup>1660</sup> *Ibid.*, T. 1180, 1189, 1222 (6 Sept 2006), T. 1252–1253, 1255, 1260 (7 Sept 2006).

and screams were heard.<sup>1661</sup> He did not return.<sup>1662</sup> During both the day and at night between 13 and 15 July, screams and bursts of machine-gun fire were audible.<sup>1663</sup>

461. During the course of the night between 13 and 14 July 1995, prisoners detained in buses near the Vuk Karadžić School were taken out of the buses and did not return.<sup>1664</sup> A VRS soldier<sup>1665</sup> and two other members of the Bosnian Serb Forces picked Bosnian Muslim prisoners from the different vehicles<sup>1666</sup> as well as from the courtyard of the school, and took them into the school.<sup>1667</sup> Screams and bursts of fire were heard from the school. None of those who had been taken out returned.<sup>1668</sup> During the night between 13 and 14 July, a Bosnian Muslim prisoner called upon his fellow prisoners to resist.<sup>1669</sup> Shortly after, automatic gunfire was heard coming from the direction of the Vuk Karadžić School.<sup>1670</sup>

462. Around 13 July 1995, five to six bodies were seen in front of the Vuk Karadžić School.<sup>1671</sup> A truck carrying bodies was seen driving through the centre of Bratunac town on 14 July 1995.<sup>1672</sup> Furthermore, in the morning of 15 or 16 July 1995, between 40 and 60 male bodies were found scattered in more than one classroom on the ground and first floors of the Vuk Karadžić School.<sup>1673</sup> The bodies were buried in Glogova.<sup>1674</sup>

463. The Trial Chamber finds that an unknown number of Bosnian Muslim prisoners were killed by members of the Bosnian Serb Forces inside and outside the Vuk Karadžić School between the evening of 13 July and the morning of 15 July 1995.

<sup>1661</sup> Ahmo Hasić, T. 1180 (6 Sept 2006).

<sup>1662</sup> *Ibid.*

<sup>1663</sup> *Ibid.*, T. 1181, 1187, 1192–1193, 1222 (6 Sept 2006).

<sup>1664</sup> Mevludin Orić, T. 915–919 (28 Aug 2006); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3029 (14 Apr 2000).

<sup>1665</sup> Orić identified the soldier as a certain “Ilija” from Spat, whom he knew before the war and used to see him in Bratunac and Srebrenica. Mevludin Orić, T. 915–918 (28 Aug 2006), T. 1053 (30 Aug 2006).

<sup>1666</sup> In Mevludin Orić’s vehicle the soldier looked for a certain “Catić” or “Dzanić”, and took away the prisoner who identified himself as being that person. Mevludin Orić, T. 915 (28 Aug 2006).

<sup>1667</sup> Mevludin Orić, T. 915–917 (28 Aug 2006).

<sup>1668</sup> *Ibid.*, T. 918–919 (28 Aug 2006).

<sup>1669</sup> Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9812 (24 May 2004); Mile Janjić, T. 18002 (20 Nov 2007).

<sup>1670</sup> Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9811–9812 (24 May 2004); Mile Janjić, T. 18002 (20 Nov 2007).

<sup>1671</sup> PW-161, T. 9390 (26 Mar 2007); Ex. PIC00077, “Exhibit P01553 (Vuk Karadžić School) marked by PW-161”. See also Momir Nikolić, T. 32946 (21 Apr 2009) (stating that the bodies were by the road in the direction of the municipality building).

<sup>1672</sup> Zoran Petrović T. 18817–18818 (5 Dec 2007).

<sup>1673</sup> PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7883, 7916–7918, 7920 (20 Apr 2004); PW-170, T. 17852, 17863, 17866, 17879, 17881 (19 Nov 2007); Ex. PIC00187, “Aerial image of Bratunac town (Ex. P1552) marked by PW-170”.

<sup>1674</sup> PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7920 (20 Apr 2004); PW-161, T. 9391 (26 Mar 2007). See also Ex. P04492, “Corrigendum to the ‘Update to the summary of forensic evidence – Exhumation of the graves related to Srebrenica – Mar 2009 prepared by Dušan Janc’, 9 April 2009”.

7. Communications to and from the VRS Main Staff on 13 July 1995

464. Prisoners continued to be the topic of a number of orders and communications in the VRS Main Staff on 13 July.<sup>1675</sup> On 13 July, in the early afternoon, the VRS Main Staff, issued an order, type-signed by **Gvero**, instructing the Commands of the Drina Corps, the Zvornik Brigade, the Birač Brigade, and the Vlasenica Brigade to “discover[ing], block[ing], disarm[ing] and capture[ing]” Bosnian Muslims.<sup>1676</sup> It also ordered them to prevent the Bosnian Muslims from crossing over to ABiH-held territory, “place captured and disarmed Muslims in suitable premises where they can be guarded by small forces, and report immediately to the superior command.”<sup>1677</sup>

465. At around 3 p.m. on 13 July 1995, Tolimir issued an order to the Command of the Military Police Battalion of the 65th Motorised Protection Regiment<sup>1678</sup> on the procedure for the treatment of POWs.<sup>1679</sup> Mladić and **Gvero** were copied in.<sup>1680</sup> Tolimir suggested to prohibit “access to all unauthorized individuals, filming and photographing of prisoners, [...] traffic for all United Nations vehicles” on the Zvornik–Vlasenica road and to re-route them via Šekovići until further notice, and to take measures to remove POWs from the main Milići-Zvornik road and place them somewhere out of sight from the ground or air.<sup>1681</sup>

466. In the evening of 13 July, at around 10:30 p.m., Tolimir sent another communication, this time to **Gvero** personally at the Main Staff.<sup>1682</sup> Tolimir informed **Gvero** that should he not find adequate accommodation for all the POWs in the Srebrenica area, space for 800 prisoners had been arranged in Sjemeč camp where they could be used for agricultural work.<sup>1683</sup>

<sup>1675</sup> See Ex. 7D2D00642, “Intercept, 13 July 1995, 11:25 a.m.” (stating that “Beara is sending four buses, two trucks, and one trailer truck to Kasaba to transport Muslim prisoners. They will be dispatched to the camp in Batkovići village, where they will be ‘sorted’ into war criminals and normal soldiers.”); Ljubomir Mitrović, T. 23608, 23613–23616, 23638–23639, 23642–23643 (11 Jul 2008). See *infra*, paras. 1263–1274. See also Ex. P00117, “Drina Corps Order-preventing passage of Muslim groups to Tuzla and Kladanj, Živanović, 13 July 1995”. The Batkovići detention centre was located approximately in the East Bosnia Corps area of responsibility. Novica Simić, T. 28581 (20 Nov 2008). See *infra*, paras. 590–596.

<sup>1676</sup> Exs. P01059, P00045, “VRS Main Staff Order to prevent the passage of Muslim groups towards Tuzla and Kladanj, sent to the Drina Corps, type-signed Gvero, 13 July 1995”, p. 1.

<sup>1677</sup> *Ibid.*

<sup>1678</sup> Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić”. See also Milomir Savčić, T. 15261–15263 (12 Sept 2007).

<sup>1679</sup> Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić”; Novica Simić, T. 28726 (24 Nov 2008). See also Petar Skrbić, T. 15616–15617 (19 Sept 2007).

<sup>1680</sup> *Ibid.*

<sup>1681</sup> Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić”.

<sup>1682</sup> Ex. P00131, “Information on accommodation for prisoners of war, from Tolimir to Gvero personally, 13 July 1995”.

<sup>1683</sup> *Ibid.*, p. 1.

467. Around that time,<sup>1684</sup> Mladić issued an order, similar in content to what Tolimir had proposed earlier that afternoon,<sup>1685</sup> to the Drina Corps and other units,<sup>1686</sup> instructing them to take certain measures in order, *inter alia*, “to ensure the organised conduct of planned combat operations and other activities in the wider area of Srebrenica and Žepa”.<sup>1687</sup> The order further instructed them to prevent the entry of “all uninvited individuals” to the area of combat operations in Srebrenica and Žepa, to close the Konjević Polje-Kravica-Bratunac and Rogatica-Borike-Višegrad roads to traffic and to set up road blocks and check-points at certain cross-roads.<sup>1688</sup> They were also to prevent the entry of all local and foreign journalists and to refrain from giving out information or making statements to the media on the combat situation, especially on POWs, evacuated civilians and escapees.<sup>1689</sup>

#### 8. Meetings held in Bratunac between 13 and 14 July 1995

468. A series of meetings took place on the evening of 13 July and into the early morning of 14 July at the SDS offices in Bratunac. Members of the civilian authorities, including Miroslav Deronjić, met with VRS members, including *inter alia*, **Beara**, to discuss the logistics of the killing operation.<sup>1690</sup> It was eventually decided that the Bosnian Muslim prisoners held in Bratunac were to be transferred to Zvornik where the executions would be carried out.<sup>1691</sup> The burial operation, including possible locations for gravesites and the resources needed, was also discussed in detail.<sup>1692</sup>

<sup>1684</sup> Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995” (showing in the original BCS version “22:30” next to “13 July” indicating the time when the order was sent out and receipt time of 12:20 on 14 July, erroneously marked “13 July”).

<sup>1685</sup> Danko Gojković, Ex. P02776, “92 *ter* statement” (16 May 2006), pp. 24–26; Danko Gojković, T. 10727–10731 (1 May 2007).

<sup>1686</sup> These were the 65th Protection Regiment, the 67th Communications Regiment, the Sector for Morale, Religious and Legal Affairs and Intelligence and Security Services—for information—and to the Rogatica Brigade, the 5<sup>th</sup> Podrinje Brigade, the Romanija Brigade, the Birač Brigade and the Bratunac Brigade, the Milići Brigade, the Vlasenica Brigade, and the Zvornik Brigade. *See* Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995”.

<sup>1687</sup> Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995”.

<sup>1688</sup> *Ibid.*, p. 1.

<sup>1689</sup> *Ibid.*

<sup>1690</sup> Ljubisav Simić, Ex. 4D00606, “92*ter* transcript”, BT. 7625–7627 (15 Apr 2004); Ljubisav Simić, T. 27238–27239, 27245 (22 Oct 2008); Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6226–6227, 6274, 6278 (20 Jan 2004), BT. 6438, 6440–6443, 6447–6450 (22 Jan 2004). *See also* Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6 (testifying about a meeting at the SDS offices, where he saw Deronjić and **Beara**); Momir Nikolić, T. 32937 (21 Apr 2009); **Borovčanin** also overheard **Beara**’s and Deronjić’s argument that evening. Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 83, 92. *See also infra*, paras. 1263–1274.

<sup>1691</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6; Momir Nikolić, T. 32944–32945 (21 Apr 2009), T. 33180 (24 Apr 2009). *See infra*, paras. 472, 1061, 1106, 1270, 1357.

<sup>1692</sup> PW-161, T. 9362, 9367–9372 (23 Mar 2007), T. 9459 (26 Mar 2007), T. 9485–9487, 9553 (private session) (27 Mar 2007 PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7873–7874, 7876, 7901–7902 (20 Apr 2004); PW-170, T. 17862 (closed session) (19 Nov 2007); Momir Nikolić, T. 33127–33130 (private session)

## G. Zvornik Area (13–17 July 1995)

### 1. Introduction

469. The area of responsibility of the Zvornik Brigade stretched along the west bank of the Drina River, from Pilica in the north to the mouth of the Drinjaca tributary in the south.<sup>1693</sup> In July 1995, **Vinko Pandurević** was the Commander,<sup>1694</sup> Dragan Obrenović was the Chief of Staff,<sup>1695</sup> and **Drago Nikolić** was the Chief of Security.<sup>1696</sup> The Zvornik Brigade headquarters, known as the Standard Barracks, was situated in Karakaj along the Konjević Polje-Zvornik-Bijeljina Road, which followed the Drina River.<sup>1697</sup> The Standard Barracks was a compound comprising several buildings behind a manned security gate.<sup>1698</sup> It housed *inter alia* the Brigade Command, the Engineering Company, and the Military Police Company.<sup>1699</sup> The Zvornik Brigade forward command post was located in Kitovnice (the “Kitovnice IKM”), 15 kilometres from the Standard Barracks, towards Orahovac.<sup>1700</sup>

### 2. Lead-up to the Events in Zvornik

470. In the early evening of 13 July 1995, **Drago Nikolić** was at the Kitovnice IKM.<sup>1701</sup> Between 7 and 8 p.m., **Drago Nikolić** called Obrenović and said that **Popović** had informed him that a large number of prisoners were to be brought from Bratunac to Zvornik.<sup>1702</sup> **Popović** also told **Drago Nikolić** that the prisoners were being brought to Zvornik to be killed.<sup>1703</sup> **Nikolić** indicated that Mladić personally ordered this, and that the superior command and **Pandurević** had been

(23 Apr 2009), T. 33355 (28 Apr 2009); PW-162, T. 9230–9232, 9235 (22 Mar 2007). *See infra*, paras. 1263–1274.

<sup>1693</sup> Ex. 7DP02109, “Map 4 from Map Book: Drina Corps Area of Responsibility”; Miodrag Dragutinović, T. 12655–12658 (14 June 2007); Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1. *But see* PW-168, who testified that Kula, Branjevo, Pilica, Ročević, Petkovi and Orahovac (including the school) were outside the area of defence of the battalions of the Zvornik Brigade, and at a considerable distance from the Brigade’s front lines where most of its active personnel were stationed. PW 168, T. 16131 (closed session) (10 Oct 2007).

<sup>1694</sup> Vinko Pandurević, T. 30668–30669 (27 Jan 2009); Ex. 7DP00372, “Detail of Professional Military Personnel for Vinko Pandurević”, pp. 4–8.

<sup>1695</sup> Vinko Pandurević, T. 30686 (27 Jan 2009); *supra*, para. 147.

<sup>1696</sup> Vinko Pandurević, T. 30781–30782 (28 Jan 2009); *supra*, para. 148.

<sup>1697</sup> *See supra*, para. 142.

<sup>1698</sup> *See* Ex. 3D00498, “Photo”; Ex. 3DIC00245, “Exhibit 3D00497 (photo) marked by Momir Nikolić”; Ex. 3DIC00244, “Document 3D00502 marked by Momir Nikolić”; Momir Nikolić, T. 33221–33222 (24 Apr 2009), T. 33241–33244 (27 Apr 2009).

<sup>1699</sup> *See supra*, paras. 142, 158; Miodrag Dragutinović, T. 12565 (13 June 2007) (stating that the Engineering Company had its headquarters at the Standard Barracks).

<sup>1700</sup> *See supra*, para. 142; Milorad Birčaković, T. 11013 (7 May 2007).

<sup>1701</sup> *See infra*, para. 1345.

<sup>1702</sup> PW-168, T. 15830 (closed session) (26 Sept 2007). The Trial Chamber notes that this is disputed by **Nikolić**. For a detailed analysis see *infra*, paras. 1346–1356.

<sup>1703</sup> *Ibid.*, T. 15830–15831 (closed session) (26 Sept 2007). **Nikolić** said that “The order is to bring the prisoners there, to the Zvornik sector, and to shoot them”. *Ibid.*



informed.<sup>1704</sup> **Nikolić** also said that the prisoners would be brought by **Beara** and **Popović**, who had been tasked with organising and carrying out the operation and that **Popović** had asked **Nikolić** to assist.<sup>1705</sup>

471. **Nikolić** asked **Obrenović** if he could have at his disposal **Miomir Jasikovac**, the Commander of the **Zvornik Brigade Military Police Company**<sup>1706</sup> and a military police platoon.<sup>1707</sup> On the evening of 13 July, on **Obrenović's** order, **Miomir Jašikovac** and his military police platoon were available to assist with the task.<sup>1708</sup> **Jasikovac** ordered members of the **Zvornik Brigade Military Police Company** to go to the **Grbavci School** in **Orahovac** to prepare the school for the arrival of prisoners.<sup>1709</sup> Once at the school, the **Military Police** followed **Jasikovac's** orders, and made the necessary preparations.<sup>1710</sup> That evening, a convoy of six buses of **Bosnian Muslim** men left **Bratunac** town and arrived at the **Grbavci School**.<sup>1711</sup> The buses were accompanied by an unidentified, high ranking **VRS** officer who spoke to **Jašikovac** at the school.<sup>1712</sup> **Nikolić** was also present at the school that night, and he assigned members of the **Zvornik Brigade Military Police Company** to stay overnight behind the school to guard the prisoners.<sup>1713</sup> Unidentified **VRS** soldiers were also at the school that night.<sup>1714</sup>

472. On 14 July at around 8 a.m., **Nikolić**, **Popović** and **Beara** met at the **Standard Barracks** for 15 to 20 minutes.<sup>1715</sup> Although there is no direct evidence of what was discussed at this meeting, in light of the timing of this meeting and these men's positions and their prior and subsequent

<sup>1704</sup> PW-168, T. 15831 (closed session) (26 Sept 2007).

<sup>1705</sup> *Ibid.*, T. 15830–15833 (closed session) (26 Sept 2007).

<sup>1706</sup> *Ibid.*, T. 15759 (closed session) (25 Sept 2007).

<sup>1707</sup> PW-168, T. 15830–15832 (closed session) (26 Sept 2007). **Nikolić** first requested a military police company but when told it was impossible he insisted on having **Jašikovac** and a platoon. *Ibid.*, T. 16050 (closed session) (9 Oct 2007).

<sup>1708</sup> PW-168, T. 15759 (closed session) (25 Sept 2007), T. 15830–15833, 15836–15837 (closed session) (26 Sept 2007). See *infra* paras. 1345–1356.

<sup>1709</sup> **Dragoje Ivanović**, T. 14539–14541 (30 Aug 2007); **Stanoje Birčaković**, T. 10741–10744, 10764 (1 May 2007); PW-143, T. 6527 (30 Jan 2007); **Stevo Kostić**, T. 26003 (22 Sept 2008); PW-142, T. 6441, 6443 (private session), 6446–6447 (partially private session), (29 Jan 2007). Although none of these witnesses could identify the specific date of the evening that the members of the **Zvornik Brigade Military Police Company** went to the **Grbavci School**, it is clear that they went to the school on the evening before the day that the prisoners were killed. **Dragoje Ivanović**, T. 14539–14552 (30 Aug 2007); **Stanoje Birčaković**, T. 10741–10754 (1 May 2007); PW-143, T. 6527–6541 (30 Jan 2007). The **Zvornik Brigade Military Police** attendance roster shows 14 July as the day on which all but two member of the **Zvornik Brigade Military Police** were away from the **Standard Barracks**. Ex. P00354, "Zvornik Brigade Military Police attendance roster, July 1995".

<sup>1710</sup> **Dragoje Ivanović**, T. 14540–14541 (30 Aug 2007); **Stanoje Birčaković**, T. 10744, 10766 (1 May 2007); PW-142, T. 6446–6447 (partially private session) (29 Jan 2007).

<sup>1711</sup> PW-162, T. 9216 (22 Mar 2007); PW-169, T. 17324, 17326–17327 (1 Nov 2007). PW-169, who was transported from **Bratunac** to **Orahovac** on 13 July 1995, testified that he travelled in a convoy of six vehicles. PW-169, T. 17327 (1 Nov 2007). See also **Stanoje Birčaković**, T. 10745–10746, 10766 (1 May 2007); **Dragoje Ivanović**, T. 14541, 14543 (30 Aug 2007).

<sup>1712</sup> **Dragoje Ivanović**, T. 14542 (30 Aug 2007).

<sup>1713</sup> PW-143, T. 6529–6533 (partially private session) (30 Jan 2007); see *infra*, paras. 1350–1356.

<sup>1714</sup> PW-143, T. 6530–6531 (30 Jan 2007).

actions,<sup>1716</sup> the Trial Chamber finds that this meeting concerned the organisation and coordination of the killing operation. After the meeting with **Popović** and **Beara**, **Nikolić** and **Birčaković** went to the Vidikovac Hotel, about two kilometres from Zvornik, and waited for the buses from Bratunac.<sup>1717</sup>

473. On 14 July, prisoners who had been detained in various locations around Bratunac were made to board buses<sup>1718</sup> accompanied, *inter alia*, by members of the Bratunac Brigade Military Police<sup>1719</sup> and civilian police from Zvornik.<sup>1720</sup> There were a number of buses which formed a convoy.<sup>1721</sup> It was crowded and extremely hot onboard the buses—prisoners collapsed, some died, and others were shot trying to escape.<sup>1722</sup>

474. **Popović** accompanied the convoy of vehicles through Konjević Polje to Zvornik in his dark blue Golf.<sup>1723</sup> He ordered the Commander of the Bratunac Brigade Military Police to follow his

<sup>1715</sup> Milorad Birčaković, T. 11014–11017 (7 May 2007), T. 11090–11091 (8 May 2007). *See infra*, paras. 1106, 1272, 1357.

<sup>1716</sup> In particular that **Popović** called **Nikolić** the night before to discuss the plan to kill the Bosnian Muslim males (*supra*, para. 470 and *infra*, para. 1104) and immediately after the meeting, **Popović** and **Nikolić** facilitated the transport of Bosnian Muslim males at Bratunac to Zvornik, where they were killed in the days that followed (*infra*, paras. 474, 1107, 1358). The Trial Chamber also notes its findings on the role of the Security Branch in the murder operation. *See infra*, para. 1068.

<sup>1717</sup> Milorad Birčaković, T. 11017 (7 May 2007), T. 11121 (8 May 2007).

<sup>1718</sup> In some vehicles new soldiers replaced those that guarded the prisoners in Bratunac, while in others they remained the same. PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3031 (14 Apr 2000); Mevludin Orić, T. 934–935 (29 Aug 2006); PW-169, T. 17325 (1 Nov 2007); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9815–9816 (24 May 2004); Ahmo Hasić, T. 1191 (6 Sept 2006).

<sup>1719</sup> Ex. P00220, “Bratunac Brigade Military Police logbook, 30 June 1995 to 29 April 1996”, p. 14 (where the report for 14 / 15 July reads: “The police was engaged in the escort of Muslim refugees”); PW-138, T. 3857, 3859 (private session) (9 Nov 2006).

<sup>1720</sup> PW-142 testified that the prisoners were guarded by civilian policemen in blue combat overalls, some armed and some wearing flak jackets. He recognised some civilian policemen from Zvornik who were not part of the Zvornik Brigade. PW-142, T. 6446, 6449, 6467–6469, 6475–6476, 6481–6482 (private session) (29 Jan 2007). *See also* Dragoje Ivanović, T. 14541 (30 Aug 2007) (testifying that he saw VRS officers on the buses that arrived at the school in Orahovac); Milorad Birčaković, T. 11019 (7 May 2007), T. 11085, 11122, 11149–11150 (8 May 2007), T. 11158–11159 (9 May 2007) (confirming his previous statement that the security guards on the bus were civilian policemen in blue uniforms, then testifying that he was not sure whether the security guards were civilian policemen or military police, then conceding that there might have been military police officers as well as civilian police officers).

<sup>1721</sup> PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1400-1402 (21 July 2003); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3029–3030 (14 Apr 2000); Mevludin Orić, T. 934–938 (29 Aug 2006); Ahmo Hasić, T. 1190-1191 (6 Sept 2006), T.1291–1292 (7 Sept 2006); PW-169, T. 17326–17328 (1 Nov 2007)...*See also* PW-110, T. 675–677 (24 Aug 2006), T. 761 (25 Aug 2006); PW-138, T. 3837–3844 (private session) (8 Nov 2006), T. 3849 (9 Nov 2006); Milorad Birčaković, T. 11017–11018 (7 May 2007); Nebojša Jeremić, T. 10423–10426 (24 Apr 2007), T. 26074, 26085–26087 (23 Sept 2008); Stevo Kostić, T. 26002–26003 (22 Sept 2008), T. 26074, 26077 (23 Sept 2008).

<sup>1722</sup> PW-110, T. 674 (24 Aug 2006); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3029–3030 (14 Apr 2000); PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1400, 1402 (21 July 2003); Ahmo Hasić, T. 1191–1192 (6 Sept 2006), T. 1273–1274, 1291–1292 (7 Sept 2006).

<sup>1723</sup> PW-138, T. 3842–3844 (private session) (8 Nov 2006), T. 3849–3851 (9 Nov 2006) (testifying that **Popović** led the convoy to the Grbavci School). **Popović** argued that **Popović** was elsewhere on 14 July, and this evidence is analysed at *infra*, paras. 1114–1115.

vehicle in a UN APC.<sup>1724</sup> The convoy stopped at the Vidikovac Hotel *en route* to Zvornik, where **Nikolić** and Birčaković were waiting.<sup>1725</sup> There, Birčaković joined the convoy and it continued on past Karakaj, to the Grbavci School.<sup>1726</sup> **Nikolić** made his own way from the Vidikovac Hotel to the Grbavci School in his Opel Rekord.<sup>1727</sup>

### 3. Detentions and Killings of Bosnian Muslim Males (13–17 July)

#### (a) Orahovac (13–16 July)<sup>1728</sup>

##### (i) Detentions – Grbavci School (13–14 July)

475. Orahovac is a small hamlet north-west of Zvornik.<sup>1729</sup> It is located approximately 10 kilometres west of the Standard Barracks.<sup>1730</sup> The Grbavci School is located on the main road in the centre of Orahovac.<sup>1731</sup>

476. On 13 July, civilian policemen accompanied the Bosnian Muslim prisoners on buses to the Grbavci School.<sup>1732</sup> Upon arrival, these policemen escorted the Bosnian Muslim males into the gymnasium, assisted by Zvornik Brigade Military Policemen and unidentified VRS officers.<sup>1733</sup>

<sup>1724</sup> PW-138, T. 3796 (private session), T. 3837–3840–3843 (private session) (8 Nov 2006); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3029–3030, 3032 (14 Apr 2000); Mevludin Orić, T. 934–938 (29 Aug 2006) (testifying that the convoy was headed by an UNPROFOR APC); Stanoje Birčaković, T. 10745–10746, 10766 (1 May 2007) (testifying that the convoy comprised 15–20 buses, was headed by an UN APC).

<sup>1725</sup> Milorad Birčaković, T. 11017–11019 (7 May 2007), T. 11083–11085 (8 May 2007).

<sup>1726</sup> PW-138, T. 3838, 3842–3844 (private session) (8 Nov 2006); Milorad Birčaković, T. 11017–11019 (7 May 2007).

<sup>1727</sup> Milorad Birčaković, T. 11022 (7 May 2007), T. 11124–11125 (8 May 2007).

<sup>1728</sup> The Indictment alleges that hundreds of Bosnian Muslim males were transported from Bratunac to Grbavci School, where they were detained and two prisoners were killed. Approximately 1,000 Bosnian Muslim males were then transported from the Grbavci School to a nearby field where they were executed. Indictment, para. 30.6.

<sup>1729</sup> Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1; Mevludin Orić, T. 937 (29 Aug 2006).

<sup>1730</sup> Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1.

<sup>1731</sup> Milorad Birčaković, T. 11031, 11035 (7 May 2007); Ex. P01700, “Aerial of Grbavci School and LZ-02 and LZ-01”.

<sup>1732</sup> *See supra*, para. 473.

<sup>1733</sup> Stanoje Birčaković, T. 10745–10746, 10766 (1 May 2007); Dragoje Ivanović, T. 14541, 14543 (30 Aug 2007); PW-169, T. 17328 (1 Nov 2007); PW-142, T. 6441, 6443–6445, 6476, 6479–6482 (private session) (29 Jan 2007);; Nada Stojanović, Ex. 3D00511, “92 *quater* transcript of interview” (1 July 2002), pp. 12, 17, 20–21, 38, 40; Milorad Birčaković, T. 11021–11022 (7 May 2007), T. 11086–11087 (8 May 2007); Lazar Ristić, T. 10075–10077, 10080–10082 (16 Apr 2007). *See also* Ex. P00289, “Logbook Kp-6 of transport service detailing vehicle Movements, 2 Dec 1994 to 31 Dec 1995”, p. 8 (recording that a Zvornik Brigade vehicle was in Orahovac at 0100 hours on 13 July with the notation “Orahovac – police”); Sreten Milosevic, T. 34014 (15 July 2009) (stating that he thinks the BCS version says “0100” – the translation says that this number is illegible). The four members of the Zvornik Brigade Military Police who Dragoje Ivanović said accompanied him to Orahovac as well as Dragoje Ivanović himself are all shown to be “in the field” on 14 July according to the attendance roster of the Zvornik Brigade Military Police. Ex. P00354, “Zvornik Brigade Military Police Unit Attendance Roster for July 1995”. *See also* Dragoje Ivanović, T. 14540 (30 Aug 2007). The Prosecution alleged that the attendance roster was altered so as to hide their presence however. Stevo Kostić confirmed that Zvornik Brigade Military Police were sent to the Grbavci School and stated during his testimony that he altered the attendance roster for ten soldiers who were at Orahovac to show that they were in the field, although he said that this was standard practice, was not done to hide information, and not done pursuant to any order. Stevo Kostić, T. 26015–26016, 26025, 26043, 26053–26057

477. On 13 and 14 July, the Zvornik Brigade Military Police guarded the prisoners.<sup>1734</sup> Between 20 and 40 VRS soldiers—unknown to the Zvornik Brigade Military Policeman who saw them—were also present on 14 July.<sup>1735</sup>

478. In the morning of 14 July, the convoy of vehicles accompanied by **Popović** arrived at the Grbavci School carrying prisoners who had previously been detained in various locations in Bratunac.<sup>1736</sup> Each bus had civilian police on board, who escorted the prisoners inside together with the Zvornik Brigade Military Police already present at the school.<sup>1737</sup> The prisoners were forced to leave their personal belongings and some of their clothing in a pile outside the school.<sup>1738</sup> By the time the last group of men was brought to the school, hundreds of prisoners were tightly packed in the gymnasium, to the point where for some, the only place to sit was in another man's lap.<sup>1739</sup> The guards occasionally shot at the walls and the ceiling.<sup>1740</sup> The prisoners received no food and little water. The only toilet facility provided was a bucket.<sup>1741</sup> The wounded did not receive medical care and some elderly people fainted from the heat.<sup>1742</sup>

(ii) Killings (14 July)

479. At around noon on 14 July, members of the Zvornik Brigade Engineering Company assembled at a field a short distance from the Grbavci School and began digging a large pit.<sup>1743</sup> Meanwhile, at some point in the afternoon of 14 July, ten members of the 4th Battalion of the

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(22 Sept 2008), 26071 (23 Sept 2008); Ex. P00354, "Zvornik Brigade Military Police Unit Attendance Roster for July 1995". Based on an assessment of all the evidence, the Trial Chamber is satisfied beyond reasonable doubt that members of the Zvornik Brigade Military Police were at the Grbavci School on the evening of 13 July and on 14 July 1995.

<sup>1734</sup> See *supra*, para. 476, fn. 1733, where the Trial Chamber finds that members of the Zvornik Brigade Military Police were at the Grbavci School on the evening of 13 July and on 14 July.

<sup>1735</sup> Dragoje Ivanović, T. 14544 (30 Aug 2007); Stanoje Birčaković, T. 10747 (1 May 2007) (testifying that at around 8 a.m., between 20 and 40 Bosnian Serb soldiers unknown to him arrived); Tanacko Tanić, T. 10327–10335 (23 Apr 2007), T. 10400–10403 (24 Apr 2007). Sreten Milošević, the Zvornik Brigade Assistant Commander for Logistics, was present at the Grbavci School on 14 July. Sreten Milošević, T. 33977 (15 July 2009).

<sup>1736</sup> Mevludin Orić, T. 908–909 (28 Aug 2006), T. 933–934 (29 Aug 2006); PW-169, T. 17315–17316, 17333, 17345 (1 Nov 2007); PW-110, T. 663, 665–666 (24 Aug 2006). See *supra*, para. 1108.

<sup>1737</sup> PW-142, T. 6446, 6475–6476, 6481 (29 Jan 2007); Milorad Birčaković, T. 11122–11123 (8 May 2007).

<sup>1738</sup> Mevludin Orić, T. 938–939 (29 Aug 2006); PW-110, T. 677, 695–696 (24 Aug 2006) (testifying that his leather jacket was taken away from him on arrival, and others were forced to remove their shirts). See also, Milorad Birčaković, T. 11029 (7 May 2007); Tanacko Tanić, T. 10336 (23 Apr 2007) (testifying that he saw a pile of clothes and a crutch at the Grbavci School on 14 July).

<sup>1739</sup> PW-169, T. 17332–17333 (1 Nov 2007).

<sup>1740</sup> PW-110, T. 698–699 (24 Aug 2006). See also Jean-René Ruez, T. 1479–1480 (11 Sept 2006); Ex. P02103, "Documents tendered with the statement of the witness Jean-René Ruez", pp. 126–127, 129 (showing bullet holes in the walls and ceiling of the Grbavci School).

<sup>1741</sup> PW-110, T. 700–702 (24 Aug 2006).

<sup>1742</sup> Mevludin Orić, T. 942–945 (29 Aug 2006), T. 1005 (30 Aug 2006); PW-169, T. 17333 (1 Nov 2007); PW-110, T. 700–701 (24 Aug 2006).

<sup>1743</sup> Cvijetin Ristanović, Ex. P02256, "92 *ter* transcript", BT. 5361–5364, 5371–5372, 5406–5408 (1 Dec 2003).

Zvornik Brigade arrived at the gymnasium.<sup>1744</sup> Lazar Ristić, the acting Commander of the 4th Battalion, had sent his men pursuant to a request from Milorad Trbić.<sup>1745</sup>

480. After the arrival of the 4th Battalion soldiers, guards began shooting at the walls and the ceilings, and sporadic shooting could be heard outside.<sup>1746</sup> At least two prisoners were taken out of the gymnasium—shortly after which a burst of gunfire could be heard—never to return.<sup>1747</sup> There were at least two dead bodies observed outside the school that afternoon.<sup>1748</sup> Another prisoner who stood up and proclaimed “[d]on’t be afraid, people. There is enough of us” was shot at the entrance to the gymnasium in front of the prisoners.<sup>1749</sup>

481. In the midst of these incidents, transportation to the execution site began. The prisoners first entered a locker room where they had their hands tied and were blindfolded.<sup>1750</sup> Next, each prisoner was given a cup of water to drink.<sup>1751</sup> The prisoners were then led onto TAM trucks by members of the Zvornik Brigade including members of the 4th Battalion, the Logistics Company and the Military Police.<sup>1752</sup> Most of the civilian police had by this time left Grbavci School.<sup>1753</sup>

<sup>1744</sup> Lazar Ristić, T. 10035–10037, 10062–10063, 10068–10069 (16 Apr 2007), T. 10116 (17 Apr 2007); PW-168, T. 15888 (closed session) (27 Sept 2007); Milorad Birčaković, T. 11039 (7 May 2007), T. 11143 (8 May 2007). At some point on the afternoon of 14 July, Mladić came to the gymnasium and addressed the prisoners. Mevludin Orić, T. 947 (29 Aug 2006); PW-169, T. 17334 (1 Nov 2007).

<sup>1745</sup> Lazar Ristić, T. 10035–10037, 10062–10063, 10068–10069 (16 Apr 2007), T. 10116 (17 Apr 2007) (testifying that he was told on 14 July that Gojko Simić was at the Grbavci School, although he knew that Simić was on leave that day); Milorad Birčaković, T. 11038–11039 (7 May 2007) (testifying that Gojko Simić, a member of the 2nd Company of the 4th Battalion whom Birčaković had known since 1992, was one of the men sent); PW-168, T. 15888 (closed session) (27 Sept 2007) (stating that Ristić told him he had sent men to Orahovac on 14 July, and his men were there when the executions were taking place). The Trial Chamber is satisfied that Gojko Simić was present at the Grbavci School on 14 July.

<sup>1746</sup> Mevludin Orić, T. 945–946 (29 Aug 2006), T. 1006 (30 Aug 2006). *See also* Jean-René Ruez, T. 1479–1480 (11 Sept 2006); Ex. P02103, “Documents tendered with the statement of the witness Jean-René Ruez”, pp. 126–127, 129 (showing bullet holes in the roof of the Grbavci School).

<sup>1747</sup> PW-110, T. 698–699, 703 (24 Aug 2006), T. 765 (25 Aug 2006); PW-169, T. 17333–17334 (1 Nov 2007). *See* Mevludin Orić, T. 945–946 (29 Aug 2006), T. 1006 (30 Aug 2006).

<sup>1748</sup> Tanacko Tanić, T. 10336 (23 Apr 2007).

<sup>1749</sup> Mevludin Orić, T. 945–946 (29 Aug 2006).

<sup>1750</sup> *Ibid.*, T. 949, 952–953, 955–956 (29 Aug 2006); PW-169, T. 17335–17336 (1 Nov 2007); PW-110, T. 708–712 (24 Aug 2006); Milorad Birčaković, T. 11025–11026 (7 May 2007); PW-142, T. 6454, 6458 (private session) (29 Jan 2007); Sreten Milošević, T. 33978 (15 July 2009) (testifying that as the men were blindfolded as they boarded the buses).

<sup>1751</sup> PW-110, T. 709 (24 Aug 2006), T. 765–766 (25 Aug 2006); PW-169, T. 17335 (1 Nov 2007); Mevludin Orić, T. 949 (29 Aug 2006).

<sup>1752</sup> Mevludin Orić, T. 953–956 (29 Aug 2006); PW-169, T. 17335–17336 (1 Nov 2007); PW-110, T. 708–712 (24 Aug 2006); Milorad Birčaković, T. 11025–11026, 11038 (7 May 2007) (testifying that one of the drivers was from the Zvornik Brigade 4th Battalion); PW-142, T. 6454, 6458 (private session) (29 Jan 2007); PW-101, T. 7559, 7571–7572, 7579 (22 Feb 2007), T. 7682–7683 (23 Feb 2007); 3DPW-10, T. 25658–25660 (private session), 25664–25668, 25671–25672 (15 Sept 2008) (testifying that at least two members of the Zvornik Brigade transported the prisoners).

<sup>1753</sup> PW-142, T. 6454, 6476 (29 Jan 2007); Milorad Birčaković, T. 11087, 11128 (8 May 2007) (testifying that once or twice, a civilian policeman from Bijeljina accompanied him as he followed the trucks to and from the execution site, although the reason for this was because a brother of this civilian policeman had been imprisoned in Srebrenica and he was there to ask people (presumably the prisoners on the buses) for information).

482. The prisoners were transported to a field approximately one kilometre from the school where members of the Zvornik Brigade Engineering Company had commenced work digging a large pit.<sup>1754</sup> At around 2 p.m. on 14 July, Obrenović heard on the radio that the Duty Officer was requesting two machine operators from the Zvornik Brigade Engineering Company to “go build a road” and when he inquired about this request, he was told that the two machine operators had to go to Orahovac “in relation to the task being performed by **Beara and Popović**”.<sup>1755</sup>

483. Soldiers from the 4th Battalion and the Logistics Company transported the prisoners to the execution site.<sup>1756</sup> The trucks, at least one of which belonged to the Zvornik Brigade,<sup>1757</sup> made several trips back and forth throughout the afternoon and into the evening, with trucks arriving and leaving approximately every ten minutes.<sup>1758</sup> Soon after the first trucks left, gunfire was heard from the direction in which the trucks had travelled.<sup>1759</sup>

484. Once at the field, the prisoners were ordered off the trucks, lined up and shot with automatic rifles.<sup>1760</sup> One of the shooters was a member of the 4th Battalion of the Zvornik Brigade.<sup>1761</sup> The prisoners fell upon one another as the shots were fired.<sup>1762</sup> Some wounded prisoners asked to be killed but were left lying in pain for some time before being shot again at close range.<sup>1763</sup>

485. Mevludin Orić described the killings as follows:

My relative was killed immediately. He was screaming, and he was squeezing my hand very tight. I pushed his hand, and I threw myself on the ground. And he fell on me, on the lower side of my

<sup>1754</sup> Cvijetin Ristanović, Ex. P02256, “92 *ter* transcript”, BT. 5367–5372, 5407–5408 (1 Dec 2003); Cvijetin Ristanović, T. 13620–13621 (10 July 2007) (testifying that the pit was dug about a kilometre from the school along the road between Orahovac and Križeviči, near a water point and an underpass of the Živinice/Zvornik railroad). *See also*, Milorad Birčaković, T. 11031–11035 (7 May 2007); Ex. PIC00104, “Exhibit P01700 marked by Milorad Birčaković”; Ex. PIC00105, “Exhibit P01700 marked by Milorad Birčaković”.

<sup>1755</sup> PW-168, T. 15842–15846, 15853–15857 (closed session) (26 Sept 2007) (quotation at T. 15845).

<sup>1756</sup> Milorad Birčaković, T. 11038 (7 May 2007); 3DPW-10, T. 25658–25660 (private session), 25662–25674 (15 Sept 2008). *See also* Sreten Milošević, T. 33978 (15 July 2009).

<sup>1757</sup> Ostoja Stanojević, Ex. P02260, “92 *ter* transcript”, BT. 5675, 5694–5695 (4 Dec 2003) (testifying that despite the fact that the Zvornik Brigade vehicle log records his name as a driver who went to Orahovac on 14 July with a TAM truck, he merely filled the vehicle with petrol and did not go to Orahovac on 14 July). *See* Ex. P00298, “Exhibit P-517 - Case No. IT-02-60-T - Zvornik Brigade Vehicle Log Book for TAM 75 (M-5264) (1 July 1995–31 July 1995)”. The Trial Chamber finds that, regardless of the driver, a truck belonging to the Zvornik Brigade was at Orahovac on 14 July.

<sup>1758</sup> Mevludin Orić, T. 962 (29 Aug 2006) (testifying that trucks arrived every four or five minutes); PW-110, T. 713, 715 (24 Aug 2006) (testifying that trucks arrived every 10 to 15 minutes); PW-169, T. 17336–17337 (1 Nov 2007); Stanoje Birčaković, T. 10753–10754 (1 May 2007).

<sup>1759</sup> PW-143, T. 6540–6541 (30 Jan 2007).

<sup>1760</sup> Mevludin Orić, T. 955–956 (29 Aug 2006); PW-169, T. 17335–17336 (1 Nov 2007); PW-110, T. 712 (24 Aug 2006).

<sup>1761</sup> PW-110, T. 717–718 (private session) (24 Aug 2006), T. 731–732 (private session) (25 Aug 2006) (testifying that he recognised the voice of Gojko Simić, a member of the 4th Battalion of the Zvornik Brigade, at the execution site telling others to gather ammunition and go to the meadow where the grass had been mowed to continue killing, and he assumed that Simić was in charge). *See supra*, para. 479, fn. 1745, where the Trial Chamber finds that Gojko Simić was at Orahovac on 14 July.

<sup>1762</sup> Mevludin Orić, T. 956 (29 Aug 2006).

<sup>1763</sup> *Ibid.*, T. 956–957, 962 (29 Aug 2006); PW-110, T. 712–715 (24 Aug 2006), T. 727–728 (25 Aug 2006).

back, and from that moment on I pretended I was dead. He was shaking. His body was shaking on my body, and then he went stiff. He died on me. And the rest of the group, maybe two or three of them, started wailing and screaming because they were wounded, and these other men came and finished them off. And that's how it continued. People were being brought there and killed.<sup>1764</sup>

486. Milorad Birčaković, a member of the Zvornik Brigade Military Police, followed one of the trucks in an Opel Rekord as it drove to and from the execution site.<sup>1765</sup> He escorted the trucks four to six times, once or twice accompanied by a civilian policeman from Bijeljina.<sup>1766</sup> Cvijetin Ristanović, a member of the Zvornik Brigade Engineering Company, used an excavator from the Zvornik Brigade to dig graves while the killings were taking place.<sup>1767</sup> In the evening of 14 July, **Nikolić** and a "Lieutenant Colonel or Colonel" were present during the executions.<sup>1768</sup>

487. PW-101 watched as the prisoners were lined up and shot.<sup>1769</sup> He testified:

In that heap, in that pile of dead bodies, who did not resemble people any longer, this was just a pile of flesh in bits, and then a human being emerged. I say a human being, but it was actually a boy of some five to six years. It is unbelievable. Unbelievable. A human being came out and started moving towards the path, the path where men with automatic rifles stood doing their job. [...] And then all of a sudden they lowered their rifles and all of them, to the last one, just froze. And it was just a child there. Had it been a person of 70 or 80 years old, it would have been horrible, let alone an innocent, sweet child. And the child was covered in bits of bowel tissue of other people. [...] And as the child was emerging out of the pile of those who had been executed, he was saying, "Baba," this is how they call father. He was saying, "Baba, where are you?"<sup>1770</sup>

488. According to PW-101, the "Lieutenant Colonel or Colonel" asked the soldiers what they were waiting for and said "Just finish him off."<sup>1771</sup> The soldiers refused, and the boy was ultimately taken to the hospital in Zvornik by PW-101.<sup>1772</sup>

<sup>1764</sup> Mevludin Orić, T. 956 (29 Aug 2006).

<sup>1765</sup> Milorad Birčaković, T. 11025–11029, 11031, 11035, 11037 (7 May 2007), T. 11087, 11126, 11129 (8 May 2007) (testifying that he was ordered to follow the buses to a water source, the location of which he indicated on an aerial photograph of the area). See Ex. P01700, "Aerial image of Grbavci School and LZ-02 and LZ-01"; Ex. PIC00103, "Exhibit P01700 marked by Milorad Birčaković". See also, Ex. P02103, "Documents tendered with statement of witness Jean-René Ruez", p. 135 (showing that the place which Birčaković indicated was where the graves were later found).

<sup>1766</sup> Milorad Birčaković, T. 11027–11028 (7 May 2007), T. 11087, 11128 (8 May 2007).

<sup>1767</sup> Cvijetin Ristanović, Ex. P02256, "92 ter transcript", BT. 5361–5364, 5406–5408 (1 Dec 2003); Cvijetin Ristanović, T. 13627–13629 (10 July 2007); Ex. P00300, "Exhibit P-515 - Case No. IT-02-60-T - Zvornik Brigade Vehicle Log Book for Rovakopac (C-3117)" (recording that on 14 July a backhoe excavator made a trip "Base-Orahovac-Return" for the purpose of "trench digging"); PW-169, T. 17337 (1 Nov 2007; PW-110, T. 715, 719–721, 723 (24 Aug 2006) (testifying that a loader arrived and its lights lit the area while the killing continued); Ex. P02851, "Zvornik Brigade Engineering Company attendance roster, July 1995"; Mevludin Orić, T. 957 (29 Aug 2006) (testifying that he heard the sound of a construction machine at the execution site).

<sup>1768</sup> PW-101, T. 7581–7582, 7585–7586, 7589–7590 (22 Feb 2007). For a detailed analysis of the role **Nikolić** played, see *infra*, paras. 1361–1365. See also the findings as to the identification of the "Lieutenant Colonel or Colonel" at *infra*, paras. 1111–1112.

<sup>1769</sup> PW-101, T. 7580 (22 Feb 2007).

<sup>1770</sup> *Ibid.*, T. 7581–7582 (22 Feb 2007).

<sup>1771</sup> *Ibid.*, T. 7581–7582 (22 Feb 2007) (quotation at T. 7582).

<sup>1772</sup> *Ibid.*, T. 7582–7584 (22 Feb 2007), T. 7659–7660 (23 Feb 2007). See also PW-105, T. 7742–7751 (26 Feb 2007); Ex. P02452 (confidential); PW-101, T. 7596 (22 Feb 2007). There are differing accounts before the Trial Chamber of the boy's journey from the execution site to the hospital. PW-101 said that he was alone with the boy, however Tanacko Tanić said that he was also present in the van, along with Sreten Milošević and others. Regardless of this

(iii) Burials (14–15 July)

489. As previously stated, the graves were dug as the executions took place,<sup>1773</sup> and both of these tasks continued into the evening.<sup>1774</sup> The order to dig the grave came from Dragan Jokić, Duty Officer and Chief of Engineering for the Zvornik Brigade.<sup>1775</sup> Upon arrival at Orahovac, Cvijetin Ristanović took orders from Slavko Bogičević, Deputy Commander of the Engineering Company.<sup>1776</sup>

490. The burials continued on 15 July, when Ristanović was ordered to return to Orahovac by Damjan Lazarević, his Platoon Commander in the Zvornik Brigade Engineering Company.<sup>1777</sup> On this day, Ristanović dug a second grave and noticed approximately four to six people dressed in civilian work clothes (from the civilian protection or the Zvornik public utility company), and soldiers.<sup>1778</sup> He also saw corpses at the site.<sup>1779</sup>

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discrepancy, Tanić confirmed that the boy “who survived the execution” was present in the van with PW-101, and that PW-101 drove the boy to the hospital in Zvornik. Tanacko Tanić, T. 10351–10352, 10353 (private session) (23 Apr 2007). 3DPW-10 said that PW-101 took the boy from the Grbavci School, not the execution site. 3DPW-10, T. 25688 (private session) (15 Sept 2008). Mirko Šakotić, who was on duty in the traffic unit of the Zvornik Brigade on 14 July said that he sent PW-101 to Užice in Serbia on that day, as indicated in the Zvornik Brigade’s vehicle log for July 1995, and that the “loko” (local trips) entry for that day could not have covered a journey to Orahovac. Mirko Šakotić, T. 25768–25770 (16 Sept 2008); Ex. 3D00473 (confidential), p. 3. PW-101 on the other hand said that his journey to Orahovac was covered by “loko”. PW-101, T. 7619–7621 (private session) (22 Feb 2007). Taking into account all of the evidence, the Trial Chamber finds that the contradictions in the evidence are not capable of undermining the essence of PW-101’s testimony, nor are they capable of undermining PW-101’s credibility. The Trial Chamber therefore accepts the evidence of PW-101.

<sup>1773</sup> Cvijetin Ristanović, Ex. P02256, “92 *ter* transcript”, BT. 5363–5387, 5406–5407 (1 Dec 2003); Cvijetin Ristanović, T. 13622, 13625–13626 (10 July 2007) (testifying that more than once, he was ordered to stop digging and turn his back as a truck approached, after which he heard shouting and gunfire, he saw a number of dead bodies and he used a G-700 owned by a private company in Zvornik); Ex. P00297, “Zvornik Brigade Engineering Company Daily Orders Logbook”, pp. 15–16 (showing that a BGH-700 and a ULT-220 were working in Orahovac on 15 and 16 July); Damjan Lazarević, T. 14446–14451, 14457–14461, 14471–14472 (29 Aug 2007) (testifying that he saw numerous dead bodies in several locations at the execution site, and a ULT-220 being used to dump bodies in the graves); Ex. P00302 “Exhibit P-522-Case No. IT-02-60-T – Zvornik Brigade Vehicle Log Book for ULT 220 from Birač-Holding”, pp. 1–2 (indicating that a ULT-22 owned by the Birač-Holding was used by the VRS on 15 July 1995 for “digging trenches in Orahovac”).

<sup>1774</sup> Mevludin Orić, T. 964, 966 (29 Aug 2006).

<sup>1775</sup> Cvijetin Ristanović, Ex. P02256, “92 *ter* transcript”, BT. 5361–5364, 5406–5408 (1 Dec 2003); Ex. P02851, “Zvornik Brigade Engineering Company attendance roster for July 1995”.

<sup>1776</sup> Cvijetin Ristanović, Ex. P02256, “92 *ter* transcript”, BT. 5371–5372 (1 Dec 2003); Ex. P00300, “Exhibit P-515 - Case No. IT-02-60-T - Zvornik Brigade Vehicle Log book for Rovakopac (C-3117)” (recording that on 14 July a backhoe excavator was Cvijetin Ristanović and it made a trip “Base-Orahovac-Return” for the purpose of “trench digging”).

<sup>1777</sup> Cvijetin Ristanović, Ex. P02256, “92 *ter* transcript”, BT. 5363, 5382, 5411 (1 Dec 2003).

<sup>1778</sup> *Ibid.*, BT. 5382–5384, 5412 (1 Dec 2003).

<sup>1779</sup> *Ibid.*, BT. 5383–5384, 5386 (1 Dec 2003). *See also* Ex. P02258, “Exhibit P-661 - Case No. IT-02-60-T - Sketch by witness during an interview with the OTP”, p. 2 (showing the place where Ristanović saw the corpses).



(iv) Forensic Evidence<sup>1780</sup>

491. In 1996 and 2000, two primary disturbed mass grave sites designated Lažete 1 and 2 were exhumed near the road that leads to the Grbavci School.<sup>1781</sup> Strips of cloth “probably used as blindfolds” were associated with 89 individuals in the Lažete 1 grave, and three bodies were found with ligatures.<sup>1782</sup> A total of 456 shell cases were recovered from in and around the grave.<sup>1783</sup> Regarding Lažete 2, 14 shell cases were collected on the surface of the grave and cloth blindfolds were found with 107 individuals.<sup>1784</sup> In relation to Lažete 1, it was found that where cause of death could be determined, it was by gunshot wounds, and the experts opined that the manner of death for all individuals was homicide.<sup>1785</sup> In addition, forensic evidence links seven secondary graves located at Hodžići Road to the primary gravesites at Lažete 1 and 2.<sup>1786</sup>

492. Among the remains exhumed from the primary graves at Orahovac and the secondary graves associated with it, 807 individuals have been identified through DNA analysis as persons reported missing following the fall of Srebrenica.<sup>1787</sup> Taking all of the evidence into account, including the testimony and assessments<sup>1788</sup> of witnesses, the Trial Chamber finds that between 800 and 2,500 Bosnian Muslim males were executed at Orahovac on 14 July 1995.

<sup>1780</sup> The Trial Chamber will examine the forensic evidence before it in relation to each gravesite associated with the Zvornik killings. The Trial Chamber notes that this examination is purely an exercise in evidentiary analysis, and it is not necessary to arrive at a finding in relation to the exact number of individuals killed in each location. The forensic evidence is examined with a view to corroborating the evidence already presented in relation to these executions and illustrating of the scale of the crimes alleged.

<sup>1781</sup> Ex. P00649, “Summary of Forensic Evidence – Execution Points and Mass Graves, 16 May 2000”, Annex A, p. 24; Ex. P00616, “Report by William Haglund on Lažete 2 gravesite, 15 June 1998”, pp. 1–2; Ex. P02459, “Lažete 1 Bosnia and Herzegovina Excavation and Exhumation Report”, pp. 2, 4; Prosecution Adjudicated Facts Decision, Annex, Facts 364, 365, 369.

<sup>1782</sup> Ex. P02459, “Lažete 1 Bosnia and Herzegovina Excavation and Exhumation Report”, pp. 3, 22–23, 30; Freddy Peccerelli, T. 8751 (13 Mar 2007).

<sup>1783</sup> Ex. P02459, “Lažete 1 Bosnia and Herzegovina Excavation and Exhumation Report”, p. 10.

<sup>1784</sup> Ex. P00616, “Report by William Haglund on Lažete 2, 15 June 1998”, p. 69; Ex. P00649, “Summary of Forensic Evidence – Execution Points and Mass Graves, 16 May 2000”, Annex A, p. 25.

<sup>1785</sup> Ex. P00616, “Report by William Haglund on Lažete 2 gravesite, 15 June 1998”, p. 49 (stating that the cause of death for 158 of 165 individuals was gunshot wounds).

<sup>1786</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, p. 36; Ex. P00666, “Report by Richard Wright on exhumations in Eastern Bosnia in 1998”, pp. 22–24 (stating that the links included limestone, rock, pollen, lumps of exotic soil and black plastic pipe); Prosecution Adjudicated Facts Decision, Annex, Fact 374; Dean Manning, T. 18976 (10 Dec 2007) (testifying that shell casings found at the primary and secondary graves matched).

<sup>1787</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, p. 2, Annex A, pp. 36–37; Thomas Parsons, T. 20873 (1 Feb 2008) (testifying that the information that these individuals went missing following the fall of Srebrenica was provided to the ICMP by the families of the missing persons).

<sup>1788</sup> The estimate as to the number of prisoners detained in the Grbavci School varies. The indictment alleges approximately 1,000 men. Indictment, para. 30.6. *See* PW-110, T. 697–698 (24 Aug 2006) (estimating 500 to 1,000 men); PW-142, T. 6478–6479 (private session) (29 Jan 2007) (estimating 1,000 men); Mevludin Orić, T. 943 (29 Aug 2006) (estimating more than 2,000 men); PW-169, T. 17338, 17352 (1 Nov 2007) (estimating 2,500 prisoners).

(b) Petkovci (14–16 July)<sup>1789</sup>

493. The turn-off to Petkovci from the Konjević Polje–Zvornik–Bijeljina Road is about one kilometre north of the Standard Barracks.<sup>1790</sup> Petkovci is a small hamlet about six to seven kilometres west of the main road, and the new elementary school, the “Petkovci School”<sup>1791</sup> is a two storey building located therein.<sup>1792</sup> The headquarters of the 6th Battalion of the Zvornik Brigade was located at the old school in Petkovci, approximately 600 to 800 meters from the Petkovci School.<sup>1793</sup> The Crveni Mulj Dam, known as the “Petkovci Dam”, is just three to four kilometres outside Petkovci.<sup>1794</sup>

(i) Detentions and “Opportunistic” Killings – Petkovci School (14 July)

494. On the morning of 14 July, Duty Officer Dragan Jokić telephoned Marko Milošević, the Deputy Commander of the 6th Battalion of the Zvornik Brigade, to inform him that Bosnian Muslim prisoners would be brought to the Petkovci School accompanied by “security.”<sup>1795</sup> Milošević notified the Battalion Commander, Captain Ostoja Stanišić, of this when Stanišić returned to the Battalion Command later in the afternoon.<sup>1796</sup>

495. Hundreds of Bosnian Muslim males who had been detained at various locations in Bratunac were taken to the Petkovci School in the afternoon of 14 July.<sup>1797</sup> The prisoners were ordered to chant pro-Serb slogans and were hit with rifle butts as they entered the school.<sup>1798</sup> Some prisoners

<sup>1789</sup> The Indictment alleges that approximately 1,000 Bosnian Muslim men were transported from Bratunac to the Petkovci School where they were detained, and then taken to a dam near Petkovci, where they were executed. The Indictment further alleges that “many” Bosnian Muslim men were killed at the Petkovci School prior to the transportation to the dam. These killings are alleged as part of the “opportunistic killings”. Indictment, paras. 30.7–30.8, 31.4.

<sup>1790</sup> Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 156.

<sup>1791</sup> Marko Milošević, T. 13318 (26 June 2007).

<sup>1792</sup> Marko Milošević, T. 13318 (26 June 2007); Jean-René Ruez, T. 1494–1497 (11 Sept 2006); Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, pp. 157–168.

<sup>1793</sup> Marko Milošević, T. 13318 (26 June 2007); Ostoja Stanišić, T. 11606 (16 May 2007); Ex. P02815, “Aerial Photograph of Petkovci, marked by Ostoja Stanišić during proofing session on 13 May 2007”.

<sup>1794</sup> PW-168, T. 15917 (closed session) (27 Sept 2007); Jean-René Ruez, T. 1495 (11 Sept 2006).

<sup>1795</sup> Marko Milošević, T. 13299–13301, 13336, 13341–13342 (26 June 2007).

<sup>1796</sup> Marko Milošević, T. 13301 (26 June 2007); Ostoja Stanišić, T. 11600–11601 (16 May 2007).

<sup>1797</sup> PW-113, T. 3337–3338, 3367–3368 (31 Oct 2006); PW-113, Ex. P02280, “92 ter transcript”, BT. 1389–1393, 1396–1405 (21 July 2003); PW-116, Ex. P02205, “92 bis transcript”, KT. 2950–2956, 2961–2965 (14 Apr 2000); Ex. P01730, “Picture showing the stairs inside Petkovci School” Ex. P01729, “Photo, Petkovci School”; Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, pp. 158–162; Jean-René Ruez, T. 1495–1496 (11 Sept 2006).

<sup>1798</sup> PW-116, Ex. P02205, “92 bis transcript”, KT. 2965 (14 Apr 2000) (testifying that the men were slapped, kicked and hit with rifle butts, and were ordered to put their hands behind their heads and chant aloud “Long live the Serb Republic” and “Srebrenica is Serb”); PW-113, Ex. P02280, “92 ter transcript”, BT. 1404–1405 (21 July 2003) (testifying that the men were hit with rifle butts, and were forced to repeat that the land and Srebrenica were Serbian).

were made to wait on the buses for up to an hour before being allowed off. Their pleas for water went unheeded.<sup>1799</sup>

496. The prisoners were detained in overcrowded classrooms across the two levels of the school.<sup>1800</sup> The floor of one of the classrooms was covered with blood and urine.<sup>1801</sup> Those guarding the prisoners demanded money, and a pile of identification documents and clothes was gathered in the corridor.<sup>1802</sup> As PW-116 entered the classroom in which he was detained, he saw two men in a corner who had been severely beaten and were covered in blood.<sup>1803</sup> Despite the heat, the prisoners were given little or no water and were not permitted to open the windows.<sup>1804</sup> The prisoners were prevented from using the bathroom.<sup>1805</sup>

497. The prisoners were also shot at and beaten by those guarding them.<sup>1806</sup> As one Bosnian Muslim man tried to look out the window, he was shot and lay wounded in the classroom.<sup>1807</sup> Other prisoners were removed from the classrooms, after which the sound of gunfire, beatings and moaning could be heard.<sup>1808</sup> The prisoners who were removed did not return, and three or four dead bodies were later seen in the bloodstained corridor.<sup>1809</sup> Shooting could be heard throughout the building until midnight.<sup>1810</sup> The Trial Chamber finds that several Bosnian Muslim men were shot and killed during the detentions at the Petkovci School on 14 July 1995.

498. In the late afternoon of 14 July, Ostoja Stanišić received a call from Dragan Jokić instructing him to notify **Beara**—whom Jokić said could be found around the Petkovci School—that **Beara** needed to report to the Standard Barracks.<sup>1811</sup> Following this call, Stanišić sent Marko

<sup>1799</sup> PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1402 (21 July 2003) (testifying that one prisoner was so thirsty that he drank his own urine).

<sup>1800</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2966, 2995 (14 Apr 2000); PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1406 (21 July 2003).

<sup>1801</sup> PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1406 (21 July 2003).

<sup>1802</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2965–2968 (14 Apr 2000). *See also*, PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1407 (21 July 2003).

<sup>1803</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2966–2967 (14 Apr 2000).

<sup>1804</sup> PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1406–1407 (21 July 2003); PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2966 (14 Apr 2000).

<sup>1805</sup> PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1406 (21 July 2003) (testifying that almost everyone was soaked with urine).

<sup>1806</sup> There is insufficient evidence before the Trial Chamber to determine the identity of those guarding the prisoners.

<sup>1807</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2966–2967 (14 Apr 2000); Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, pp. 165–166 (showing bullet holes in a blackboard in one of the classrooms in the Petkovci School); Jean-René Ruez, T. 1499 (11 Sept 2006).

<sup>1808</sup> PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1407–1408 (21 July 2003).

<sup>1809</sup> PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1407–1408, 1415 (21 July 2003); PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2970 (14 Apr 2000).

<sup>1810</sup> PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1408 (21 July 2003). Marko Milošević and Ostoja Stanišić both heard gunfire from the direction of the school on 14 July. Marko Milošević, T. 13307 (26 June 2007); Ostoja Stanišić, T. 11607 (16 May 2007).

<sup>1811</sup> Ostoja Stanišić, T. 11601, 11604 (16 May 2007), T. 11703–11705, 11725–11726 (17 May 2007) (testifying that when he asked Jokić which “command” **Beara** was supposed to report to, Jokić said “Well, he knows well which

Milošević to deliver the message. Milošević met **Nikolić** at a crossroads 70 or 80 metres from the Petkovci School.<sup>1812</sup> Milošević delivered the message to **Beara** after **Nikolić** pointed him out.<sup>1813</sup> Milošević saw a few buses and trucks parked down the road, and soldiers guarding the school.<sup>1814</sup> Four or five Military Police officers were also present.<sup>1815</sup>

(ii) Killings – Petkovci Dam (15 July)

499. In the early morning hours of 15 July, the prisoners at the Petkovci School were brought out of the classrooms one by one and told to remove their shoes and most of their clothes.<sup>1816</sup> There was a pile of IDs, clothes, footwear and documents in the corridor.<sup>1817</sup> The prisoners then had their hands tied behind their backs and were told to board trucks parked at the front of the school.<sup>1818</sup> Groups of prisoners were transported in several trucks belonging to the 6th Battalion of the Zvornik Brigade to a field near Petkovci Dam.<sup>1819</sup> PW-116 stated that his truck carried approximately 100 men.<sup>1820</sup> A number of times PW-113's truck stopped and some prisoners were told to disembark. After the selected prisoners had done so, a burst of gunfire could be heard outside the truck.<sup>1821</sup>

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command he's supposed to report to"); Marko Milošević, T. 13302–13303 (26 June 2007) (testifying that he told **Beara** to report "to the brigade command").

<sup>1812</sup> Ostoja Stanišić, T. 11604–11606 (16 May 2007); Marko Milošević, T. 13302–13304 (26 June 2007).

<sup>1813</sup> See *infra*, paras. 1279, 1366. Marko Milošević, T. 13303–13304 (26 June 2007); Ex. P00377, "Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995", p. 128 (noting the following for 14 July: "1500 hrs – Colonel Beara is coming in order to Orovoc [sic], Petkovci, Ročević, Pilica").

<sup>1814</sup> Marko Milošević, T. 13304–13305 (26 June 2007) (testifying that he saw a blue Golf III car parked near the buses and trucks). See also Ostoja Stanišić, T. 11605 (16 May 2007).

<sup>1815</sup> Marko Milošević, T. 13304–13305, 13344 (26 June 2007) (testifying that the Military Police officers were not from the Zvornik Brigade, although he did not know every Zvornik Brigade MP); Ostoja Stanišić, T. 11605 (16 May 2007). Ex. P00220, "Bratunac Brigade Military Police Daily Log Book, 30 June 1995–29 April 1996", p. 14 (recording that on 14 July "The police was engaged in the escort of Muslim refugees"). Neither Milošević nor Stanišić testified as to which brigade these military policemen came from. The Prosecution argues that these men must have been from the Zvornik Brigade because "the Petkovci School was within the Zvornik Brigade's area of responsibility and the MPs were with Drago Nikolić". Prosecution Final Brief, para. 784. The Trial Chamber is of the view that there is insufficient evidence before it to make a finding as to the brigade to which these military policemen belonged.

<sup>1816</sup> PW-116, Ex. P02205, "92 bis transcript", KT. 2968 (14 Apr 2000) (stating that he was ordered to remove all of his clothes, but was allowed to keep only a vest on); PW-113, Ex. P02280, "92 ter transcript", BT. 1409 (21 July 2003) (stating that he striped down to his waist).

<sup>1817</sup> PW-116, Ex. P02205, "92 bis transcript", KT. 2968 (14 Apr 2000).

<sup>1818</sup> PW-116, Ex. P02205, "92 bis transcript", KT. 2969–2970 (14 Apr 2000); PW-113, Ex. P02280, BT. 1409–1410, 1414–1416 (21 July 2003).

<sup>1819</sup> PW-113, Ex. P02280, "92 ter transcript", BT. 1415–1418, 1423 (22 July 2003); PW-116, Ex. P02205, "92 bis transcript", KT. 2968–2970, 2974–2975 (14 Apr 2000); Ex. P00944, "Vehicle Work Log valid from 1 July until 31 July 1995, Military Post Zvornik", p. 2 (recording that two TAM trucks from the 6th Battalion of the Zvornik Brigade made six and four trips, respectively, between Petkovci and Petkovci Dam on 15 July). See also PW-116, Ex. P02205, "92 bis transcript", KT. 2988 (14 Apr 2000) (identifying the area shown in Ex. P01741, "Helicopter overview of the area, annotated in court"); PW-113, Ex. P02280, "92 ter transcript", BT. 1497–1498 (22 July 2003); Jean-René Ruez, T. 1499 (11 Sept 2006); Ex. P02103, "Documents tendered with statement of witness Jean-René Ruez", pp. 173–176 (identifying the areas indicated by PW-116 and PW-113 as being located at Petkovci).

<sup>1820</sup> PW-116, Ex. P02205, "92 bis transcript", KT. 2974 (14 Apr 2000).

<sup>1821</sup> PW-113, Ex. P02280, "92 ter transcript", BT. 1417 (22 July 2003).

500. When a group of prisoners arrived at the field beside Petkovci Dam, it was illuminated by floodlights and full of dead bodies lying facedown with their hands tied.<sup>1822</sup> The prisoners were ordered to form a line and members of the Bosnian Serb Forces shot at their backs and heads from a distance of about seven to ten metres.<sup>1823</sup> The prisoners fell upon the bodies.<sup>1824</sup> Two prisoners fell to the ground pretending to be dead,<sup>1825</sup> and watched as other prisoners were executed around them:

Well, they were still bringing out more groups in the second row to my right [...] And the bullets were whizzing past me. They were whistling past. I was just twitching from that, and I was waiting to be hit [...] I was thinking that I'd like to die.<sup>1826</sup>

As members of the Bosnian Serb Forces checked the bodies to make sure that the prisoners were dead, one of them shot a prisoner in the head.<sup>1827</sup>

(iii) Burials (15–16 July)

501. In the early morning hours of 15 July, a ULT and an excavator belonging to the Zvornik Brigade Engineering Company operated close to the Petkovci Dam.<sup>1828</sup> A loader scooped up the bodies and deposited them onto a large tractor.<sup>1829</sup> PW-116 believes that the bodies were taken somewhere in the vicinity of the Petkovci Dam.<sup>1830</sup> Later that same day, pursuant to a request from the Petkovci villagers, Stanišić authorised a truck belonging to the 6th Battalion to be used to assist with the disposal of bodies at the Petkovci School.<sup>1831</sup>

(iv) Forensic Evidence

502. In 1998, a primary disturbed mass grave site was exhumed near the Petkovci Dam.<sup>1832</sup> The shape of several skull fragments was reported to be consistent with those seen in gunshot wounds to

<sup>1822</sup> PW-116, Ex. P02205, “92 bis transcript”, KT. 2975, 2984 (14 Apr 2000).

<sup>1823</sup> *Ibid.*, KT. 2975–2976 (14 Apr 2000).

<sup>1824</sup> *Ibid.*, KT. 2976–2977 (14 Apr 2000).

<sup>1825</sup> PW-113, Ex. P02280, “92 ter transcript”, BT. 1419–1421 (22 July 2003).

<sup>1826</sup> *Ibid.*

<sup>1827</sup> PW-113, Ex. P02280, “92 ter transcript”, BT. 1420–1421 (22 July 2003).

<sup>1828</sup> PW-116, Ex. P02205, “92 bis transcript”, KT. 2978–2981 (14 Apr 2000); Ex. P00297, “Zvornik Brigade Engineering Company Daily Orders Logbook”, p. 15.

<sup>1829</sup> PW-116, Ex. P02205, “92 bis transcript”, KT. 2981, 2983–2984 (14 Apr 2000); PW-113, Ex. P02280, “92 ter transcript”, BT. 1423 (22 July 2003) (both PW-113 and PW-116 testifying that they saw the loader picking up the dead bodies. PW-116 was familiar with construction equipment and believed that what he saw was a bulldozer, type number 7, with a “Caterpillar”, with tracks and a ULT 160 loader manufactured in Kragujevac before the war).

<sup>1830</sup> PW-116, Ex. P02205, “92 bis transcript”, KT. 2982 (14 Apr 2000). PW-116 did not elaborate on why he thought this.

<sup>1831</sup> Ostoja Stanišić, T. 11610–11612 (16 May 2007).

<sup>1832</sup> Ex. P00666, “Report by Richard Wright on exhumations in Eastern Bosnia in 1998”, p. 7; Ex. P01746, “Aerial, 5 July 1995”; Dean Manning, T. 18934 (10 Dec 2007) (showing an area of disturbed earth near the Petkovci Dam where exhumations were later conducted, and an aerial photograph of the same location taken on 5 July 1995 shows no such disturbance.).

the head.<sup>1833</sup> A twine ligature and a cloth which could have been used as a blindfold were also found in the grave.<sup>1834</sup> Evidence of gunshot wounds was noted.<sup>1835</sup> In addition, forensic evidence links five secondary mass graves along Liplje Road to the primary grave at the Petkovci Dam.<sup>1836</sup>

503. Among the remains exhumed from the primary grave at Petkovci Dam and the secondary graves associated with it, 805 individuals have been identified through DNA analysis as persons reported missing following the fall of Srebrenica.<sup>1837</sup> Taking all of the evidence into account, including the testimony and assessments of witnesses,<sup>1838</sup> the Trial Chamber finds that over 800 Bosnian Muslim males were executed at Petkovci on 15 July 1995.

(c) Ročević School and Kozluk (14–16 July)<sup>1839</sup>

504. The village of Kozluk is situated on the banks of the Drina River about ten kilometres north of the Standard Barracks along the Konjević Polje-Zvornik-Bijeljina Road.<sup>1840</sup> The turn off to Ročević is an additional five to six kilometres north, and the Ročević School is located just 100 meters or so from this juncture.<sup>1841</sup> The 2nd Battalion command was located in Malešić, approximately 14 kilometres from Ročević.<sup>1842</sup>

<sup>1833</sup> Ex. P00640, “Report by Dr. Lawrence on the Dam Site, June 1998”, p. 7.

<sup>1834</sup> *Ibid.*, p. 2.

<sup>1835</sup> Ex. P00640, “Report by Dr. Lawrence on the Dam Site, June 1998”, p. 2 (stating that there were six definite gunshot wounds, two probable gunshot wounds and 15 possible gunshot wounds identified in the contents of 10 body bags).

<sup>1836</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, pp. 36–37. Liplje Road is approximately 14 kilometres from the Petkovci Dam. Ex. P00666, “Report by Richard Wright on exhumations in Eastern Bosnia in 1998”, p. 20. The Liplje 2 grave contained the same type of rock found at the primary grave. Richard Wright, Ex. P02162, “92 *ter* transcript”, KT. 3658 (26 May 2000); Ex. P00666, “Report by Richard Wright on exhumations in Eastern Bosnia in 1998”, pp. 20, 24; Ex. P00640, “Report by Dr. Lawrence on the Dam Site, June 1998”, p. 8 (noting that the pattern of weathering and crushing due to stone fragments at Liplje 2 was similar to the grave near the dam at Petkovci).

<sup>1837</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, pp. 36–37; Thomas Parsons, T. 20873 (1 Feb 2008) (testifying that the information that these individuals went missing following the fall of Srebrenica was provided to the ICMP by the families of the missing persons).

<sup>1838</sup> PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2968 (14 Apr 2000) (testifying that there were approximately 200 men in one of the classrooms of the Petkovci School).

<sup>1839</sup> The Indictment alleges that approximately 500 Bosnian Muslim males were detained in the Ročević School and then transported to a site near Kozluk and executed. Indictment, paras. 30.8.1, 30.10. The Trial Chamber notes that the victims detained at Ročević School are the same killed near Kozluk.

<sup>1840</sup> Ex. P01760, “Map of Kozluk”; Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1.

<sup>1841</sup> PW-165, T. 9919–9921 (3 Apr 2007); Dragan Jović, T. 18059 (21 Nov 2007); Mile Janjić, T. 17949–17951 (20 Nov 2007); Ex. P02494, “Map of Ročević”; Ex. PIC00083, “Ex. P02494 marked by PW-165”; Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1.

<sup>1842</sup> Srećko Aćimović, T. 12931 (20 June 2007).

(i) Detentions – Ročević School (14–15 July)

505. By the evening of 14 July, Bosnian Muslim men were detained inside the Ročević School, guarded by men from the Bratunac Brigade, including military police officers.<sup>1843</sup>

506. Srećko Aćimović, Commander of the 2nd Battalion of the Zvornik Brigade, gave evidence before the Trial Chamber.<sup>1844</sup> **Nikolić** challenged the reliability of Aćimović's evidence, on the grounds that Aćimović was personally involved in the events at Ročević and parts of his testimony were inconsistent with other evidence before the Trial Chamber.<sup>1845</sup> **Nikolić** argues on this basis that Aćimović's evidence is unreliable and no probative value should be attached to it.<sup>1846</sup> The Trial Chamber has evaluated the evidence given by Aćimović in its totality, including the extensive cross-examinations conducted.<sup>1847</sup> Having seen and heard him, the Trial Chamber has considered not only the content of his testimony but also his demeanour and manner of delivery. Further, the Trial Chamber has assessed his testimony in the context of other evidence before it as well as examined its internal constancy. The Trial Chamber is of the view that throughout his testimony Aćimović sought to downplay his own involvement in the events at Ročević. The Trial Chamber believes that due to this motivation, Aćimović was not always truthful in his account of events nor fully forthcoming. It is further of the opinion that the inconsistencies uncovered between parts of Aćimović's testimony and other evidence before the Trial Chamber in most instances arise from his attempt to minimise his own responsibility, perhaps even to himself. However, the Trial Chamber does not agree with **Nikolić** that this renders Aćimović's evidence unreliable in its entirety. Many aspects of his evidence are consistent with other evidence and some is specifically corroborated.<sup>1848</sup> Further, several points were credibly adhered to despite intensive cross-examination. Therefore, the Trial Chamber considers that it must examine his evidence carefully on each salient issue in order to determine what weight, if any, to attribute to it and has accordingly done so in the analysis which follows.

<sup>1843</sup> Mile Janjić, T. 17951–17952, 17954, 17998 (20 Nov 2007); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9756 (24 May 2004); Dragan Jović, T. 18053, 18083 (21 Nov 2007). PW-138 told the Trial Chamber that the Bratunac Brigade Military Police were never responsible for guarding Bosnian Muslim prisoners, but later stated that he was unsure. In his prior testimony before the Tribunal in another case, PW-138 stated that the Bratunac Brigade Military Police did in fact assist in guarding the Bosnian Muslims in Bratunac. When this testimony was put to PW-138 in this case, he confirmed its accuracy. PW-138, T. 3834–3836 (private session) (8 Nov 2006), T. 3908 (private session) (9 Nov 2006). Having observed PW-138's testimony, in light of Mile Janjić's evidence that he saw Bratunac Brigade Military Police at the school, the Trial Chamber finds that Bratunac Brigade Military Police and soldiers guarded the prisoners at the Ročević School overnight on 14 July.

<sup>1844</sup> T. 12928 (20 June 2007)–13158 (22 June 2007) (including private sessions).

<sup>1845</sup> See **Nikolić** Final Brief, paras. 892–955.

<sup>1846</sup> *Ibid.*, paras. 892, 907, 955.

<sup>1847</sup> Srećko Aćimović, T. 12992 (21 June 2007)–13157 (22 June 2007) (including private sessions).

<sup>1848</sup> *E.g.*, Mitar Lazarević, Dragan Jović, Veljko Ivanović.

507. Aćimović testified that he learned of the detentions at the Ročević School through civilians and also heard that some prisoners had been killed outside the Ročević School.<sup>1849</sup> Between 8:30 and 9:30 p.m. on 14 July, after visiting the school himself, Aćimović called the Zvornik Brigade Command at the Standard Barracks, and was told by the Duty Officer that **Pandurević** and Obrenović were absent, but that **Popović** had just arrived.<sup>1850</sup> Aćimović reported to **Popović** that prisoners were being detained in the Ročević School and there were reports that some had been killed. **Popović** told Aćimović not to be so dramatic as the prisoners would be exchanged the next morning.<sup>1851</sup>

508. Aćimović testified that between 1 and 2 a.m. on 15 July, he received a telegram from the Zvornik Brigade Command at the Standard Barracks that a platoon of soldiers should be dispatched to execute the prisoners at the Ročević School.<sup>1852</sup> According to Aćimović, the telegram was coded and decoded by members of the 2nd Battalion.<sup>1853</sup> Aćimović discussed the telegram with two close associates in the 2nd Battalion, Vujo Lazarević, the Assistant Commander for Morale and Religious Affairs, and Mitar Lazarević, the General Affairs Officer.<sup>1854</sup> They all agreed that no personnel would be assigned to the task, and a reply telegram was sent to the Zvornik Brigade Command stating that the 2nd Battalion did not have any personnel available to execute the prisoners.<sup>1855</sup> Aćimović testified that a second coded telegram was received from the Zvornik Brigade Command, relaying the same order, and that a second reply was sent.<sup>1856</sup> Aćimović stated that he again discussed the second telegram with his two close associates, as well as company commanders or deputy commanders.<sup>1857</sup> However, Mitar Lazarević testified that there was only one telegram and one reply.<sup>1858</sup>

509. **Nikolić** argued that Aćimović's evidence on this point should be rejected because (a) it was impossible for the 2nd Battalion Command to receive a coded telegram, and (b) other witnesses in

<sup>1849</sup> Srećko Aćimović, T. 12934–12935, 12941–12943 (20 June 2007), T. 13006 (21 June 2007), T. 13123–13124 (22 June 2007).

<sup>1850</sup> *Ibid.*, T. 12937–12940 (20 June 2007) (testifying that he made the telephone call from Kozluk on an “induction telephone” at his “former logistics unit”); Mitar Lazarević, T. 13372–13373, 13392 (27 June 2007).

<sup>1851</sup> Srećko Aćimović, T. 12940–12941 (20 June 2007), T. 13008–13009 (21 June 2007). Although Mitar Lazarević did not identify **Popović** as the person to whom Aćimović spoke, Mitar Lazarević said that Aćimović spoke to a “security man from the corps”. Mitar Lazarević, T. 13372–13373, 13392 (27 June 2007). Given the context and content of the conversation related, the Trial Chamber finds Aćimović's evidence as to the conversation reliable.

<sup>1852</sup> Srećko Aćimović, T. 12944–12946 (20 June 2007); Mitar Lazarević, T. 13373–13374, 13386 (27 June 2007).

<sup>1853</sup> Srećko Aćimović, T. 12945 (20 June 2007), T. 13020–13021 (21 June 2007).

<sup>1854</sup> *Ibid.*, T. 12943, 12948 (20 June 2007).

<sup>1855</sup> *Ibid.*, T. 12943, 12946–12948 (20 June 2007). *See also*, Mitar Lazarević, T. 13375–13377, 13406 (27 June 2007).

<sup>1856</sup> Srećko Aćimović, T. 12947–12950 (20 June 2007).

<sup>1857</sup> *Ibid.*, T. 12948–12949 (20 June 2007), T. 13059 (21 June 2007), T. 13069–13070, 13141 (22 June 2007).

<sup>1858</sup> Mitar Lazarević, T. 13405 (26 June 2007).



the 2nd Battalion were not informed of the telegram, and therefore it must not have existed.<sup>1859</sup> The Trial Chamber notes the conflicting testimony regarding the mode and timing of delivery of the telegram, as well as the number of telegrams received.<sup>1860</sup> The Trial Chamber is of the opinion that how exactly the instruction was received is a peripheral issue, however. The essence of Aćimović's testimony is that an instruction was received from the Standard Barracks that a platoon should be dispatched to execute prisoners at Ročević School, and the Trial Chamber does not consider the inconsistencies sufficiently grave to cast doubt upon the existence of this instruction. The Trial Chamber also notes that this evidence is corroborated by Mitar Lazarević.<sup>1861</sup> The essence of the evidence is further corroborated by the fact that soldiers from the 2nd Battalion were in fact sent to Ročević School, and the prisoners there were executed.<sup>1862</sup> The Trial Chamber also notes that an analogous process was used to enlist the assistance of the 1st Battalion with the guarding of prisoners at the Kula School. First a telegram was sent from the Zvornik Brigade Command, which **Nikolić** followed up with a phone call.<sup>1863</sup> While the evidence does not indicate that killings were mentioned in either the telegram or phone call, the Trial Chamber considers that the similarity of the process provides some further corroboration for Aćimović's evidence.

510. Around 2:30 a.m., Aćimović received a call from **Nikolić**, who told him that the order "had come from above" and had to be carried out.<sup>1864</sup> **Nikolić** called him again at approximately 7 or 8 a.m. to find out whether Aćimović had executed the order.<sup>1865</sup> Aćimović told **Nikolić** that he

<sup>1859</sup> Nikolić Final Brief, paras. 920–943, referring, *inter alia*, to the evidence of Dragan Stevanović, the Commander of the communications unit of the 2nd Battalion, that "codes were not used" at the 2nd Battalion Command. Dragan Stevanović, T. 32856 (1 Apr 2009).

<sup>1860</sup> See also Mitar Lazarević, T. 13373–13376 (27 June 2007) (stating that that the telegram was coded and signalmen of the 2nd Battalion, including Milisav Cvijetinović, would have decoded it and Milan Radić, Commander of the 3rd Company of the 2nd Battalion, was aware of it, and all those who were present at the Command of the 2nd Battalion read the telegram); Milisav Cvijetinović, T. 25835–25838, 25855, 25891 (17 Sept 2008) (stating that neither he nor the other communicators were able or qualified to code or decode telegrams, and he was unaware of any telegram requesting that soldiers participate in executions); Milan Radić, Ex. 3D00477, "92 *ter* statement" (6 Apr 2008), p. 2 (stating that he was in the field on 15 July and had no communication with the 2nd Battalion); Petko Tomić, T. 26181 (24 Sept 2008); Petko Tomić, Ex. 3D00478, "92 *ter* statement" (6 Apr 2008), p. 2 (Radić's deputy, stating that he never told Radić about the existence of such a telegram and said that he did not attend any meeting of company commanders at the 2nd Battalion Command during which such a telegram was discussed, nor was he ever informed about the telegram); Dragan Jović, T. 18086 (21 Nov 2007) (Aćimović's driver, stating that he never heard about the existence of any telegram); Dragan Stevanović, T. 32848–32849 (1 Apr 2009) (stating he never heard of a telegram ordering the 2nd Battalion to provide soldiers to participate in the execution of prisoners).

<sup>1861</sup> Mitar Lazarević, T. 13399, 13421 (private session) (27 June 2007) .T. 13373–13374 (27 June 2007) (stating that that the telegram was coded and signalmen of the 2nd Battalion, including Milisav Cvijetinović, would have decoded it and Milan Radić, Commander of the 3rd Company of the 2nd Battalion, was aware of it, and all those who were present at the Command of the 2nd Battalion read the telegram).

<sup>1862</sup> See *infra* paras. 517, 519–520.

<sup>1863</sup> See *infra* para. 527.

<sup>1864</sup> Srećko Aćimović, T. 12949–12951 (20 June 2007); Mitar Lazarević, T. 13377–13378, 13387–13388, 13392 (27 June 2007) (testifying that Aćimović never mentioned **Nikolić** but that after the reply telegram was sent, he heard Aćimović cursing and quarrelling with an unknown person over the phone). Noting this corroboration of Aćimović's evidence, the Trial Chamber accepts Aćimović's evidence on this point.

<sup>1865</sup> Srećko Aćimović, T. 12951 (20 June 2007).

would not assign anyone to execute the prisoners.<sup>1866</sup> **Nikolić** was angry and ordered Aćimović to meet him at the school later that morning.<sup>1867</sup>

511. At around 9 or 10 a.m. on 15 July, Aćimović drove to the Ročević School where he saw at least a dozen corpses lying on the ground.<sup>1868</sup> **Nikolić** was not present, but Aćimović met **Popović** in front of the School.<sup>1869</sup> **Popović** shouted at Aćimović, asking him why he had not brought men as ordered.<sup>1870</sup> **Popović** threatened Aćimović that he would be held responsible for not following the order.<sup>1871</sup> **Popović** also asked Aćimović about suitable execution sites and pressured him to ask the soldiers in the schoolyard to find volunteers willing to participate in the executions.<sup>1872</sup> Aćimović approached Dragan Jović, a member of the 2nd Battalion who was at the Ročević School, and told him to inquire whether a certain “Drasković”, whose brother had been killed in the war, wanted to participate in executing the prisoners at Ročević School.<sup>1873</sup> Aćimović stated “[w]e have to do that. It’s an order, the order must be carried out”.<sup>1874</sup> Considering this evidence, combined with that of other witnesses present, particularly the corroboration as to **Popović’s** presence, and the subsequent acts of Aćimović and others as found, the Trial Chamber is satisfied that Aćimović’s description of this encounter with **Popović** is reliable.

512. During his meeting with Aćimović, **Popović** called the Standard Barracks, requesting that trucks be sent to Ročević.<sup>1875</sup> **Popović** also requested that either Trbić or Jasikovac be sent

<sup>1866</sup> Srećko Aćimović, T. 12951–12952 (20 June 2007).

<sup>1867</sup> *Ibid.*, T. 12952–12953, 12956 (20 June 2007).

<sup>1868</sup> *Ibid.*, T. 12957–12958 (20 June 2007); Mitar Lazarević, T. 13367, 13379 (26 June 2007) (testifying that Aćimović went to the Ročević School alone in order to inform those at the school that Aćimović would not dispatch any men to participate in the executions, and also that Aćimović told him that prisoners had been killed at the school on 14 July); Dragan Jović, T. 18049–18050 (21 Nov 2007) (testifying that he heard that there were dead bodies at the Ročević School on 14 July).

<sup>1869</sup> Srećko Aćimović, T. 12957–12958 (20 June 2007); Dragan Jović, T. 18055–18056 (21 Nov 2007) (testifying that at the Ročević School, he saw Aćimović talking to a “rather big” man with a shaven, round face who wore a uniform without a rank, and wore no gun or uniform hat. Jović did not recognise him as someone from the Zvornik Brigade).

<sup>1870</sup> *Ibid.*, T. 12958–12959, 12964–12965 (private session) (20 June 2007).

<sup>1871</sup> *Ibid.*

<sup>1872</sup> *Ibid.*, T. 12959–12961, 12964–12966 (private session) (20 June 2007), T. 13117 (private session) (22 June 2007) (testifying that when he told **Popović** that he would not provide men or participate in executing the prisoners, **Popović** cursed at him and said “Do you know what happened to the Serbs in Kravica and other Serb villages which were torched and which are around Srebrenica?”).

<sup>1873</sup> Dragan Jović, T. 18056–18057 (21 Nov 2007).

<sup>1874</sup> *Ibid.*, T. 18057–18081 (21 Nov 2007) (testifying that “Drasković” declined to participate in the execution of the prisoners); PW-174, T. 32701, 32706 (private session), 32716–32717 (private session), 32760 (private session) (23 Mar 2009) (testifying that he saw a man called Vukasin Drasković at the school, heading in the direction of the execution site, although PW-174 did not know if he fired at the prisoners). Contrary to Jović’s testimony, Aćimović testified that he did not recruit volunteers to participate in the executions. Srećko Aćimović, T. 13121 (private session) (22 June 2007). The Trial Chamber is satisfied that this is one instance where Aćimović was downplaying his role in the events and therefore accepts Jović’s evidence on this point.

<sup>1875</sup> Srećko Aćimović, T. 12965–12966 (private session) (20 June 2007).

urgently.<sup>1876</sup> At around 11 a.m. or noon, Jasikovac visited the Ročević School where he gave orders to Zvornik Brigade Military Police officers.<sup>1877</sup>

513. **Popović** was angry when only a single truck arrived and said that the prisoners would all have to be killed near the school.<sup>1878</sup> **Popović** attempted to source additional trucks by engaging civilian drivers.<sup>1879</sup> Aćimović testified that he purposely did not make contact with any drivers.<sup>1880</sup> However, Dragan Jović and Veljko Ivanović, another member of the 2nd Battalion, testified that Aćimović ordered them to transport prisoners to the execution site near Kozluk.<sup>1881</sup> The Trial Chamber, noting that Aćimović was motivated to diminish his own responsibility during the course of his testimony, accepts the evidence of Jović and Ivanović on this point.

514. At some point, a soldier came into the office and said someone had volunteered to participate in the executions.<sup>1882</sup> This volunteer was not a member of the Zvornik Brigade, and **Popović** told him to go out and find other volunteers.<sup>1883</sup> Aćimović left the school early in the afternoon, leaving three soldiers from the 2nd Battalion there.<sup>1884</sup>

515. Some other soldiers from the Zvornik Brigade were also present at the Ročević School.<sup>1885</sup> Members of the Zvornik Brigade Military Police, acting upon orders from their Commander

<sup>1876</sup> Srećko Aćimović, T. 12986–12987 (21 June 2007) (testifying that **Popović** requested “one of the two men who were located either in Petkovci or Orahovac”, and that after this event, Milorad Trbić told Aćimović that **Popović** had probably referred to either Trbić or Jasikovac). Noting this evidence, and also noting that Jasikovac later arrived at the Ročević School, the Trial Chamber concludes that **Popović** requested Trbić or Jasikovac.

<sup>1877</sup> PW-142, T. 6463 (private session) (29 Jan 2007); Dragoje Ivanović, T. 14553–14555 (30 Aug 2007) (testifying that Jasikovac went into the school for approximately 20 minutes and when he came out, they returned to the Standard Barracks, and that he did not see any other members of the Zvornik Brigade at the school, although he did see VRS soldiers there); Ex. P00296, “Vehicle Logbook for Opel Rekord P-4528”, p. 4 (recording that the Zvornik Brigade car travelled, *inter alia*, to Ročević on 14 July).

<sup>1878</sup> Srećko Aćimović, T. 12968–12969 (private session) (20 June 2007). *See also infra*, para. 1282, where at 10 a.m. on 15 July **Beara** is intercepted attempting to source 15–30 men, stating that “I don’t know what to do. I mean it Krle. There are still 3,500 “parcels” that I have to distribute and I have no solution.”

<sup>1879</sup> Srećko Aćimović, T. 12967–12970 (private session) (20 June 2007).

<sup>1880</sup> *Ibid.*, T. 12969–12970 (private session) (20 June 2007); T. 13105 (22 June 2007).

<sup>1881</sup> Dragan Jović, T. 18058–18059 (21 Nov 2007); Veljko Ivanović, T. 18174, 18177–18178 (26 Nov 2007) (testifying that he told Aćimović he did not want to transport the prisoners to the execution site, but Aćimović shrugged his shoulders and told him it “has to be done”. Ivanović again refused, telling Aćimović that driving to the field would mean making a U-turn in his village, but Aćimović said “You have to do this [...] And I can’t watch this”). In stark contrast to the testimony of both Jović and Ivanović, Aćimović adamantly denied that he issued any orders to his men to participate in the execution and stated that it was **Popović** who gave such orders. Srećko Aćimović, T. 12957, 12968–12969 (private session) (20 June 2007).

<sup>1882</sup> Srećko Aćimović, T. 12971 (private session) (20 June 2007).

<sup>1883</sup> Srećko Aćimović, T. 12971–12972 (private session) (20 June 2007), T. 13118 (private session) (22 June 2007) (testifying that he had never seen this individual before, and described the volunteer as 17 or 18 years old, wearing civilian clothes).

<sup>1884</sup> *Ibid.*, T. 12988–12989 (21 June 2007), T. 13109–13110 (private session) (22 June 2007) (testifying in private session that these men were Veljko Ivanović, Dragan Jović, and Đoko Nikolić).

<sup>1885</sup> PW-142, T. 6461–6462, 6487–6488 (29 Jan 2007) (testifying that these uniformed men were members of the Zvornik Brigade from the vicinity but he could not confirm which unit they belonged to); PW-143, T. 6545 (30 Jan 2007).

Jašikovac, guarded the prisoners<sup>1886</sup> and established a checkpoint just outside the school in order to prevent civilians from gaining access.<sup>1887</sup> At some point during the day, two vehicles passed the checkpoint carrying Zvornik Brigade security officers.<sup>1888</sup>

516. Several dead bodies were seen outside the school.<sup>1889</sup> At one point a crowd of angry Bosnian Serb civilians gathered by the school.<sup>1890</sup> Later that day, the Zvornik Brigade Military Police put the prisoners detained at the Ročević School on trucks and transported them to a gravel pit near Kozluk, together with the dead bodies.<sup>1891</sup>

(ii) Killings – Kozluk (15 July)

517. On 15 July 1995, Veljko Ivanović, a member of the 2nd Battalion of the Zvornik Brigade, was stationed at Karakaj when he received an order to take three crates of ammunition for automatic rifles to the Ročević School.<sup>1892</sup> Ivanović received this order from a man named Pantić.<sup>1893</sup> Ivanović delivered the ammunition to Aćimović at the school.<sup>1894</sup> Later that day, Dragan Jović, another member of the 2nd Battalion, was at the Ročević School when he learned from

<sup>1886</sup> PW-142, T. 6460 (private session), 6461 (29 Jan 2007); PW-143, T. 6542–6543, 6545 (30 Jan 2007) (testifying that the VRS soldiers belonged to one of the battalions of the Zvornik Brigade, saying “That was my opinion. It did not even occur to me that there were soldiers from other brigades there”).

<sup>1887</sup> PW-165, T. 9905, 9909–9913, 9919–9921 (3 Apr 2007), T. 9988, 10002 (4 Apr 2007); Ex. P02494, “Map of Ročević”; Ex. PIC00083, “Map P02494 marked by the witness”; Ex. 3DIC00085, “Map of Ročević School marked the witness”; PW-142, T. 6461 (29 Jan 2007); PW-143, T. 6542–6543, 6545 (30 Jan 2007). PW-165 testified that he received this order on 11 July. PW-165, T. 9913, 9916 (3 Apr 2007). However, based upon the testimony of PW-142 and PW-143 that they received this assignment the day after they were stationed at the Grbavci School, together with the Zvornik Brigade Military Police attendance roster detailed below, the Trial Chamber concludes that PW-165 was mistaken about the date and was actually present at Ročević School with the other men on 15 July. *See* PW-142, T. 6460–6461, 6478 (29 Jan 2007); PW-143, T. 6542–6543, 6550 (30 Jan 2007). The Prosecution alleges that the Zvornik Brigade Military Police attendance roster for July 1995 was altered to change the location of six officers from “R” to “T”. Stevo Kostić, T. 26053 (22 Sept 2008); Ex. P00354, “Zvornik Brigade Military Police attendance roster, July 1995”. Stevo Kostić, the administrative clerk of the Zvornik Brigade Military Police Company, testified that he was responsible for maintaining the attendance roster and that, although he made some alterations to the records, it was not done with the intention to hide information. Moreover, he testified that the letter “R” does not appear on the exhibit in his list of abbreviations. Stevo Kostić, T. 25982, 26015–26016 (22 Sept 2008), T. 26070 (23 Sept 2008). Kostić also testified that the designation of the letter “T” was used generally to denote that a soldier was in the field. *Ibid.*, T. 26025, 26043 (22 Sept 2008). The Trial Chamber considers that there is no need to decide this issue—regardless of whether the attendance roster was altered; either way the evidence indicates that Zvornik Brigade military police officers were in the field.

<sup>1888</sup> PW-165, T. 9923 (3 Apr 2007), T. 9961 (4 Apr 2007). A vehicle log, signed out to Milorad Birčaković, records five trips to Ročević on 15 July. Ex. P00296, “Vehicle Logbook for Opel Rekord P-4528”, p. 4. *See also infra*, para. 1370.

<sup>1889</sup> PW-142, T. 6461–6462, 6487 (29 Jan 2007).

<sup>1890</sup> *Ibid.*, T. 6461, 6467–6468 (29 Jan 2007) (testifying that he thought the civilians wanted to take revenge on the prisoners at the school because he heard someone shout “Let me come in and kill someone”); PW-165, T. 9911–9912 (3 Apr 2007) (testifying that there was a group of 20 to 30 angry Bosnian Serb civilians at the school).

<sup>1891</sup> PW-142, T. 6461–6462, 6464 (29 Jan 2007).

<sup>1892</sup> Veljko Ivanović, T. 18176–18179 (26 Nov 2007).

<sup>1893</sup> *Ibid.*, T. 18176–18177 (26 Nov 2007). Pantić was head of the transportation pool in the Standard Barracks. *Ibid.*, T. 18178 (26 Nov 2007).

<sup>1894</sup> Veljko Ivanović, T. 18177 (26 Nov 2007).

Aćimović that the prisoners detained there were to be executed.<sup>1895</sup> Jović and Veljko Ivanović transported prisoners to the execution site in the afternoon.<sup>1896</sup>

518. The prisoners were loaded into trucks that came from the 2nd Battalion, accompanied by two to four Military Police officers who had assisted with guard duty at the school.<sup>1897</sup> Jović and Ivanović participated in the transportation of three or four truckloads of prisoners using the 2nd Battalion's truck.<sup>1898</sup> The prisoners were blindfolded and their hands were tied.<sup>1899</sup> Ivanović stated:

They were half dead, exhausted, without water or bread. Nobody — nobody begged for their lives. And this worries me greatly. Nobody said, "Spare my life".<sup>1900</sup>

519. At a gravel pit in Kozluk, the military police unloaded the prisoners.<sup>1901</sup> A group of Bosnian Serb men—at least one of whom was a member of the Zvornik Brigade Military Police—shot the prisoners.<sup>1902</sup> Ivanović described the executions as disorganised and confused, and at the time he wondered if the shooters were going to end up hitting each other.<sup>1903</sup> Some of the wounded fell into the Drina River and clung to shrubbery on the riverbank while being shot at.<sup>1904</sup> The wounded who tried to escape were chased down and beaten.<sup>1905</sup> A 12–14 year old boy was among the prisoners,

<sup>1895</sup> Dragan Jović, T. 18048, 18051, 18056–18057 (21 Nov 2007).

<sup>1896</sup> *Ibid.*, T. 18063 (21 Nov 2007) (stating that he transported prisoners from 2 or 3 p.m. until 6 or 7 p.m.); Veljko Ivanović, T. 18179 (26 Nov 2007) (stating that he arrived at Ročević School at around 11 a.m., and transportation to the execution site commenced some time after this and concluded by 2.30 or 3 p.m.); PW-142, T. 6461–6462, 6464–6465 (29 Jan 2007) (stating that he arrived at Ročević School at around 11 a.m., and transportation to the execution site commenced some time after this and concluded by nightfall).

<sup>1897</sup> Dragan Jović, T. 18059–18060, 18083 (21 Nov 2007) (testifying that he did not know which unit the military police officers belonged to). Members of both the Bratunac Brigade Military Police and the Zvornik Brigade Military Police were seen at the Ročević school that day. *See supra*, paras. 505, 512, 515.

<sup>1898</sup> Dragan Jović, T. 18061–18062 (21 Nov 2007) (testifying that he transported prisoners from Ročević to Kozluk two or three times with a truck, which could carry approximately 10 prisoners; Veljko Ivanović, T. 18191 (private session) (26 Nov 2007). *Cf.* Srećko Aćimović, T. 12930–12931 (20 June 2007); T. 13110, 13118–13119 (private session) (22 June 2007) (denying that certain members of his Battalion whom Veljko Ivanović named as participating in the transportation of prisoners, but acknowledging that when he left the Ročević School Veljko Ivanović, Dragan Jović and Đoko Nikolić remained behind and he assumed they participated in transportation of the prisoners).

<sup>1899</sup> Veljko Ivanović, T. 18182 (private session) (26 Nov 2007).

<sup>1900</sup> *Ibid.*, T. 18218 (private session) (26 Nov 2007).

<sup>1901</sup> Dragan Jović, T. 18059–18060 (21 Nov 2007).

<sup>1902</sup> Veljko Ivanović, T. 18189–18192, 18195, 18222 (private session) (26 Nov 2007); Dragan Jović, T. 18060 (21 Nov 2007); PW-174, T. 32701–32702, 32707–32713 (partially private session), 32720, 32758 (private session), 32762 (private session) (23 March 2009) (stating that he was present at the execution site as the killings took place, and he saw 15–20 military policemen at the site, one of whom he recognized as a Zvornik Brigade Military Police officer named "Cigo". "Cigo" had a gun, but PW-174 did not see him shoot it. PW-174 described "Cigo" as tall, dark and skinny, and stated "Cigo was not in Sreco's battalion but, rather, in the Zvornik Brigade". PW-174 stated that he became acquainted with Cigo two or three years after July 1995, and he now knows him well. PW-174 also stated that Dragan Jović handed him a gun and said "What are you doing here? Why did he bring you here, just to stand around?", in response to which, PW-174 fired a gun into the hole where prisoners were being held). The Trial Chamber is satisfied, on the basis of the evidence of PW-174, that at least one member of the Zvornik Brigade Military Police was involved in the executions at Kozluk. *See also* Milorad Birčaković, T. 11049 (7 May 2007); PW-142, T. 6489–6490 (29 Jan 2007).

<sup>1903</sup> Veljko Ivanović, T. 18189–18191 (private session), 18222 (private session) (26 Nov 2007).

<sup>1904</sup> *Ibid.*, T. 18224 (private session) (26 Nov 2007).

<sup>1905</sup> *Ibid.*, T. 18189 (private session) (26 Nov 2007).

“begging to be spared his life.”<sup>1906</sup> At first, none of the men were willing to shoot the boy, however eventually an executioner was found and the boy was killed.<sup>1907</sup>

520. Sometime later, Jović transported soldiers and more prisoners from the Ročević School to the gravel pit, and noticed that there were more soldiers present than earlier, in addition to the military police.<sup>1908</sup>

(iii) Burials (16 July)

521. On the morning of 16 July, Dragan Jokić, the Duty Officer and Chief of Engineering for the Zvornik Brigade, ordered Damjan Lazarević, the Commander of the 2nd Platoon of the Zvornik Brigade Engineering Company, to go to Kozluk to bury the bodies.<sup>1909</sup> The same morning, Jokić also ordered two other members of the Zvornik Brigade Engineering Company, Miloš Mitrović and Nikola Rikanović, to travel to Kozluk with an excavator.<sup>1910</sup> The execution site had pits filled with bodies and broken glass from the nearby glass factory.<sup>1911</sup> When Mitrović and Rikanović arrived, Lazarević showed them the bodies and told them to cover them using a skip, however it turned out to be too small for the task.<sup>1912</sup> Later, a civilian named Rade Bosković arrived with a ULT-220 loader and Lazarević instructed him to cover the bodies.<sup>1913</sup>

522. The Trial Chamber notes the significant involvement of elements of the Zvornik Brigade in the events at Ročević School and Kozluk. While the Bosnian Muslim males were in detention at the

<sup>1906</sup> Veljko Ivanović, T. 18190 (private session) (26 Nov 2007).

<sup>1907</sup> *Ibid.*; Ex. P04494 (confidential), p. 176 (recording that the remains of a boy aged 14 in 1995 were found in the Kozluk grave).

<sup>1908</sup> Dragan Jović, T. 18060–18062, 18065–18066 (21 Nov 2007) (testifying that he did not know or recognise these soldiers, and that he did not know whether they were from the 2nd Battalion).

<sup>1909</sup> Damjan Lazarević, T. 14436, 14431, 14435–14436, 14454–14455 (29 Aug 2007) (testifying that this order was conveyed by either Slavko Bogičević, the Deputy Commander of the Zvornik Brigade Engineering Company, or Vojkan Šekonjić, the Company Desk Officer); Jean-René Ruez, T. 1507–1508 (12 Sept 2006) (testifying that an aerial image indicates that the Kozluk mass gravesite was created between 5 and 17 July 1995); Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 192; Ex. P00649, “Summary of forensic evidence – execution points and mass graves, 16 May 2000”, Annex A, p. 48; Dean Manning, T. 18933–18934, 18976 (10 Dec 2007); Ex. P01761, “Aerial Kozluk, 5 and 17 July 1995”; Ex. P01763, “Aerial Kozluk, 7 and 27 Sept 1995”.

<sup>1910</sup> Miloš Mitrović, Ex. P02259, “92 bis transcript”, BT. 5603, 5612 (3 Dec 2003); Ex. P00295, “Zvornik Brigade July 1995 vehicle work log book”, pp. 489–490 (indicating that a Torpedo Excavator was digging trenches in Kozluk for eight hours on 16 July. Mitrović identified this Torpedo Excavator as the Skip he took to Kozluk); Damjan Lazarević, T. 14435, 14454–14455 (29 Aug 2007).

<sup>1911</sup> Damjan Lazarević, T. 14455–14457 (29 Aug 2007) (describing the location of the bodies as near the Drina River where gravel was being dug for the construction industry and broken glass from the Vitinka Kozluk mineral water plant was taken to be dumped); Ex. P00665, “Report by Richard Wright on Kozluk in 1999, 2 Feb 2000”, p. 4 (describing the exhumation he conducted as occurring in an area of rubbish dumping and gravel extraction alongside the Drina River).

<sup>1912</sup> Miloš Mitrović, Ex. P02259, “92 ter transcript”, BT. 5604–5609 (3 Dec 2003); Damjan Lazarević, T. 14456–14457 (29 Aug 2007), T. 14522 (30 Aug 2007).

<sup>1913</sup> Miloš Mitrović, Ex. P02259, “92 ter transcript”, BT. 5606–5607, 5609–5610 (3 Dec 2003), T. 5630–5631 (4 Dec 2003); Damjan Lazarević, T. 14458–14459 (29 Aug 2007), T. 14522 (30 Aug 2007).

Ročević School, Aćimović was present with members of the 2nd Battalion<sup>1914</sup> and Jaškovac was present with members of the Zvornik Brigade Military Police.<sup>1915</sup> Both men issued orders to their subordinates.<sup>1916</sup> Members of the 2nd Battalion transported prisoners from the school to the execution site.<sup>1917</sup> At least one member of the Zvornik Brigade Military Police was involved in the execution,<sup>1918</sup> and the Zvornik Brigade Engineering Company buried the bodies.<sup>1919</sup>

(iv) Forensic Evidence

523. A primary disturbed mass gravesite was exhumed in Kozluk in 1999.<sup>1920</sup> The bodies were dressed in civilian clothing, all for whom sex could be determined were male and at least 237 individuals were concluded to have died as a result of gunshot injuries.<sup>1921</sup> Hundreds of shell casings were found at the site and forensic evidence established that many of the bodies had been shot at the gravesite.<sup>1922</sup> Blindfolds were located with 44 bodies and ligatures were still binding 140 bodies.<sup>1923</sup> In addition, forensic evidence links six secondary graves at Čančari Road to the primary gravesite at Kozluk.<sup>1924</sup>

524. Among the remains exhumed from the primary grave at Kozluk and the secondary graves associated with it, 1,040 individuals have been identified through DNA analysis as persons reported missing following the fall of Srebrenica.<sup>1925</sup> Taking all of the evidence into account, including this forensic evidence and the estimates of an eyewitness,<sup>1926</sup> the Trial Chamber concludes that over 1,000 males were executed at Kozluk on 15 July 1995.

<sup>1914</sup> Srećko Aćimović, Dragan Jović and Veljko Ivanović testified that they were present. *Supra*, paras. 511, 517.

<sup>1915</sup> *See supra* para. 512.

<sup>1916</sup> Jaškovac ordered his men to guard the prisoners, Aćimović ordered his men to find drivers. *Supra*, paras. 512–513.

<sup>1917</sup> *See supra*, para. 518.

<sup>1918</sup> *See supra*, para. 519.

<sup>1919</sup> *See supra*, para. 521.

<sup>1920</sup> Ex. P00665, “Report by Richard Wright on Kozluk in 1999, 2 Feb 2000”, pp. 3–4.

<sup>1921</sup> *Ibid.*, p. 2; Ex. P00575, “ICTY Operations in Bosnia-Herzegovina 1999 Season: Report of the Chief Pathologist”, pp. 6, 10–12. *See also* Prosecution Adjudicated Facts Decision, Annex, Facts, 453–454.

<sup>1922</sup> Ex. P00665, “Report by Richard Wright on Kozluk in 1999, 2 Feb 2000”, p. 11, 13–14; Richard Wright, Ex. P02162, “92 *ter* transcript”, KT. 3687–3688, 3716–3717 (29 May 2000); Richard Wright, T. 7507–7509 (21 Feb 2007).

<sup>1923</sup> Ex. P00575, “ICTY Operations in Bosnia-Herzegovina 1999 Season: Report of the Chief Pathologist”, p. 7.

<sup>1924</sup> The secondary gravesites associated with Kozluk are Čančari Road 2–5, 7 and 13. Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, pp. 36–37. These links included broken green bottle glass, labels from the Vitinka soft drink bottling factory in Kozluk, and soil with patches of imported clay containing red ceramics and clinker. Ex. P00665, “Report by Richard Wright on Kozluk in 1999, 2 Feb 2000”, p. 14; Prosecution Adjudicated Facts Decision, Annex, Fact 461.

<sup>1925</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, pp. 36–37; Thomas Parsons, T. 20873 (1 Feb 2008) (testifying that the information that these individuals went missing following the fall of Srebrenica was provided to the ICMP by the families of the missing persons).

<sup>1926</sup> PW-142, T. 6478–6479 (private session) (29 Jan 2007) (testifying that approximately 1,000 prisoners were detained at the school, acknowledging that the estimate was difficult, but that he thought that the number of prisoners at Ročević was the same as at Orahovac, where he understood that 1,000 prisoners were detained).

(d) Pilica (14–17 July)<sup>1927</sup>

525. Pilica is a small village in the Zvornik municipality located approximately 25 kilometres north of the Standard Barracks along the Konjević Polje-Zvornik-Bijeljina Road.<sup>1928</sup> The Pilica Cultural Centre is located on this road in the centre of town.<sup>1929</sup> To reach the Kula School at Pilica, one must turn off the Konjević Polje-Zvornik-Bijeljina Road approximately one kilometre south of Pilica, and travel two or three kilometres along this road past small plots of farmland until one reaches a two storey peach-coloured building, the Kula School.<sup>1930</sup> The headquarters of the 1st Battalion of the Zvornik Brigade was in Manojlovići, in the village of Lokanj, which is situated between two and four kilometres west of Pilica.<sup>1931</sup>

526. In late 1994, **Pandurević** requisitioned six hectares of land near Pilica from a company called Agroprom in order to produce food for the 1st Battalion.<sup>1932</sup> This plot of land came to be known as the Branjevo Military Farm,<sup>1933</sup> and is located approximately two to three kilometres from Pilica, down a road which turns off the Konjević Polje-Zvornik-Bijeljina Road.<sup>1934</sup> In July 1995 the Branjevo Military Farm was under the authority and control of the 1st Battalion of the Zvornik Brigade.<sup>1935</sup>

(i) Detentions and Killings – Kula School (14–15 July)

527. On the morning of 14 July 1995, Momir Pelemiš, the Deputy Commander of the 1st Battalion, announced to members of the command that “somebody at the Brigade” had informed him that a group of 200 Bosnian Muslim prisoners were to be brought to the Kula School.<sup>1936</sup> A telegram from the Zvornik Brigade Command at the Standard Barracks ordered the 1st Battalion

<sup>1927</sup> The Indictment alleges that 1,200 Bosnian Muslim males were transported from Bratunac to the Kula School, where they were detained. The “remaining members” of this group were transported to the Branjevo Military Farm and executed. Five hundred men who had surrendered or been captured from the column of men retreating from Srebrenica or been separated at Potočari were killed inside the Pilica Cultural Centre.

<sup>1928</sup> Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1.

<sup>1929</sup> Zoran Radosavljević, T. 22118, 22131–22132 (11 June 2008); Ex. 1D1C00203, “Map of Zvornik municipality marked by the witness”; Ex. P01820, “Video of Pilica Cultural Centre”; Jean René Ruez, T. 1534–1535 (12 Sept 2006).

<sup>1930</sup> Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, pp. 1, 197–208.

<sup>1931</sup> Slavko Perić, T. 11369, 11371 (11 May 2007); Rajko Babić, T. 10214–10215 (18 Apr 2007); Radivoje Lakić, T. 10264–10265, 10286–10287 (19 Apr 2007).

<sup>1932</sup> Radivoje Lakić, T. 10265–10268, 10297 (19 Apr 2007) (testifying, *inter alia*, that the 1st Infantry Battalion was also at times referred to as the Pilica–Lokanj Battalion).

<sup>1933</sup> *Ibid.*, T. 10265, 10293–10294 (19 Apr 2007).

<sup>1934</sup> Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1; Ahmo Hasić, T. 1200–1201 (6 Sept 2006) (testifying that Branjevo Military Farm was two and a half kilometres from Pilica).

<sup>1935</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 439; Radivoje Lakić, T. 10264–10267 (19 Apr 2007) (testifying that he was captain first class of the 1st Battalion of the Zvornik Brigade and was in charge of a work platoon on Branjevo Military Farm. His Battalion Commander was Milan Stanojević).

<sup>1936</sup> Slavko Perić, T. 11369, 11371, 11375–11376 (11 May 2007) (quotation at T. 11375).



to prepare the Kula School for the arrival of between 100 and 200 prisoners.<sup>1937</sup> Approximately an hour after the telegram arrived, **Nikolić** called Slavko Perić, the Assistant Commander for Intelligence and Security in the 1st Battalion, and told him “something very similar to what was written in the telegram” and that Perić should go to the Kula School to ensure that there were no problems with local civilians.<sup>1938</sup> Between one and two hours after receiving this order, around 10 to 15 members of the 1st Battalion secured the Kula School in preparation for the arrival of the prisoners.<sup>1939</sup>

528. In the afternoon of 14 July after the members of the 1st Battalion arrived at the Kula School, groups of Bosnian Muslim prisoners began to arrive in buses and trucks guarded by members of the Bosnian Serb Forces who were not from the 1st Battalion.<sup>1940</sup> Together with these men, members of the 1st Battalion undertook guard duties at the school.<sup>1941</sup>

<sup>1937</sup> Rajko Babić, T. 10214–10217, 10241 (18 Apr 2007) (testifying that he reviewed the telegram and that when he returned to the Battalion Command on 16 July, he checked the logbook and found that the page of the logbook containing “the order”—presumably, the initial order to prepare the school—was missing. No one would tell Babić how or why the page was missing); Slavko Perić, T. 11375–11378 (11 May 2007) (testifying that he was aware of a telegram to this effect); Ex. 3D00131, “Zvornik Brigade Duty Officer Logbook, 13 to 15 July 1995”, pp. 7–15 (containing no information about an order to prepare any school for the arrival of prisoners on 14 July, and nothing on the scanned original to indicate that a page relating to 14 July has been ripped out); Pero Petrović, Ex. P02470 (confidential), BT. 5499–5500, 5503–5504 (2 Dec 2003) (testifying that he was told by Perić that an order had been received to prepare the premises of Kula School to receive prisoners. Petrović then called the Zvornik Brigade Command and spoke to Dragan Jokić, asking him what was happening in Pilica. Jokić responded that the prisoners were none of Petrović’s concern and that Petrović should mind his own business because the situation was being taken care of). *See also supra*, para. 508 (stating that between 1 and 2 a.m. on 15 July, the Zvornik Brigade Command sent a telegram to the 2nd Battalion ordering a platoon to be dispatched to execute prisoners at Ročević School).

<sup>1938</sup> Slavko Perić, T. 11375–11378 (11 May 2007) (quotation at T. 11376). Perić said that what **Nikolić** told him did not constitute an order, although not much later during his testimony he classified the instruction from **Nikolić** as an order. *Ibid.*, T. 11378, 11380 (11 May 2007).

<sup>1939</sup> The men included Slavko Perić, Rajko Babić, the Officer for General Affairs, and Dragan Pantić, the Assistant Battalion Commander for Morale and Information. Slavko Perić, T. 11380–11381 (11 May 2007); Rajko Babić, T. 10214, 10219–10220 (18 Apr 2007). *See supra*, para. 494 (stating that on 14 July Jokić called Marko Milošević, the Deputy Commander of the 6th Battalion of the Zvornik Brigade, in Petkovci and informed him that Bosnian Muslim prisoners would be brought to the Petkovci School).

<sup>1940</sup> Slavko Perić, T. 11381–11382 (11 May 2007); Rajko Babić, T. 10221–10224, 10232–10233 (18 Apr 2007). Perić did not know the soldiers or who commanded them. Slavko Perić, T. 11381–11382, 11389, 11396 (11 May 2007). Babić did not know where they were from, adding that he was sure that the soldiers were not from the 1st Battalion of the Zvornik Brigade, but he did not know whether they were from another unit of the Zvornik Brigade. Rajko Babić, T. 10223, 10250 (18 Apr 2007).

<sup>1941</sup> Slavko Perić, T. 11383–11385 (11 May 2007). Perić testified as follows about the role of the 1st Battalion: “[...] as to what their actual task was, it was to prevent any contact with the locals. [...] Q. Are you suggesting that the men were protecting the prisoners from the local population? A. Yes. Q. Were the men also preventing the prisoners from escaping? A. Well, it’s a complex issue, in fact. The sole authority over these people was exerted by the men who escorted them. They had the power to take them out at any point and do whatever they wished with them. We were there simply as silent observers.” *Ibid.*, T. 11385 (11 May 2007). The Prosecution argues that Perić’s explanation is “utterly implausible”, and it is reasonable to infer that the 1st Battalion was there to prevent the prisoners from escaping. Prosecution Final Brief, paras. 892–893. Rajko Babić testified that a prisoner was shot attempting to escape, regarding which he said: “And then probably our soldiers prevented him from escaping and shooting at him as he was fleeing and they probably hit him in the leg.” Rajko Babić, T. 10229 (18 Apr 2007). The Trial Chamber accepts the Prosecution’s argument and finds that the role of the 1st Battalion was to guard the prisoners to ensure that they did not escape.

529. The prisoners were placed in the school gymnasium and classrooms, while some prisoners remained on buses parked outside the school.<sup>1942</sup> Conditions were very difficult because of overcrowding.<sup>1943</sup> Food and water were scarce, and no medical treatment was provided.<sup>1944</sup> Prisoners were beaten when they went to the toilet, so they relieved themselves where they stood.<sup>1945</sup> Throughout the night screaming, moaning and bursts of gunfire could be heard, and some men were taken outside, never to return.<sup>1946</sup> One prisoner sustained a gunshot wound to the leg as he attempted to escape.<sup>1947</sup>

530. At around 10 or 11 a.m. on 15 July, Perić visited the Standard Barracks to discuss the lack of cooperation from the Zvornik Brigade Command regarding a request to relocate the prisoners at the Kula School.<sup>1948</sup> Perić discussed the situation at the School with four or five officers, including Dragan Jokić, describing it in “even more dramatic terms than it actually was”.<sup>1949</sup> Perić described the atmosphere at the meeting as tense, and found the officers to be disinterested in what he was saying.<sup>1950</sup>

531. In the evening of 15 July, 15–20 1st Battalion soldiers arrived at the Kula School to take over duty from the 1st Battalion soldiers who had been there overnight.<sup>1951</sup> Also on 15 July, one dead body was seen on the ground outside the Kula School,<sup>1952</sup> and nine dead bodies wearing civilian clothes were found approximately 50 metres from the Kula School.<sup>1953</sup> These bodies were loaded onto a truck by the work Platoon of the 1st Battalion of the Zvornik Brigade.<sup>1954</sup> The Trial

<sup>1942</sup> Rajko Babić, T. 10221–10227 (18 Apr 2007); Slavko Perić, T. 11393 (11 May 2007), T. 11429–11430 (14 May 2007); Ahmo Hasić, T. 1194 (6 Sept 2006) (testifying that the men with whom he was detained in Pilica ranged from 15 to 80 years of age).

<sup>1943</sup> PW-117, Ex. P02207, “92 bis transcript”, KT. 3036 (14 Apr 2000).

<sup>1944</sup> *Ibid.*, KT. 3032–3033, 3036–3037 (14 Apr 2000) (testifying that the water that he and four others had volunteered to collect was insufficient for all the prisoners and that he was given some paté and a piece of bread after he had fainted, but he did not see anyone else given food on the night of 14 July); Ahmo Hasić, T. 1195 (6 Sept 2006) (testifying that at one point bite-size pieces of a loaf of bread were given to some prisoners).

<sup>1945</sup> Ahmo Hasić, T. 1193 (6 Sept 2006).

<sup>1946</sup> PW-117, Ex. P02207, “92 bis transcript”, KT. 3033–3036; 3038, 3050 (14 Apr 2000); Ahmo Hasić, T. 1192–1195 (6 Sept 2006).

<sup>1947</sup> Rajko Babić, T. 10229 (18 Apr 2007).

<sup>1948</sup> Slavko Perić, T. 11392, 11395 (11 May 2007).

<sup>1949</sup> *Ibid.*, T. 11395–11397, 11399–11401 (11 May 2007) (quotation at T. 11397) (testifying that he knew most of the officers in the Brigade by sight, and one of the officers present may have been Jokić. He also stated: “I think that one of them left the office and came back quite soon, and he said that Major Obrenović -- whether he had actually seen him or spoken to him, I don’t know, but he relayed to us that there was a total lack of interest in that problem”); PW-168, T. 15869–15871 (26 Sept 2007) (testifying that Obrenović returned to the Zvornik Brigade Command on 15 July at around 11 am., and was told by Jokić that there were huge problems guarding and burying the prisoners). Based upon the testimony of PW-168 and Slavko Perić, the Trial Chamber is satisfied that Dragan Jokić was one of the officers present at this meeting.

<sup>1950</sup> Slavko Perić, T. 11395–11396, 11399–11400 (11 May 2007).

<sup>1951</sup> Rajko Babić, T. 10231–10233 (18 Apr 2007).

<sup>1952</sup> Milorad Birčaković, T. 11046 (7 May 2007).

<sup>1953</sup> Jevto Bogdanović, T. 11323–11324, 11344 (10 May 2007).

<sup>1954</sup> *Ibid.*, T. 11323–11324, 11344 (10 May 2007).

Chamber finds that between 14 and 15 July 1995, ten Bosnian Muslim men detained at the Kula School near Pilica were killed.

(ii) Killings – Branjevo Military Farm (16 July)

532. On the morning of 16 July, Pelemiš was informed by the Zvornik Brigade Command at the Standard Barracks that someone would be coming to take the prisoners at the Kula School away.<sup>1955</sup>

533. Around noon, **Beara** and **Popović** arrived at the Kula School.<sup>1956</sup> An intercept from 16 July at 1:58 p.m. records the Duty Officer of the Zvornik Brigade telling the Duty Officer of the Drina Corps that **Popović** required 500 litres of fuel to be delivered to Pilica.<sup>1957</sup> Also at 11:11 a.m., a conversation took place between **Beara**, Milorad Trbić and the Drina Corps Duty Officer in which conducting a “triage” on certain prisoners was discussed.<sup>1958</sup>

534. That same day, Jevto Bogdanović, a member of the work platoon in the 1st Battalion, was ordered by Radivoje Lakić, the Commander of the same platoon and the director of Branjevo Military Farm,<sup>1959</sup> to go to the Kula school.<sup>1960</sup> When he arrived, Bogdanović was ordered by the soldiers present to stand guard so that the prisoners, who were all wearing civilian clothes, could be loaded onto buses.<sup>1961</sup> The prisoners were taken from the school in groups of around eight, had their hands tied behind their backs—some groups were also blindfolded—and were loaded onto buses and transported to the Branjevo Military Farm.<sup>1962</sup> As he was led out of the school, Ahmo Hasić saw a dead body lying in a pool of blood on the ground floor of the school.<sup>1963</sup>

535. Brano Gojković was in charge of a unit of the 10th Sabotage Detachment of the Main Staff, which was directly subordinated to the Administration for Intelligence.<sup>1964</sup> On the morning of

<sup>1955</sup> Slavko Perić, T. 11408 (11 May 2007) (testifying that Pelemiš called him and relayed this information to him. Pelemiš did not say how the prisoners would be transported, nor where they would be transported to).

<sup>1956</sup> Slavko Perić, T. 11414 (11 May 2007). The reliability of Perić’s identification will be discussed at *infra*, para. 1125, fn. 3674. The Trial Chamber notes an entry in the Zvornik Brigade Duty Officer Notebook made between 4:00 a.m. and 6:00 a.m. on 16 July, recording that the 1st Battalion requested 50 litres of oil, 20 litres of gasoline and 10 crates of ammunition for “transport of troops to Kula”. Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 37. For further analysis of this entry, see *infra*, para. 1372.

<sup>1957</sup> Ex. P01189a, “Intercept, 16 July 1995, 13:58 hours”.

<sup>1958</sup> Ex. P01187a, “Intercept, 16 July 1995, 11:11 hours”. This conversation is analysed in more detail at *infra*, para. 1285.

<sup>1959</sup> Radivoje Lakić, T. 10264–10265, 10267 (19 Apr 2007); Ex. P02506, “Zvornik Brigade document, signed by Vinko Pandurević, 7 Dec 1994”.

<sup>1960</sup> Jevto Bogdanović, T. 11314–11315, 11319, 11343 (10 May 2007) (testifying that his work platoon was part of the 1st Battalion, and that the order was conveyed to him by Stevo Ostojić and Rajko Jurosević).

<sup>1961</sup> *Ibid.*, T. 11320–11322 (10 May 2007).

<sup>1962</sup> PW-117, Ex. P02207, “92 bis transcript”, KT. 3040–3041 (14 Apr 2000); Ahmo Hasić, T. 1192–1195, 1200–1201 (6 Sept 2006); Rajko Babić, T. 10234–10235 (18 Apr 2007).

<sup>1963</sup> Ahmo Hasić, T. 1195–1196 (6 Sep 2006).

<sup>1964</sup> See Dražen Erdemović, T. 10963 (4 May 2007).

16 July, Gojković ordered eight of his men<sup>1965</sup> to execute busloads of Bosnian Muslims due to arrive at the Branjevo Military Farm.<sup>1966</sup> These eight men travelled to the Standard Barracks where a certain “Lieutenant Colonel” and two military police officers joined them.<sup>1967</sup> They continued on to Branjevo Military Farm together, however the “Lieutenant Colonel” and the military policemen left as the Bosnian Muslims began to arrive.<sup>1968</sup>

536. Between 10 a.m. and 3 or 4 p.m., the eight members of the 10th Sabotage Detachment executed the Bosnian Muslim prisoners.<sup>1969</sup> Early in the afternoon eight or ten VRS soldiers arrived from Bratunac and joined in the executions.<sup>1970</sup>

537. Erdemović, a member of the 10th Sabotage Detachment, described the killings as follows:

They brought out ten persons. We were standing in a line. [...] the first people from that first bus were blindfolded and their hands were tied behind their backs. [...] We took those people, I can't be precise, but I believe it was 100, 200 meters away from the bus, and then we were ordered to shoot at them. They had their backs to us. [...] They took people out from the bus in groups, group by group, and the second group followed the first one. Groups were of ten and they were executed.<sup>1971</sup>

538. Survivors of the execution described being led in groups to a meadow littered with corpses and told to turn their backs to the waiting soldiers.<sup>1972</sup> Brano Gojković gave the order to open fire,

<sup>1965</sup> Dražen Erdemović, Zoran Svetković, Marko Boskić, Zoran Goronja, Franc Kos, Stanko Savanović, and a certain Golijan. Dražen Erdemović, T. 11005 (7 May 2007). Dražen Erdemović was a member of the 10th Sabotage Detachment who has been convicted for his participation in the killings at Branjevo Military Farm. *Ibid.*, T. 10928 (4 May 2007). *See also*, Indictment, para. 123(d). The Indictment alleges that “Zoran Goronjs” was a physical perpetrator, however, the Trial Chamber considers the disparity in spelling to be a typographical error. *See* Indictment, para. 123(d). Erdemović concluded that Second Lieutenant Milorad Pelemiš, Commander of the 10th Sabotage Detachment, told Brano Gojković “what needed to be done” in relation to the activities at Branjevo Military Farm. Dražen Erdemović, T. 10963 (4 May 2007).

<sup>1966</sup> Dražen Erdemović, T. 10962–10963 10970–10972 (4 May 2007).

<sup>1967</sup> *Ibid.*, T. 10964–10971 (4 May 2007). As to the identity of the Lieutenant Colonel, *see infra*, paras. 1131–1135. Erdemović said that he remembered reading “military police” on the men’s uniforms, and concluded that they were from the Drina Corps, because he understood that the headquarters of the Drina Corps was located in Zvornik. *Ibid.*, T. 10966–10967 (4 May 2007). Given that Erdemović’s assumption was based upon incorrect information (the headquarters of the Drina Corps was actually located in Vlasenica, *see supra*, para. 134), the Trial Chamber is unable to make a finding regarding the affiliation of these military policemen.

<sup>1968</sup> Dražen Erdemović, T. 10969–10971 (4 May 2007).

<sup>1969</sup> *Ibid.*, T. 10962, 10971–10973, 10983 (4 May 2007).

<sup>1970</sup> These men also beat the prisoners. Dražen Erdemović, T. 10974–10975 (4 May 2007). Brano Gojković, leader of Dražen Erdemović’s unit of the 10th Sabotage Detachment, recognised these men, however Erdemović did not know what unit these men belonged to, but he did recall one of the men because he wore a US Army uniform and a bandana. *Ibid.*, T. 10974, 10992 (4 May 2007). Erdemović recognised this man on Ex. PIC00101, “Picture of a man wearing a bandana, marked by Erdemović” and Ex. P01918, “Picture of a man wearing a bandana in Potočari on 12 July 1995”. Dražen Erdemović, T. 10976–10977 (4 May 2007). The man in the bandana was also identified, based upon the same photo, by Dobrisav Stanojević, who knew him to be Radenko Tomić, nicknamed Gargija, a member of two units, first working in the Panthers Unit before transferring to the Bratunac Brigade. No time period was given for when Tomić might have transferred to the Bratunac Brigade. Dobrisav Stanojević, T. 12888, 12891, 12899 (19 June 2007); Ex. PIC00127, “Photograph P01936 marked by the witness.” The Trial Chamber concludes that Radenko Tomić, nicknamed Gargija, a VRS Soldier, participated in the executions at Branjevo Military Farm.

<sup>1971</sup> Dražen Erdemović, T. 10971–10972 (4 May 2007).

<sup>1972</sup> PW-117, Ex. P02207, “92 bis transcript”, KT. 3040–3041 (14 Apr 2000); Ahmo Hasić, T. 1202–1203 (6 Sept 2006); Ex. 7D00013 (confidential), p. 4; Dražen Erdemović, T. 10970–10971 (4 May 2007). Erdemović also testified that Second Lieutenant Milorad Pelemiš, Commander of the 10th Sabotage Detachment Unit, would have

and the prisoners fell to the ground upon being shot.<sup>1973</sup> Soldiers would then ask whether anyone remained alive and shoot any of those who responded.<sup>1974</sup> As Ahmo Hasić was led to the execution site, he was kicked in the stomach because he had no money to give the soldiers. He described the desperation of his fellow prisoners as they pleaded for water before being killed. Others agreed to register as Serbs, although this did not save them.<sup>1975</sup>

539. PW-117 recalled:

When they opened fire, I threw myself on the ground. My hands were still tied behind my back and I fell on my stomach, face down. And one man fell on my head. I think he was killed on the spot. And I could feel the hot blood pouring over me. The shooting continued and then they ordered soldiers to shoot people individually. And I could hear a voice saying that they shouldn't shoot people in their heads, so that their brains wouldn't spill out, but rather to shoot them in their backs.<sup>1976</sup>

(iii) Detentions and Killings – Pilica Cultural Centre

540. A few days prior to 16 July 1995, VRS soldiers brought prisoners to the Pilica Cultural Centre.<sup>1977</sup> At around 3 or 4 p.m. on 16 July, the “Lieutenant Colonel” returned to the Branjevo Military Farm and ordered the VRS soldiers deployed there to go to the Pilica Cultural Centre in order to execute the 500 Bosnian Muslims who were detained there.<sup>1978</sup> The eight members of the 10th Sabotage Detachment refused to go.<sup>1979</sup> The VRS soldiers from Bratunac who had also been at Branjevo Military Farm that day volunteered and left with the “Lieutenant Colonel” and the two military policemen.<sup>1980</sup> The roads from the direction of Pilica were secured, and that same afternoon, firing could be heard at Branjevo Military Farm.<sup>1981</sup> Firing and explosions could also be heard that afternoon in Pilica town, coming from the direction of the Pilica Cultural Centre.<sup>1982</sup>

541. Pursuant to an instruction from the “Lieutenant Colonel”, Erdemović went to a café directly across the road from the Pilica Cultural Centre at 3 or 4 p.m. on 16 July, from which point he could

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known about the killings because “not a single action or mission of our unit was possible without the knowledge of the commander of our unit”. *Ibid.*, T. 11004 (7 May 2007).

<sup>1973</sup> Dražen Erdemović, T. 10972 (4 May 2007); Ahmo Hasić, T. 1201-1203 (6 Sep 2006); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3041 (14 Apr 2000).

<sup>1974</sup> PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3042 (14 Apr 2000); Ahmo Hasić, T. 1203–1205 (6 Sept 2006) (testifying that he waited until two hours before dusk to escape from the meadow).

<sup>1975</sup> Ahmo Hasić, T. 1201–1202 (6 Sep 2006).

<sup>1976</sup> PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3041 (14 Apr 2000).

<sup>1977</sup> Witnesses also refer to the Pilica Cultural Centre as the Pilica Dom or the Pilica Community Centre. Pero Petrović, Ex. P02470, “92 *ter* transcript”, BT. 5511–5515 (2 Dec 2003); Ex. P02471, “Diagram drawn by Pero Petrović”. Slavko Perić observed security—men in military and police uniforms which he did not recognise—outside the Pilica Cultural Centre on 15 July, having travelled there because he heard that prisoners were being detained. Slavko Perić, T. 11404–11405 (11 May 2007).

<sup>1978</sup> Dražen Erdemović, T. 10970–10971, 10975, 10982 (4 May 2007).

<sup>1979</sup> *Ibid.*, T. 10982 (4 May 2007).

<sup>1980</sup> *Ibid.*, T. 10982 (4 May 2007).

<sup>1981</sup> Radivoje Lakić, T. 10269–10271 (19 Apr 2007).

see a number of bodies outside the Pilica Cultural Centre.<sup>1983</sup> A check-point had been set up outside the centre guarded by armed civilian police.<sup>1984</sup> After a short while, VRS soldier Radenko Tomić, who was nicknamed Gargija and who had participated in the executions at Branjevo Military Farm, entered the café and told the “Lieutenant Colonel”, that “everything was finished”.<sup>1985</sup> Later, just before they all left the café the “Lieutenant Colonel” stood up and announced: “Who remained alive has remained alive.”<sup>1986</sup>

(iv) Burials (16–17 July)

542. On 16 July 1995,<sup>1987</sup> a “courier” from the 1st Battalion<sup>1988</sup> arrived at the Branjevo Military Farm and asked that five men go to the Pilica Cultural Centre to load corpses.<sup>1989</sup> Lakić sent all of the men from his 1st Battalion work platoon (namely, Jevto Bogdanović, Đusan Trivković, Jevto Lazarević, Jovan Ilić, Rajo Jurosević, Vojo Lakić and Stevo Ostojić) to complete this task.<sup>1990</sup>

543. The men travelled the few kilometres to the Pilica Cultural Centre with the “courier” on a tractor. They noticed the bodies of approximately ten people in civilian clothes along the way with apparent gunshot wounds by the side of the road.<sup>1991</sup> When they arrived at the Pilica Cultural Centre, there were soldiers present.<sup>1992</sup> The soldiers were securing the area and not letting the local villagers into the Cultural Centre.<sup>1993</sup> Once at the Pilica Cultural Centre, members of the

<sup>1982</sup> Dražen Erdemović, T. 10983–10985 (4 May 2007) (testifying that the firing and explosions were heard around 3 or 4 p.m.).

<sup>1983</sup> *Ibid.*, T. 10983–10986 (4 May 2007); Ex. P01820, “Video of Pilica Cultural Center”, 0:34–0:55.

<sup>1984</sup> *Ibid.*, T. 10984 (4 May 2007) (testifying that there were two or three armed civilian policemen wearing blue camouflage uniforms of the RS MUP).

<sup>1985</sup> *Ibid.*, T. 10985 (4 May 2007). *See supra*, para. 536, fn. 1970.

<sup>1986</sup> *Ibid.*, T. 10986 (4 May 2007).

<sup>1987</sup> Lakić testified that these events occurred on a Sunday, and 16 July 1995 fell on a Sunday. Radivoje Lakić, T. 10275 (19 Apr 2007).

<sup>1988</sup> Radivoje Lakić, T. 10272–10273 (19 Apr 2007).

<sup>1989</sup> *Ibid.*, T. 10272–10275 (19 Apr 2007).

<sup>1990</sup> *Ibid.*, T. 10272–10275 (19 Apr 2007); Jevto Bogdanović, T. 11327, 11343 (10 May 2007). Lakić testified that it was difficult for him to select five men, and his assistant Perisa suggested that he send all of his men (Lakić testified that there were six), which he did. Lakić could tell from their expression that they did not want to go but they obeyed. Radivoje Lakić, T. 10274 (19 Apr 2007). Contrary to Lakić’s statement that there were six men in the work platoon, Bogdanović testified that there were 12 members of the work platoon, excluding him. Jevto Bogdanović, T. 11329 (10 May 2007). Bogdanović also testified that Lakić was present in Pilica when the men were loading the trucks. *Ibid.*, T. 11332 (10 May 2007). This is contrary to Lakić’s testimony, where he said that he did not go to Pilica with his men. Radivoje Lakić, T. 10275–10276 (19 Apr 2007). Having observed Lakić’s testimony, the Trial Chamber concludes that he was not telling the whole truth about his presence in Pilica, and accepts Bogdanović’s testimony that Lakić was present in Pilica with his men.

<sup>1991</sup> Radivoje Lakić, T. 10273–10274 (19 Apr 2007); Jevto Bogdanović, T. 11327 (10 May 2007). On 17 July 1995, Stevo Osojić left the group as soon as he had an opportunity and there was no consequence for him. Radivoje Lakić, T. 10274 (19 Apr 2007). Pero Petrović saw five men wearing t-shirts and olive grey trousers loading corpses in front of the Pilica Cultural Centre. Petrović testified that he saw this on the Monday morning after St Peter’s day, which is on 12 July. Pero Petrović, Ex. P02470 (confidential), BT. 5517–5518 (2 Dec 2003). 12 July fell on a Wednesday in 1995, which would mean that the following Monday was 17 July 1995.

<sup>1992</sup> Bogdanović did not know what unit or battalion the soldiers were from. Jevto Bogdanović, T. 11328 (10 May 2007).

<sup>1993</sup> Jevto Bogdanović, T. 11328 (10 May 2007).

1st Battalion loaded the dead bodies onto two “tipper trucks”. The inside of the Pilica Cultural Centre was described as having corpses “piled up on each other, just lying there scattered all over the place”<sup>1994</sup> and the bodies—two of which were female—were all wearing civilian clothes and appeared to have been killed inside the Centre.<sup>1995</sup>

544. Forensic evidence supports that killings occurred inside the Pilica Cultural Centre.<sup>1996</sup> Heavy concentrations of apparent blood splatter and tissue were found on the walls of the centre, regarding which it was noted that “very few areas are spared”, and multiple impacts consistent with gunfire and explosions were also noted.<sup>1997</sup>

545. On 17 July, Milenko Tomić, a driver and member of the R Battalion<sup>1998</sup> of the Zvornik Brigade, reported to the Pilica Cultural Centre, acting upon an order from his supervisor, Radislav Pantić.<sup>1999</sup> Tomić arrived at the Pilica Cultural Centre with a lorry belonging to Metalno (the Company for which he worked), and proceeded to transport two truckloads of corpses from the Pilica Cultural Centre to Branjevo Military Farm together with an unidentified soldier.<sup>2000</sup>

546. On the morning of 17 July 1995, Damjan Lazarević, the Commander of the 2nd Platoon of the Zvornik Brigade Engineering Company,<sup>2001</sup> ordered members of the Zvornik Brigade Engineering Company including a machine operator Cvijetin Ristanović to take an excavating machine to Branjevo Military Farm and to dig a pit there.<sup>2002</sup> This task had been assigned to

<sup>1994</sup> Jevto Bogdanović, T. 11329–11330 (10 May 2007) (quotation at T. 11330).

<sup>1995</sup> *Ibid.*, T. 11330–11331 (10 May 2007).

<sup>1996</sup> Between 27 September and 2 October 1996, a team comprising ICTY Prosecution personnel and members the United States Naval Criminal Investigation Service inspected the Pilica Cultural Centre. Ex. P00679, “Report by United States Naval Criminal Investigative Service”, pp. 1, 3–4; Dean Manning, T. 18981–18983 (10 Dec 2007). *See also* Ex. P01817, “Photo at back of room of the Pilica Cultural Centre” (depicting blood and tissue on the walls, as well as damage to the floor indicating an explosion); Ex. P00599, “Report by de Bruyn on forensic explosives samples, 2 Mar 2000”, p. 5 (stating that subsequent analysis of samples taken from Pilica Cultural Centre confirmed the existence of explosive residue).

<sup>1997</sup> Ex. P00679 “Report of investigation by United States Naval Criminal Investigative Service”, pp. 3, 10–11 (quotation at p. 3).

<sup>1998</sup> *See supra*, para. 145.

<sup>1999</sup> Milenko Tomić, T. 21001, 21022 (5 Feb 2008); Ex. P00295, Zvornik Brigade July 1995 Transportation Records, pp. 583–584.

<sup>2000</sup> Milenko Tomić, T. 21001–21002, 21006 (5 Feb 2008); Ex. P00295, Zvornik Brigade July 1995 Transportation Records, p. 584 (recording five trips “Zvor-Pilica-Kula-Pilica-Zvor” on 17 July 1995); Ex. P00305, “Vehicle Work Log number 22-1667/95” (recording that a lorry from the Metalno Company was issued to Milenko Tomić on 17 July 1995).

<sup>2001</sup> Damjan Lazarević, T. 14436 (29 Aug 2007).

<sup>2002</sup> Cvijetin Ristanović, Ex. P02256, “92 *ter* transcript”, BT. 5360, 5389–5392, 5418 (1 Dec 2003); Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995” (Notebook), p. 153 (recording the following request (and that it was conveyed to Dragan Jokić, Chief of Engineering, and Sreten Milošević, Assistant Commander for Logistics) for 16 July at 10:22 p.m.: “the 1st pb asked for one loader, one excavator and a dump-truck with a tarpaulin to be in Pilica at 08:00 hours”); Damjan Lazarević, T. 14472 (29 Aug 2007); Ex. P00297, “Zvornik Brigade Engineer Company Daily Orders log book”, p. 17 (recording that a BGH-700 and the ULT 220 were in Branjevo on 17 July 1995); Damjan Lazarević, T. 14480 (29 Aug 2007); Ex. P00302, “Zvornik Brigade vehicle logbook for ULT 220 from Birac-Holding”, p. 2 (recording that the ULT-220 log for the 17 July 1995 was “VRS, digging trenches in Branjevo” for eight and a half hours); however, Damjan Lazarević testified that this

Lazarević by Slavko Bogičević, the Deputy Commander of the Engineering Company, and by Vojkan Šekonjić, the Company Desk Officer.<sup>2003</sup> As Ristanović carried out Lazarević's order, he noticed a loader operating in the vicinity of a number of corpses at the site.<sup>2004</sup>

547. Damjan Lazarević himself was at Branjevo Military Farm while burials were taking place, and noticed that while the operator of the machine would occasionally use the bucket to load the bodies, the bodies were mostly loaded onto the machine manually.<sup>2005</sup> He also noticed that there may have been a few people from the rear battalion of the Zvornik Brigade present,<sup>2006</sup> and also that workers from public utilities and civilian protection authorities assisted in the burial.<sup>2007</sup>

(v) Forensic Evidence

548. In 1996, a primary mass gravesite was exhumed at Branjevo Military Farm in which all but one individual was found wearing civilian clothing.<sup>2008</sup> In every case where gender could be determined, it was determined to be male, and where the cause of death could be determined, it was gunshot wounds.<sup>2009</sup> Ligatures associated with 83 individuals were recovered, and evidence of affiliation with the Muslim religion was found on five individuals.<sup>2010</sup> It was considered plausible that the individuals were killed, at a minimum, one year prior to the exhumation conducted in 1996.<sup>2011</sup> In addition, four secondary gravesites located along Čančari Road have been associated with the primary gravesite at Branjevo Military Farm.<sup>2012</sup>

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machine was not in Branjevo on 17 July 1995, and there was another ULT-220 machine in Branjevo that was the property of the quarry at Jošanica. Damjan Lazarević, T. 14481 (29 Aug 2007). Taking all of this evidence into account, the Trial Chamber finds that equipment of the Zvornik Brigade Engineering Company was digging trenches in Pilica on 17 July 1995.

<sup>2003</sup> Damjan Lazarević, T. 14435, 14459 (29 Aug 2007).

<sup>2004</sup> The corpses were in the meadow. Cvijetin Ristanović, Ex. P02256, "92 *ter* transcript", BT. 5393–5395 (1 Dec 2003); Ex. P02258, "Sketch by Cvijetin Ristanović", p. 1; Ex. P00299, "Zvornik Brigade vehicle logbook for Mercedes 2626", p. 2. (recording that a 700 loader was taken on the route "Base-Standard-Branjevo-Base" on 17 July 1995).

<sup>2005</sup> Damjan Lazarević, T. 14461–14462 (29 Aug 2007).

<sup>2006</sup> *Ibid.*, T. 14462 (29 Aug 2007).

<sup>2007</sup> *Ibid.*

<sup>2008</sup> Ex. P00622, "Report by William Haglund on Branjevo Military Farm grave site, 15 June 1998", pp. ix, 43, 49, 67–68. *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 431.

<sup>2009</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 432; Ex. P00622, "Report by William Haglund on Branjevo Military Farm grave site, 15 June 1998", pp. 43, 50–51, 67; William Haglund, Ex. P02150, "92 *ter* transcript", KT. 3754. (29 May 2000).

<sup>2010</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 433.; Ex. P00622, "Report by William Haglund on Branjevo Military Farm grave site, 15 June 1998", pp. 52–53 (recording that amulets, prayer beads, and documents indicating membership in the Islamic community were found in the grave).

<sup>2011</sup> Ex. P00622, "Report by William Haglund on Branjevo Military Farm grave site, 15 June 1998", p. 68 (stating that This conclusion is based solely upon the "fleshed state" and relative absence of natural disarticulation of the remains).

<sup>2012</sup> These graves are Čančari Road 9–12. Ex. P04490, "Summary of forensic evidence by Dušan Janc, 13 March 2009", Annex A, pp. 13–14, 37. Čančari Road is located approximately 30–40 kilometres south-west of Branjevo Military Farm. Ex. 4DP04524, "Srebrenica – Mass graves primary and secondary; DNA and forensic evidence connections"; Dušan Janc, T. 33496–33497 (1 May 2009). The connection between the gravesites is based upon



549. Among the remains exhumed from the primary gravesite at Branjevo Military Farm and the secondary gravesites associated with it, 960 individuals have been identified through DNA analysis as persons reported missing following the fall of Srebrenica.<sup>2013</sup> In addition to the 960 individuals identified in these gravesites, a fifth secondary gravesite associated with the Branjevo Military Farm primary grave has been found, Čančari Road 8. This grave was exhumed in October and November of 2008 and was found to contain a minimum number of 84 individuals, as well as five cloth ligatures.<sup>2014</sup>

550. Taking all of the evidence into account, including forensic evidence as well as evidence regarding the estimated number of prisoners executed<sup>2015</sup> and the transport of bodies from the Pilica Cultural Centre to Branjevo Military Farm,<sup>2016</sup> the Trial Chamber concludes that between 1,000 and 2,000 persons were executed in the Pilica area (at Branjevo Military Farm and Pilica Cultural Centre) on 16 July 1995.

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soil, pollen and textile analysis. *See* Ex. P00559, “Report by Jose Pablo Baraybar – Anthropology examination of human remains from Eastern Bosnia in 1999”, pp. 3, 8; Ex. P00562, “Statement of Antony G Brown, 26 Feb 1999”, p. 10; Ex. P00675, “Report by S.E. Maljaars on textile investigation, 11 Feb 2000”, p. 23; Prosecution Adjudicated Facts Decision, Annex, Fact 488. Aerial images indicate that Čančari Road 12 was created between 7 and 27 September 1995 and backfilled prior to 2 October 1995. Prosecution Adjudicated Facts Decision, Annex, Fact 434; Ex. P01868, “Aerial, Čančari, 27 Sept 1995”; Ex. P01869, “Aerial, Čančari, 2 Oct 1995 (with marking CR-12)”; Dean Manning, T. 19148 (12 Dec 2007).

<sup>2013</sup> Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, p. 37; Thomas Parsons, T. 20873 (1 Feb 2008) (testifying that the information that these individuals went missing following the fall of Srebrenica was provided to the ICMP by the families of the missing persons).

<sup>2014</sup> Ex. P04499, “ICMP Summary Report on Čančari Road 8, created from 20 Oct to 19 Nov 2008”, p. 8.

<sup>2015</sup> Dražen Erdemović, T. 10983 (4 May 2007) (estimating that 1,000–1,200 prisoners were executed. He based this estimate upon on the 15–20 buses which arrived at the farm); Ahmo Hasić, T. 1205, 1229 (6 Sept 2006) (estimating that between 1,000 and 1,500 men were killed at Branjevo Military Farm on 16 July 1995, based on the number of corpses he saw);

<sup>2016</sup> *Supra*, para. 545 (evidence that corpses were transported from the Pilica Cultural Centre to Branjevo Military Farm). *See also* Dražen Erdemović, T. 10982 (4 May 2007) (testifying that he was told that there were 500 prisoners in the Pilica Cultural Centre); Jevto Bogdanović, T. 11333 (10 May 2007) (testifying that he saw approximately 550 bodies in and around the Pilica Cultural Centre in July 1995). Some time in mid to late July 1995, Pero Petrović heard from local people that those killed at Pilica Cultural Centre were buried at Branjevo Military Farm. Pero Petrović, Ex. P02470, “92 ter transcript”, BT. 5519 (2 Dec 2003); Pero Petrović was the President of the Pilica Local Commune at the time. Pero Petrović, Ex. P02470, “92 ter transcript”, BT. 5496 (2 Dec 2003).

## H. 16–27 July 1995

### 1. 16 July 1995: Opening of a Corridor for the Passage of the Bosnian Muslim Men from the Column

#### (a) Circumstances Leading up to the Opening of the Corridor

551. On the morning of 15 July, Krstić ordered **Pandurević**—who was in the vicinity of Podžeplje<sup>2017</sup>—to return with his forces to the Zvornik Brigade area of responsibility to “block” the column, in order to “prevent the consequences of a possible attack on Zvornik” and the joining up of the column with the forces of the ABiH 2nd Corps.<sup>2018</sup>

552. At approximately 11 a.m. on 15 July, Dragan Obrenović met with Dragomir Vasić at the Standard Barracks to discuss the situation the Zvornik Brigade was facing with the 28th Division. **Borovčanin** and Miloš Stupar—from the 2nd Šekovići Detachment—joined the meeting later.<sup>2019</sup> By that time, Duško Vukotić, Assistant Chief of Staff for Intelligence of the Zvornik Brigade,<sup>2020</sup> had already had several communications with Šemso Muminović on behalf of Obrenović, in which Muminović requested safe passage for the 28th Division through the Zvornik Brigade area.<sup>2021</sup> An initial proposal, either from Vasić<sup>2022</sup> or from **Borovčanin**,<sup>2023</sup> to grant safe passage to the Bosnian Muslim men from the column was discussed at the meeting.<sup>2024</sup>

<sup>2017</sup> Podžeplje is located north of Žepa, towards Han Pijesak. Ex. 7DIC00126, “Map marked by Miodrag Dragutinović”.

<sup>2018</sup> Ex. 5D7D00686, “Order to return elements of the Zvornik Brigade, signed by Krstić, 15 July 1995”. *See also infra*, para. 1859. *See also* Ex. 5DP00327, “Zvornik Brigade interim combat report, 14 July 1995” (noting that one part of the column was two or three kilometres long); Ex. 5DP00169, “Drina Corps report on formation of armed Muslims, 14 July 1995”; Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 138 (stating at 9:21 a.m. on 15 July: “Obrenović: ordered an urgent request for reinforcements from the Corps. REPORTED”). Colonel Milanović indicated that large groups of enemy soldiers were still present in the area to the east of the Milići-Konjević Polje-Bratunac Road and that the Bratunac Brigade was still searching this terrain. Prosecution Adjudicated Facts Decision, Annex, Fact 285. *See also* Ex. 4D00083, “Bratunac Brigade order, signed by Blagojević, 14 July 1995”; Ex. 4D00085, “Drina Corps regular combat report, type-signed Krstić, 15 July 1995.” Colonel Milanović proposed, in the absence of available personnel from the Drina Corps, the appointment of the Commander of the Bratunac Brigade, Colonel Blagojević, as the commander of the forces engaged in sweeping the terrain. General Krstić subsequently accepted this proposal. Prosecution Adjudicated Facts Decision, Annex, Fact 286; *see also* Ex. 4D00086, “Document by Ignjat Milanović concerning searching the terrain, 15 July 1995”. Ex. P00913, “CJB Report, 15 July 1995” (stating that on 15 July, offensive MUP forces were heading towards Crni Vrh and Baljkovica together with the VRS).

<sup>2019</sup> PW-168, T. 15869–15873 (closed session) (26 Sept 2007), T. 16524 (closed session) (17 Oct 2007), T. 16527–16528 (closed session) (18 Oct 2007); Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, p. 102.

<sup>2020</sup> *See supra*, para. 152.

<sup>2021</sup> PW-168, T. 15872 (closed session) (26 Sept 2007), T. 16545–16546 (closed session) (18 Oct 2007).

<sup>2022</sup> *Ibid.*, T. 15872 (closed session) (26 Sept 2007).

<sup>2023</sup> Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, pp. 102–103.

<sup>2024</sup> PW-168, T. 15872 (closed session) (26 September 2007); Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, pp. 102–103.

553. At this point, Obrenović sought approval from the Drina Corps Command for the proposal to let the 28th Division pass through their territory.<sup>2025</sup> He also tried to contact **Pandurević** who could not be reached as he was already on his way to the Zvornik Brigade Command.<sup>2026</sup> The Drina Corps Commander and Chief of Staff being unavailable, Dragan Obrenović called the VRS Main Staff and asked to be connected to “any of the generals”.<sup>2027</sup> **Miletić** took the call and stated he did not approve the proposal; and he ordered that Obrenović use all available manpower and equipment of the Zvornik Brigade to continue fighting the column and “destroy it”.<sup>2028</sup>

554. At around 12 p.m, **Pandurević** met with Obrenović, **Borovčanin**, Vasić, Danilo Zoljić—Commander of the PJP units from Zvornik—and Miloš Stupar, at the Standard Barracks; and he ordered them to cut off the column and thus neutralise the forces of the 28th Division.<sup>2029</sup> At the end of the meeting, **Pandurević** sent Obrenović to the command of the 4th Battalion in Baljkovica, while **Borovčanin** took his units to the Parlog and Baljkovica area.<sup>2030</sup> **Pandurević** went to the Kitovnice IKM. He testified that the situation on the ground was very different from what had been described to him earlier: it was calm in the sectors of the 4th and 6th Battalions of the Zvornik Brigade and only sporadic firing was coming from the Memići area, on the left bank of the IKM.<sup>2031</sup> **Borovčanin**, however, on reaching Baljkovica, saw that his units were under intensive fire and that part of the column had captured the post where his units were staying.<sup>2032</sup>

555. In the afternoon of 15 July, after deploying the forces necessary should combat break out, **Pandurević** had a disagreement with Muminović about letting the whole column through the VRS defence line in the Nezuk area.<sup>2033</sup> At 7:25 p.m. that evening, **Pandurević** sent an interim report informing the Drina Corps Command that he had made an offer to the Commander of the 28th Division to separate the civilians and have the others surrender, but the 28th Division had refused, asking that they all be permitted to pass.<sup>2034</sup>

<sup>2025</sup> PW-168, T. 15873–15874 (closed session) (26 Sept 2007). *See also* Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, pp. 102–103.

<sup>2026</sup> PW-168, T. 15873 (closed session) (26 Sept 2007).

<sup>2027</sup> *Ibid.*, T. 15873 (closed session) (26 Sept 2007), T. 16639 (closed session) (19 Oct 2007).

<sup>2028</sup> *Ibid.*, T. 15874 (closed session) (26 Sept 2007).

<sup>2029</sup> *See infra*, paras. 1862–1863. Vinko Pandurević, T. 30962–30963 (2 Feb 2009). *See also* Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, p. 40; PW-168, T. 16524–16525 (closed session) (17 Oct 2007); Zarko Zarić, T. 26945 (10 Oct 2008).

<sup>2030</sup> *See infra*, para. 1863.

<sup>2031</sup> Vinko Pandurević, T. 30964–30969 (2 Feb 2009). **Pandurević** arrived at the Kitovnice IKM around 1 p.m. *Ibid.*

<sup>2032</sup> Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, p. 106. Baljkovica is located north west of Zvornik, near Nezuk. Ex. 7D01056, “Map of zone of responsibility of Zvornik Brigade according to Drina Corps order of 1992”.

<sup>2033</sup> Vinko Pandurević, T. 30977–30978 (2 Feb 2009). *See also infra*, para. 1867.

<sup>2034</sup> Ex. P00329, “Zvornik Brigade interim combat report signed by Pandurević, 15 July 1995”. *See also infra*, paras. 1868–1870.

556. On the evening of 15 July and into the early morning hours of 16 July, there were several waves of attacks by the ABiH 2nd Corps and fighting between the two forces was fierce.<sup>2035</sup>

(b) Opening of the Corridor

557. Between 9 and 10 a.m. on 16 July, after having been informed by Obrenović that the situation in the 28th Division was very grave due to numerous losses, **Pandurević** established contact with the 28th Division to negotiate the passage of the column.<sup>2036</sup> Negotiations ensued between **Pandurević** and Muminović between 10 and 11 a.m., during which time artillery weapons were not fired.<sup>2037</sup> **Pandurević** agreed, contrary to Krstić's orders, to let the 28th Division and the "civilian population accompanying it" pass through.<sup>2038</sup> The agreement was to open a corridor several hundred metres wide along the Resnik and Žuta Zemlja axis by moving soldiers from the Zvornik Brigade 4th Battalion from three trenches and to direct soldiers from the 28th Division to pass through that corridor. It was also agreed that some 2nd Corps soldiers should enter in the direction of Baljkovica and assist in the evacuation of the wounded and ill within the column.<sup>2039</sup>

558. Between 1 and 2 p.m. on 16 July—after the VRS had left the trenches and the hostilities had ceased for approximately two hours—the agreement entered into effect.<sup>2040</sup> The defence lines were re-established around 6 p.m. on 17 July.<sup>2041</sup> **Pandurević** monitored the situation throughout all this time and he estimated that approximately 5,000 to 6,000 Bosnian Muslims from the column passed through the corridor on 16 and 17 July, some armed and some in uniform.<sup>2042</sup> Other evidence provided the Trial Chamber with slightly higher numbers.<sup>2043</sup>

<sup>2035</sup> Ex. P02853, "Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002", p. 109. In the early morning of 16 July, at around 4 a.m., fighting further escalated, when the 2nd Corps attacked the positions of the 4th, 6th and 7th Battalions of the Zvornik Brigade. Vinko Pandurević, T. 31012 (2 Feb 2009), T. 31056 (3 Feb 2009); Lazar Ristić, T. 10097 (16 Apr 2007). The 7th Battalion successfully repelled the attack. Miodrag Dragutinović, T. 12601 (14 June 2007).

<sup>2036</sup> See *infra*, paras. 1872–1873.

<sup>2037</sup> See *infra*, para. 1873. See also Miodrag Dragutinović, T. 12707–12708 (15 June 2007); Lazar Ristić, T. 10150 (17 Apr 2007).

<sup>2038</sup> See *infra*, paras. 1873–1874.

<sup>2039</sup> Vinko Pandurević, T. 31034 (3 Feb 2009) (specifying that at the time the agreement was reached, **Pandurević** made no counter-request, but that later, he asked for the release of two prisoners).

<sup>2040</sup> See *infra*, para. 1873.

<sup>2041</sup> Vinko Pandurević, T. 31093–31094 (9 Feb 2009).

<sup>2042</sup> *Ibid.*, T. 31075 (3 Feb 2009). See *infra*, para. 1873. See also Ostoja Stanišić, T. 11713–11714 (17 May 2007) (testifying that it was a "great mass of people, a huge number of people, a long column, maybe a kilometre or two long"); Lazar Ristić, T. 10157–10159 (17 Apr 2007) ("there were a lot of them. It was a huge column but I wouldn't be able to estimate it."); Miodrag Dragutinović, T. 12708 (15 June 2007) (stating that he observed the column in part from Pandurica, and saw that some of the Bosnian Muslims were soldiers).

<sup>2043</sup> PW-168, T. 15897 (closed session) (27 Sept 2007) (estimating that 7,000 to 10,000 people passed through the corridor, half of whom were armed).

(c) Report and Inquiry about the Opening of the Corridor

559. At 1:55 p.m. on 16 July, **Pandurević** communicated to the Drina Corps Command that he had set up a corridor for Bosnian Muslim civilians to pass through, and that he was still fighting the 28th Division.<sup>2044</sup> After several unsuccessful attempts from the VRS Main Staff and the Drina Corps to get an update from **Pandurević** on the situation in the field, **Pandurević** sent a report to the Drina Corps Command at 8 p.m. the same day, stating, *inter alia*, that he had decided “to open a corridor [...] for the civilian population – about 5,000 of them [...] It is likely that a certain number of soldiers got out among the civilians, but all who passed, passed through unarmed.”<sup>2045</sup>

560. On the morning of 17 July, two officers from the VRS Main Staff, Colonel Nedeljko Trkulja<sup>2046</sup> and Bogdan Sladojević<sup>2047</sup>, travelled to the Zvornik Brigade Command pursuant to an order from **Miletić**.<sup>2048</sup> Sladojević’s understanding was that the purpose of their trip was to determine whether someone should be held accountable for allowing the column of Bosnian Muslims to pass through the Udrc-Crni Vrh axis towards Tuzla.<sup>2049</sup> In the afternoon, Trkulja and Sladojević went to the Kitovnice IKM to meet with **Pandurević**.<sup>2050</sup> A third Main Staff Officer, Colonel Milovan Stanković, was already present at the Kitovnice IKM with **Pandurević**.<sup>2051</sup>

<sup>2044</sup> See *infra*, para. 1874.

<sup>2045</sup> Ex. 7DP00330, “Zvornik Brigade interim combat report signed by Pandurević, 16 July 1995”. See also *infra*, paras. 1874, 1876.

<sup>2046</sup> Colonel Trkulja is a retired colonel. In July 1995, he was the Chief of the armoured units with the VRS Main Staff. Nedeljko Trkulja, T. 15072, 15074–15075 (10 Sept 2007).

<sup>2047</sup> On 13 July 1995, Colonel Bogdan Sladojević was transferred to Han Pijesak where **Miletić** informed him that he would be Chief of the Main Staff Operations Department. Bogdan Sladojević, T. 14358–14361 (27 Aug 2007).

<sup>2048</sup> Nedeljko Trkulja, T. 15105–15107, 15110 (10 Sept 2007). That morning, Sladojević saw that **Miletić** gave a piece of paper to Trkulja, who later told Sladojević that **Miletić** had hinted that “something was going to happen” in the Baljkovica area. Bogdan Sladojević, T. 14367–14368 (27 Aug 2007). See *infra*, para. 1680.

<sup>2049</sup> Bogdan Sladojević, T. 14367, 14372–14373, 14406 (27 Aug 2007) (also testifying that there was a rumour that a column of Bosnian Muslims had been allowed to pass through “the area of defence” of the Zvornik Brigade); Miodrag Dragutinović, T. 12604–12605 (14 June 2007); T. 12709–12710 (15 June 2007). See also Ex. 7DP00378, “Zvornik Brigade Duty Officer logbook, 12 February 1995 to 3 January 1996”, p. 4 (stating: “08.45 hrs – A group of commanding officers led by Colonel Trkulja came to the Brigade’s IKM in order to review the conditions in new situation and they returned at 1500 hrs”); Vinko Pandurević, T. 31090–31092 (9 Feb 2009). Ex. P00927, “Main Staff order, re integration of operations to crush lagging Muslim forces, signed by Mladić, 17 July 1995” (stating “1. Send 3 officers (Colonels Nedo Trkulja, Milovan Stanković and Bogdan Sladojević) from the [...] Main Staff [...] to the command of the [Zvornik Brigade] to assist in the joining of the VRS and MUP [...] forces, the planning and coordination of combat operations to block, crush and destroy lagging Muslim forces in the wider areas of Kamenica and Cerska. 2. The team from the VRS [Main Staff] shall assess the situation on the Brigade’s front line and in the rear, the available forces, and hear out the proposal and opinion of the commander of the [Zvornik Brigade]”).

<sup>2050</sup> Miodrag Dragutinović, T. 12602–12603 (14 June 2007). See also *infra*, para. 1887.

<sup>2051</sup> Bogdan Sladojević, T. 14369–14370, 14372 (27 Aug 2007). Colonel Milovan Stanković was a desk officer in the Security and Intelligence Department of the VRS Main Staff. Bogdan Sladojević, T. 14370 (27 Aug 2007). See also Ex. P00927, “VRS Main Staff order re integration of operations to crush lagging Muslim forces, signed by Mladić, 17 July 1995” (instructing to send 3 officers from the VRS Main Staff—Colonels Nedo Trkulja, Milovan Stanković and Bogdan Sladojević—to the Command of the Zvornik Brigade).

561. **Pandurević** briefed the Main Staff officers on the combat situation and the reasons for the opening of the corridor.<sup>2052</sup> Sladojević and Trkulja left the IKM between 3 and 4 p.m. the same day; and Trkulja reported orally to **Miletić** on 18 July.<sup>2053</sup>

## 2. Continued Searches Through the Terrain

562. Before 9 a.m. on the morning of 17 July, a meeting was convened at the Bratunac Brigade headquarters to distribute tasks to the Bratunac Brigade and MUP units involved, “to comb the area and the territory”.<sup>2054</sup> During this operation, parts of the terrain, including the areas of Pobude, Glogova, Hrnčići and Konjević Polje, were searched for ABiH forces.<sup>2055</sup> The search of the terrain was commanded by Mićo Gavrić from the Bratunac Brigade.<sup>2056</sup>

563. On 17 July, Miodrag Dragutinović, Assistant Chief of Staff for Operations and Training in the Zvornik Brigade, was ordered by **Pandurević** to reconnoitre the area and verify whether the ABiH was in compliance with the agreement previously reached between **Pandurević** and Muminović and whether it was staying within the agreed limits of the corridor.<sup>2057</sup> On 18 July, Dragutinović and his unit continued to assist the 4th and 7th Battalions of the Zvornik Brigade in combat and to “strengthen that area of the defence”.<sup>2058</sup>

564. During the first three or four days after the corridor was closed, elements of the Zvornik Brigade also participated in scouring the terrain for ABiH soldiers.<sup>2059</sup> Some ABiH soldiers were killed and others were captured.<sup>2060</sup> In an intercepted conversation of 23 July 1995 at 8 a.m.,

<sup>2052</sup> See *infra*, para. 1887.

<sup>2053</sup> Nedeljko Trkulja, T. 15115 (10 Sept 2007); Bogdan Sladojević, T. 14377–14378 (27 Aug 2007).

<sup>2054</sup> PW-160, T. 8631, 8633 (12 Mar 2007); Mićo Gavrić, T. 26488–26490 (1 Oct 2008). PW-160 testified: “we had Sapas to demine the areas and from the police side we had units with guard dogs, search dogs and we were given tasks.” PW-160, T. 8631 (12 Mar 2007). *But see* Momir Nikolić, T. 32946–32947, 32957 (21 Apr 2009) (testifying that he was not interested in the “sweep operation” starting 17 July 1995 and did not participate in it).

<sup>2055</sup> PW-160, T. 8634 (12 Mar 2007), T. 8704–8706 (13 Mar 2007); Mićo Gavrić, T. 26488–24689, 26514 (1 Oct 2008); Dragoslav Trišić, T. 27093 (20 October 2008); Ex. 4DP00262, “Bratunac Brigade daily combat report, 18 July 1995”; Ex. 4DIC00074, “Map marked by PW-160”; PW-160, T. 8700–8703, 8706 (13 Mar 2007).

<sup>2056</sup> PW-160, T. 8699 (13 Mar 2007). *See also* PW-160, T. 8705 (13 Mar 2007); Ex. 4D00086, “Document by Colonel Ignjat Milanović regarding terrain Search, 15 July 1995” (recording a proposal to “authorise and appoint the Commander of the 1st [Bratunac Brigade] as commander of all forces which [are] participating in searching of the terrain and sweeping of the battlefield to the east of the road (and in control of the Kasaba-Drinjača road)”.

<sup>2057</sup> Miodrag Dragutinović, T. 12602–12603 (14 June 2007).

<sup>2058</sup> *Ibid.*, T. 12603–12604 (14 June 2007).

<sup>2059</sup> Vinko Pandurević, T. 31099, 31130 (9 Feb 2009) (stating that the Podrinje Detachment, the East Bosnia Corps and the 4th and 7th Battalions and their intervention platoons were amongst the units that participated); PW-168, T. 15905 (closed session) (27 Sept 2007); Ljubo Bojanović, Ex. P03135, “92 *bis* transcript”, BT. 11734–11735 (8 July 2004). *See also* Ex. P01206a, “Intercept, 17 July 1995, 06:15 hours” (recording Krstić asking Trbić, the Zvornik Brigade Security Assistant, “have you killed the Turks up there?”). *See also infra*, para. 1892.

<sup>2060</sup> Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 164 (stating that “[a]nother 28 were liquidated and three were captured”); Vinko Pandurević, T. 31130 (9 Feb 2009). *See also infra*, paras. 1892, 1897. *See also* Ex. P01261a, “Intercept, 19 July 1995, 08:12 hours” (indicating that **Pandurević** had knowledge of a sweep operation near Baljkovica. During this conversation, **Pandurević** told Colonel Cerović that “yesterday we liquidated some 20-odd”, and that earlier that morning, they “started chasing about 150 of them”

**Pandurević** told Colonel Cerović, Assistant for Moral, Legal and Religious Affairs of the Drina Corps, that he was “still catching Turks”.<sup>2061</sup> On 23 July 1995, the Zvornik Brigade was still combing the terrain.<sup>2062</sup>

### 3. Killings in the Zvornik Area

#### (a) Baljkovica – near Nezuk<sup>2063</sup>

565. On 15 July 1995, **Miletić** issued a report on the reassignment of a unit from the 1st Krajina Corps, in order to assist “in breaking up and destroying fleeing Muslim groups in the general area of Kamenica”.<sup>2064</sup> The Krajina Corps dispatched an infantry company of the 16th Krajina Motorised Brigade, which reported to the Zvornik Brigade at 6.30 p.m. on 16 July 1995.<sup>2065</sup> Both **Pandurević** and the Commander of the 16th Brigade of the Krajina Corps were informed.<sup>2066</sup> The 16th Brigade remained under the command of **Pandurević** until 21 July 1995, when the unit was redeployed to the Sarajevo Romanija Corps pursuant to an order signed by **Miletić**.<sup>2067</sup>

566. An entry dated 18 July in the Zvornik Brigade Duty Officer Notebook records a report from Ljubo Bojanović, who was at the Kitovnice IKM, that a unit from the 16th Brigade of the Krajina Corps was deployed approximately four kilometres from Nezuk.<sup>2068</sup>

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who were encircled in the Planinci-Baljkovica area); Ex. P00336 “Zvornik Brigade daily combat report, type-signed Vinko Pandurević, 19 July 1995” (recording on 19 July that a Company of the 16th Krajina Brigade, amongst others, conducted a search operation around Kalesija during which “two Muslim soldiers were captured and 13 eliminated”). See also Ex. P01387b, “Intercept, 2 August, 09:50 hours”, where Krstić was asking Obrenović whether he was “working down there” and he told Obrenović “[d]on’t leave a single one alive”.

<sup>2061</sup> Vinko Pandurević, T. 31146 (9 Feb 2009); Ex. P01309a “Intercept dated 23 July 1995, 08:00 hours”.

<sup>2062</sup> Ex. P01307a, “Intercept, 23 July 1995, 06:40” (recording the Zvornik Brigade Duty Officer Ljubo Bojanović telling Krstić that “six Turks were captured”).

<sup>2063</sup> The Indictment alleges that on 19 July 1995, members of the 1st Krajina Corps of the VRS, re-subordinated to the Zvornik Brigade, captured approximately 10 Bosnian Muslim males from Srebrenica near the town of Nezuk. Shortly after, they were summarily executed by their captors. Indictment, para. 30.13.

<sup>2064</sup> Ex. P02754, “Report on the dispatch of an infantry company to assist the 1st Zvornik Infantry Brigade”, para. 1. See *infra*, para. 1641.

<sup>2065</sup> Ex. P00405, “Order from 1st Krajina Corps, dispatching an infantry company to the Zvornik area, signed by Momir Talić, 16 July 1995”, p.1 (recording that Momir Talić, Commander of the 1st Krajina Corps, issued the dispatch order, which also included instructions to send “an officer as an advance party [...] to obtain the necessary instruction and orders from the Brigade Commander”); Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 151.

<sup>2066</sup> Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 151.

<sup>2067</sup> Ex. P03923, “VRS Main Staff Order, dispatch of a motorised company from the 16th Krajina Motorised Brigade to the area of Trnovo, signed by Miletić, 21 July 1995”, p. 1. See *infra*, para. 1641.

<sup>2068</sup> Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 160 (stating that the Brigade was deployed at “trig point 602”); Ex. 3DIC00232, “Map of Kladanj and Zvornik area marked by the witness”; Jovo Marković, T. 27665 (31 Oct 2008) (testifying as to the position of “trig point 602”); Ex. 3D00094, “Map of Kladanj and Zvornik area - (Baljkovic-Zvornik-Snagovo-Memici)” (showing that trig point 602 is approximately 4 kilometres from Nezuk); Vinko Pandurević, T. 31587 (17 February 2009) (stating that the report in the Duty Officer Notebook came from Ljubo Bojanović); Ljubo Bojanović, Ex. P03135, BT. 11723, 11732 (8 July 2004) (stating what he was at the Kitovnice IKM on 16 July). See also Ex. P00334, “Zvornik Brigade Interim Combat Report, signed by Pandurević, 18 July 1995”, para. 2 (“The Zvornik infantry brigade forces, reinforced by a company from the Krajina 16th brigade, a company from the Bratunac [Light Infantry Brigade], two platoons of

567. On 18 July, a group of between 500 and 1,000 Bosnian Muslim men from the column gathered in Baljkovica, near Nezuk.<sup>2069</sup> The following day, small groups of men began to break away from the larger group in an attempt to cross into ABiH territory.<sup>2070</sup> Sometime between noon and 2 p.m., six of these men<sup>2071</sup> were captured by soldiers including a component from the 16th Krajina Brigade and were told to hand over their documents and valuables and lie face down on the ground.<sup>2072</sup> They were then interrogated at gunpoint.<sup>2073</sup> A VRS Soldier nicknamed “Stari” was in charge of the interrogations, during which one of the Bosnian Muslim men stated that there were approximately 500 members of the ABiH in the vicinity.<sup>2074</sup> Upon hearing such information, Stari immediately telephoned through an instruction to another commander, “Vuka Šinović”, to “finish [them] off” and told the VRS soldiers present that the Wolves (Vukovi) would “deal with that.”<sup>2075</sup>

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the Bijeljina Military Police and one platoon from the Vlasenica [Light Infantry Brigade] successfully repulsed all enemy attacks on the front, sealed off and searched the terrain in the wider area of Crni vrh-Pandurica-Križeviči...”).

<sup>2069</sup> PW-119, Ex. P02212, “92 bis transcript”, KT. 3194–3196 (23 May 2000) (testifying that he arrived in Bajkovica on 18 July and was captured the next day); PW-139, Ex. P02288, “confidential - 92 ter statement” (18 May 2009), paras. 9–10 (testifying that he was captured on 18 or 19 July); T. 3686 (7 Nov 2006). Although medical records indicate that PW-119 was injured on 11 August, the Trial Chamber is nevertheless satisfied—based upon the evidence of PW-119 and PW-139—that the incident took place on 19 July. See Ex. P02213 (confidential) (medical record showing PW-119’s treatment at a military hospital for a gunshot wound above his left clavicle dated 12 August 1995 and stating that the injury was sustained the previous day).

<sup>2070</sup> PW-119, Ex. P02212, “92 bis transcript”, KT. 3194–3196 (23 May 2000); PW-139, Ex. P02288, “confidential – 92 ter statement” (18 May 2009), para. 9.

<sup>2071</sup> The Trial Chamber notes that PW-119 testified that there were eleven in the group, whereas PW-139 testified that six men surrendered (in both cases, this number includes the witness). Given that PW-139 is able to name the men he was captured with (including PW-119), the Trial Chamber accepts PW-139’s evidence on this point. PW-139, Ex. P02288, “confidential - 92 ter statement” (18 May 2009), para. 10; *ibid.*, T. 3673–3675 (private session) (6 Nov 2006). See also PW-119, Ex. P02212, “92 bis transcript”, KT. 3196 (23 May 2000).

<sup>2072</sup> PW-119, Ex. P02212, “92 bis transcript”, KT. 3196–3197, 3205–3206, 3212 (23 May 2000); PW-139, Ex. P02288, “confidential - 92 ter statement” (18 May 2009), paras. 9–10; *ibid.*, T. 3672–3675 (private session) (6 Nov 2006). PW-119 is certain to have seen yellow insignia on the left arm of soldiers’ uniforms. There was “a yellow sort of circle and it said the Krajišnici, men from Krajišnici, something like that, on this circle in this patch.” PW-119, Ex. P02212, “92 bis transcript”, KT. 3205–3206, 3224–3225, 3229–3230 (23 May 2000). On a few other patches, PW-119 thinks that he saw the letters “DRE” on the left sleeve, coming to the conclusion that the word was “Drinski” or “Drina”. He has “a feeling that it was there”. PW-119, Ex. P02212, “92 bis transcript”, KT. 3206–3207, 3223, 3225 (23 May 2000). PW-139 testified that the VRS Soldiers wore camouflage uniforms with a badge on the sleeve displaying “Army of the Republika Srpska” in Cyrillic with the three colours of the Serbian flag and an eagle with four letters “S” in the Cyrillic script. PW-139, Ex. P02288, “confidential – 92 ter statement” (18 May 2000), para. 11; *ibid.*, T. 3680 (6 Nov 2006). The eagle was similar to the design of the insignia on Ex. 7D00063, “Photograph of military insignia”. PW-139, T. 3719 (7 Nov 2006). One soldier said they were “Krajišnici”, from the Krajina. PW-139, Ex. P02288, “confidential – 92 ter statement” (18 May 2000), para. 11; T. 3680 (6 Nov 2006). Based upon all the evidence, the Trial Chamber finds that there were men from the 16th Brigade of the 1st Krajina Corps re-subordinated to the Zvornik Brigade present.

<sup>2073</sup> PW-119, Ex. P02212, “92 bis transcript”, KT. 3197–3199 (23 May 2000); PW-139, Ex. P02288, “confidential – 92 ter statement” (18 May 2000), para. 11; PW-139, T. 3677–3678 (private session) (6 Nov 2006).

<sup>2074</sup> PW-119, Ex. P02212, “92 bis transcript”, KT. 3198, 3202–3204 (23 May 2000) (describing Stari as wearing “a military uniform [...] without any insignia or rank, and it was a camouflage army uniform. He was somewhat older, he was bald, he had hairy arms, short in build”).

<sup>2075</sup> *Ibid.*, KT. 3198, 3203–3204 (23 May 2000). PW-119 assumed that “the wolves” meant the “Drina Wolves” unit, because PW-119 had heard of that unit. *Ibid.*, KT. 3229 (23 May 2000). When the commander spoke on the radio, he referred to another commander by the name of “Vuka Šinović”. PW-139 had the impression that “Vuka Šinović” was from the Drina Wolves, but could not recall why he thought so. PW-139, Ex. P02288, “confidential - 92 ter statement” (18 May 2000), para. 11.



568. After the interrogations, the VRS soldiers took the Bosnian Muslim men aside and shot them at close range one by one with automatic rifles.<sup>2076</sup> One of the Bosnian Muslim men was not shot, because an order came through via radio that he should be taken to Zvornik and exchanged with captured VRS soldiers.<sup>2077</sup> This man was eventually taken to the Batković detention centre.<sup>2078</sup> One other Bosnian Muslim man survived, despite being shot in the left shoulder.<sup>2079</sup>

569. PW-139, one of the men who survived this incident, named the five men with whom he was captured.<sup>2080</sup> One of the men he named is PW-119. For another man, PW-139 could only give part of his name. The remaining three men's names all appear on the 2007 List of Missing and Deceased with the status "still missing", meaning that they were reported missing following the fall of Srebrenica, but have not yet been identified or their death confirmed through DNA analysis. There is no other forensic evidence related to this incident before the Trial Chamber.<sup>2081</sup> Based upon the testimony of eyewitnesses and considering that three of these men disappeared at the same time, the Trial Chamber is satisfied that four Bosnian Muslim men were killed at Baljkovica on 19 July. However, the Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt that members of the 16th Krajina Brigade, who were involved in capturing the men, were involved in the killings of these four men.<sup>2082</sup>

<sup>2076</sup> PW-119, Ex. P02212, "92 bis transcript", KT. 3198–3207 (23 May 2000) (testifying that he was taken to a slope and shot in the left shoulder from a distance of approximately one metre. As he lay on the slope pretending to be dead, PW-119 heard people being shot around him, and saw a number of corpses. Before heading towards territory held by the ABiH, PW-119 called out two or three times to check whether anybody was alive, but nobody responded. PW-119 could see that the man lying next to him was dead because he gave no signs of life. Prior to being shot, PW-119 also noticed that one of the men who had been taken to be shot before him was dead by the colour of his skin). See also Ex. P02213 (confidential).

<sup>2077</sup> PW-139, Ex. P02288, "confidential - 92 ter statement" (18 May 2000), para. 11 (stating that it was the commander who made the phone call, but giving no further details). Viewed together with PW-119's testimony, the Trial Chamber concludes that the commander was, in fact, Stari.

<sup>2078</sup> *Ibid.*, paras. 12–13.

<sup>2079</sup> PW-119, Ex. P02212, "92 bis transcript", KT. 3200–3202 (23 May 2000).

<sup>2080</sup> See PW-139, Ex. P02288, "confidential - 92 ter statement" (18 May 2000), para. 10; T. 3674–3675 (private session) (6 Nov 2006).

<sup>2081</sup> Ewa Tabeau, T. 21032 (5 Feb 2008); Ex. P03159a (confidential), pp. 3, 12, 112. Two of the names given by PW-139 also appear on the 2009 ICMP List of Deceased, however the names given on the list are imprecise (two alternative first names are given), and the remains were found in two different places (an unspecified dam, and Liplje, approximately 12 kms south east of Baljkovica). In light of this, the Trial Chamber finds there is insufficient evidence to conclude that these remains are those of the men named by PW-139. See Ex. P04494, (confidential); Ex. P01876, "Map of "northern" area showing battalion AORs"(showing that Liplje, approximately 12 kms south east of Baljkovica).

<sup>2082</sup> The Trial Chamber notes that there is a daily combat report of the Zvornik Brigade type-signed **Pandurević** and dated 19 July 1995, stating that a Company of the 16th Krajina Brigade, amongst others, conducted a search operation around Kalesija during which "two Muslim soldiers were captured and 13 eliminated". Ex. P00336, "Zvornik Brigade daily combat report, type-signed Vinko Pandurević, 19 July 1995". The Trial Chamber however cannot conclude that the reference to Muslim soldiers "eliminated" in this report is a reference to the four men killed near Nezuk in the absence of additional evidence. In this regard, the Trial Chamber considers that a reasonable inference can be drawn that the soldiers "eliminated" during a search operation as mentioned in the report refers to soldiers killed during the course of combat.

(b) Wounded Bosnian Muslim Prisoners from Milići Hospital<sup>2083</sup>

570. On 14 July, after spending approximately 24 hours at the Milići Hospital, a group of wounded Bosnian Muslim men were transferred to the Zvornik Hospital.<sup>2084</sup> The transfer order came from Dr. Ratko Rokvić, Chief Medical Officer of the VRS, who was a member of the VRS Main Staff.<sup>2085</sup> The men appeared to be afraid, and some of them were severely wounded.<sup>2086</sup> A report signed by Dr. Davidović, director of Milići Hospital, states that a total of 18 Bosnian Muslim men were transferred from Milići to Zvornik.<sup>2087</sup> The medical records of 11 Bosnian Muslim men are in evidence.<sup>2088</sup> The Trial Chamber finds that 11 Bosnian Muslim men were transferred from Milići to the Zvornik Hospital.

571. Dr. Radivoje Novaković, a surgeon at the Zvornik Hospital, treated these Bosnian Muslim prisoners, and was told that they were to be exchanged.<sup>2089</sup> Aziz Bećirović,<sup>2090</sup> one of the Bosnian Muslim men, was suffering from severe facial injuries and passed away at the Zvornik Hospital.<sup>2091</sup>

<sup>2083</sup> The Indictment alleges that on approximately 13 July 1995, 19 wounded Bosnian Muslim men were taken to Milići Hospital, after they either surrendered or were captured. Shortly after, 11 of the 19 wounded were transferred to the Zvornik Hospital on orders from the VRS Main Staff; and from there they were taken to the infirmary of the Zvornik Brigade a few days later. Around 20 July, the 11 Bosnian Muslim men were summarily executed by the VRS. Indictment, para. 30.15.

<sup>2084</sup> Jugoslav Gavrić, T. 9114–9115 (21 Mar 2007); Ex. P02482, “92 *ter* statement” (19 Jan 2003), pp. 1–3; Radivoje Novaković, Ex. P02480, “92 *ter* statement” (6 Mar 2003), p. 2; *ibid.*, T. 9029–9030, 9036 (20 Mar 2007); Ex. P01884, (confidential); Ex. 6DP01880, “Note regarding transfer of wounded from Milići Hospital to Zvornik Hospital, signed by Radomir Davidović, 20 July 1995”. See also Jugoslav Gavrić, T. 9120 (21 Mar 2007) (Gavrić understood that the only reason the men were being transferred was because the Milići Hospital did not have capacity to treat them; this was routine practice and had occurred before); Ex. P01882, “Two pages extracted from a hospital patient logbook with entries dated 13 July 1995” pp. 1–2 (pages extracted from the Milići Hospital patient logbook, showing that on 13 July 1995, 14 Muslim men were admitted to the hospital).

<sup>2085</sup> Ex. P03178, “VRS Main Staff personnel employment records”, p. 0505-7641; Ex. 6DP01888, “Letter from the Director of the Milići Hospital signed by Dr. Davidović, 20 July 1995” (stating that “the injured” were to be transferred to Zvornik Hospital on the orders of the Chief Medical Officer of the VRS, the Head of the Municipality and the Chief of the Milići SJB); Ex. P01880, “Report addressed to the Drina Corps Command, General Radislav Krstić, regarding medical service providers, signed by Dr. Davidović” (stating that wounded Bosnian Muslim men were transferred to Zvornik Hospital on the orders of the Main Staff).

<sup>2086</sup> Jugoslav Gavrić, Ex. P02482, “92 *ter* statement” (19 Jan 2003), p. 2. According to Milići Hospital’s medical records, the men were named Aziz Bećirović, Mensur Salkić, Behajja Kurtić, Izet Halilović, Behudin Lolić, Huso Salihović, Vahdet Suljić, Remzija Ibišević, Mujo Bečić, Sulejman Begović and Mehmedalija Hamzabegović. Ex. P01884 (confidential). Although this exhibit is confidential, the Trial Chamber considers that there is no barrier to public disclosure of the names of the men, given that the names appear in the public Indictment.

<sup>2087</sup> Ex. P01880, “Report addressed to the Drina Corps Command, General Radislav Krstić, regarding medical service providers, signed by Dr. Davidović”, p. 2.

<sup>2088</sup> Ex. P01884 (confidential).

<sup>2089</sup> Radivoje Novaković, T. 9036 (20 Mar 2007).

<sup>2090</sup> Ex. P01884 refers to “Aziz Bećirović” and also “Aziz Bećirević”, however Novaković’s live testimony refers only to “Bećirević”. As Novaković was referring to Bećirović’s medical records in Ex. P01884 when he testified, the Trial Chamber concludes that he is referring to the Aziz Bećirović listed in the Indictment.

<sup>2091</sup> Radivoje Novaković, Ex. P02480, “92 *ter* statement” (6 Mar 2003), p. 2; *ibid.*, T. 9039–9041, 9075, 9084 (20 Mar 2007). See also Ex. P01884, (confidential), p. 34; Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 144 (stating “Aziz Bećirević died at the hospital. Novaković notified that the utility company should take care of it”). *But see* Radivoje Novaković, T. 9081–9082 (20 Mar 2007) (testifying that he did not remember having reported about Aziz Bećirović’s death, nor that the Zvornik Brigade was informed). Novaković’s

572. The wounded Bosnian Muslim prisoners from Milići Hospital remained at the Zvornik Hospital for more than one day before being transferred again, this time to the Standard Barracks.<sup>2092</sup> Given that one of the men passed away at the Zvornik Hospital, the Trial Chamber finds that ten wounded prisoners were transferred from the Zvornik Hospital to the Standard Barracks. At the time of their transfer to the Standard Barracks, the injuries of the Bosnian Muslim men were not life-threatening.<sup>2093</sup> The Bosnian Muslim men stayed at the Standard Barracks for five to seven days,<sup>2094</sup> guarded by Zvornik Brigade military police.<sup>2095</sup>

573. Upon **Pandurević**'s order, Obrenović went to the clinic at the Standard Barracks to inspect the security situation with respect to the wounded Bosnian Muslims prisoners from Milići Hospital.<sup>2096</sup> **Pandurević** also contacted the Superior Command in order to resolve the problem of the wounded prisoners, as the Zvornik Brigade was not equipped to guard and look after them.<sup>2097</sup> Two intercepted conversations on 23 July 1995 support the conclusion that **Pandurević** sought guidance on the issue of wounded prisoners and was told that **Popović** would arrive to sort the matter out.<sup>2098</sup> In the first conversation at 8 a.m., **Pandurević** tells Colonel Cerović that he has some wounded prisoners whom he does not know what to do with, and inquires about the possibility of an exchange.<sup>2099</sup> The second call occurs five minutes later, and Cerović instructs the Duty Officer to convey to **Pandurević** the message that **Popović** will arrive at 5 p.m. to "say what needs to be done regarding the work we talked about."<sup>2100</sup>

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evidence on this point does not affect the Trial Chamber's finding that Aziz Bećirević did, in fact, pass away at the Zvornik Hospital.

<sup>2092</sup> Zoran Begović, Ex. P02481, "92 *ter* statement" (2 Apr 2003), para. 7; Radivoje Novaković, Ex. P02480, "92 *ter* statement" (6 Mar 2003), p. 2.

<sup>2093</sup> Zoran Begović, T. 9146–9147 (21 Mar 2007).

<sup>2094</sup> Zoran Begović, Ex. P02481, "92 *ter* statement" (2 Apr 2003), paras. 8–9. Dr. Novaković and other doctors continued to treat the Bosnian Muslim men after their transfer to the Standard Barracks, though Novaković treated the men at the Standard only once. Radivoje Novaković, Ex. P02480, 6 Mar 2003, p. 3; Zoran Begović, Ex. P02481, "92 *ter* statement" (2 Apr 2003), para. 15.

<sup>2095</sup> Zoran Begović, T. 9140 (21 Mar 2007); *ibid.*, Ex. P02481, "92 *ter* statement" (2 Apr 2003), para. 10; PW-168, T. 15914 (closed session) (27 Sept 2007). PW-168 did not specify whether the police were military or civilian, however on the basis of Begović's testimony and the fact that they were being hospitalized at the Standard Barracks, the Trial Chamber concludes that the wounded Bosnian Muslims were guarded by military policemen of the Zvornik Brigade.

<sup>2096</sup> Vinko Pandurević, T. 31169 (10 Feb 2009); Zoran Begović, T. 9134 (21 Mar 2007), Ex. P02481, "92 *ter* statement" (2 Apr 2003), p. 2–3; PW-168, T. 15914 (closed session) (27 Sept 2007). Specifically, **Pandurević** told Obrenović that he should prohibit any Zvornik Brigade troops from entering the clinic (PW-168, T. 15914 (closed session) (27 Sept 2007)), and that the wounded Bosnian Muslim prisoners would be treated in the same way as any other wounded person. Vinko Pandurević, T. 31169 (10 Feb 2009).

<sup>2097</sup> PW-168, T. 15914 (closed session) (27 Sept 2007).

<sup>2098</sup> See *infra*, paras. 1903–1904.

<sup>2099</sup> Ex. P01309a, "Intercept, 23 July 1995, 08:00 hours"; Vinko Pandurević, T. 31146 (9 Feb 2009) (testifying that he believed the other person in this intercepted conversation was Colonel Cerović).

<sup>2100</sup> Ex. P01310a, "Intercept, 23 July 1995, 08:05 hours". See also Ex. P00377, "Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995", p. 177 (stating "0830 hrs. – Lieutenant Colonel Cerović relayed a message for commander that LTC Popović will arrive by 17:00 hours"); Vinko Pandurević, T. 32262–32263 (27 Feb 2009). PW-168 testified that, based on his knowledge of the incident and review of the intercept, the "Ljubo" referred to is

574. Sometime thereafter, according to PW-168, Obrenović was informed by the duty officer that the wounded prisoners were driven away very early in the morning.<sup>2101</sup> Later on the same day that he learned that the wounded prisoners were taken away, Obrenović was also informed by **Pandurević** that **Popović** had arrived with an order from Mladić for the injured Bosnian Muslim men to be liquidated.<sup>2102</sup> The wounded prisoners left Standard Barracks without their medical records.<sup>2103</sup>

575. **Pandurević** denies having authorised the execution of the wounded Bosnian Muslim prisoners from Milići Hospital, testifying instead that on 24 July, Obrenović reported to him that these wounded prisoners were taken to Batković detention centre, in Bijelina.<sup>2104</sup> Begović, Chief of the Zvornik Brigade Medical Centre, testified that he was told by Obrenović that the wounded men were to be exchanged in Bijelina.<sup>2105</sup> Novaković, a surgeon at the Zvornik Hospital, was told by a soldier at the Standard Barracks that the wounded Bosnian Muslim men had been taken to be exchanged near Patkovača in the Bijeljina municipality.<sup>2106</sup>

576. As previously stated, Aziz Bećirović, passed away at the Zvornik Hospital.<sup>2107</sup> The remains of another patient, Redžo Mustafić, have been identified in a grave at Liplje.<sup>2108</sup> As of November 2007, the other nine wounded Bosnian Muslim men were still missing.<sup>2109</sup>

577. On the basis of this evidence, considering that the ten wounded prisoners from Milići Hospital disappeared around the same time and were last seen in the custody of **Popović**, the Trial Chamber is satisfied beyond reasonable doubt that the ten wounded Bosnian Muslim prisoners taken from the Standard Barracks were killed.

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Major Ljubo Bojanović, who was on duty that day. PW-168, T. 16025 (closed session) (28 Sept 2007)). The Trial Chamber finds that “Ljubo” is a reference to Ljubo Bojanović and that “Vinko” is a reference to **Pandurević**.

<sup>2101</sup> PW-168, T. 15914–15916 (closed session) (27 Sept 2007). *See also infra*, para. 1905.

<sup>2102</sup> PW-168, T. 15915–15916 (closed session) (27 Sept 2007) (testifying that the men were taken “from Drago Nikolić and driven away”). *See also* Internal Memorandum re. Verification of accuracy of interpretation in case no. IT-05-88-T, hearing of 27 September 2007, confidential, 4 December 2009. *See also infra*, para. 1905.

<sup>2103</sup> Zoran Begović, T. 9147–9148 (21 Mar 2007).

<sup>2104</sup> Vinko Pandurević, T. 31170 (10 Feb 2009).

<sup>2105</sup> Zoran Begović, T. 9133–9134, 9148 (21 Mar 2007).

<sup>2106</sup> Radivoje Novaković, Ex. P02480, “92 *ter* statement” (6 Mar 2003), p. 3.

<sup>2107</sup> *See supra*, para. 571.

<sup>2108</sup> Ex. P04494 (confidential), p. 163.

<sup>2109</sup> Ex. P03159a (confidential). The name as well as the father’s name of the Muslim patients corresponds with the names listed in Ex. P01884 (confidential), however for Izet Halilović, Huso Salihović, Remzija Ibišević, Mujo Bečić and Sulejman Begović, their father’s names are not recorded in Ex. P01884. The date of birth in Ex. P03159a (confidential) for Mehmedalija Hamzabegović is 15 January 1957, whereas the Indictment lists this person’s date of birth as 15 February 1957. The Trial Chamber finds that this discrepancy is not material.

(c) Snagovo<sup>2110</sup>

578. Some time between 14 and 24 July, a PJP Platoon was deployed in Snagovo comprising eight to eleven policemen from various police stations, including the Ugljevik SJB.<sup>2111</sup> The members of PW-107's PJP Platoon all wore the same olive-coloured uniforms.<sup>2112</sup> Dragan Kulić, Commander of the Ugljevik SJB,<sup>2113</sup> gave the PJP Platoon orders prior to their deployment during a brief meeting.<sup>2114</sup> Their orders were:

to go to the Snagovo area, to go to clear or cleanse the terrain. [...] He said, "Not even a fly should be let out", which meant clearing, cleansing, or mopping up. Actually, killing. What else? He did not use the word "killing", but that's what [was] understood."<sup>2115</sup>

579. When the platoon reached the Snagovo area, gunfire could be heard in the background, along with members of the Bosnian Serb Forces calling through loudspeakers urging Bosnian Muslims to surrender, saying: "Give yourselves up. Don't be afraid".<sup>2116</sup> A couple of decomposing corpses of men and children were scattered throughout the terrain.<sup>2117</sup>

580. Around 20 July 1995, near Snagovo the PJP Platoon captured a group of five Bosnian Muslims,<sup>2118</sup> who were heading towards Tuzla.<sup>2119</sup> As the PJP Platoon took the Bosnian Muslims

<sup>2110</sup> The Indictment alleges that on or about 22 July 1995, approximately 6 Bosnian Muslim men who had separated from the column were captured and executed by MUP forces in the woods near the town of Snagovo, within the zone of responsibility of the Zvornik Brigade. Indictment, para. 30.15.1.

<sup>2111</sup> PW-107, T. 4093–4094, 4102–4104 (private session) (17 Nov 2006); Ex. P02295 (confidential). PW-107 testified that he left for Snagovo on 10 or 12 July 1995, but emphasised that he was uncertain about the dates. PW-107, T. 4093 (private session) (17 Nov 2006). A Report from the Bijelina Public Security Centre at Ugljevik, states that PW-107's Platoon was deployed between 14 and 24 July 1995. Ex. P02295 (confidential). Based upon this evidence, the Trial Chamber concludes that PW-107 was deployed between 14 and 24 July 1995.

<sup>2112</sup> PW-107, T. 4112, 4158 (private session) (17 Nov 2006). *See also* PW-106, T. 3968–3969, 3991, 3996 (private session) (15 Nov 2006); Ex. 6D00004 (confidential). PW-106 initially testified that he saw Ugljevik RS Military Police insignia. However later PW-106 stated that he was unsure whether the insignia indicated military or civilian police. *Ibid.*

<sup>2113</sup> PW-107, T. 4079–4080 (private session) (16 Nov 2006).

<sup>2114</sup> *Ibid.*, T. 4094, 4097–4099 (private session) (17 Nov 2006), T. 4216–4217 (private session) (20 Nov 2006); Ex. 7D00069 (confidential), p. 3.

<sup>2115</sup> PW-107, T. 4094, 4097 (private session) (17 Nov 2006). The conclusion that the essence of Kulić's order was to kill any Bosnian Muslims they encountered is supported by the fact that Kulić strongly reprimanded PW-107's platoon when they returned to the Ugljevik SJB with a Bosnian Muslim male. *See* PW-107, T. 4124 (private session) (17 Nov 2006), T. 4186 (private session) (20 Nov 2006).

<sup>2116</sup> PW-107, T. 4110–4111 (17 Nov 2006), T. 4169–4170 (20 Nov 2006). PW-107 stated that he did not know whether those who were using the loudspeakers were Bosnian Serb soldiers or policemen as he was located too far from them and both soldiers and policemen were dressed in the same army uniforms. *Ibid.*, T. 4169–4170 (20 Nov 2006).

<sup>2117</sup> *Ibid.*, T. 4110–4111 (17 Nov 2006). PW-107 stated that he did not get close to the bodies because of the stench and he therefore did not know whether they had died from gunshot wounds or shrapnel. *Ibid.*, T. 4165–4166 (20 Nov 2006).

<sup>2118</sup> PW-106 was a member of this group, and testified that there were initially seven men in the group (including him), however just prior to their capture, one member of the group went to reconnoitre the terrain and was not seen again, and another member of the group managed to escape as the others were captured, therefore five men were eventually taken into custody. PW-106, T. 3961, 3963–3966 (15 Nov 2006), 4037 (16 Nov 2006). PW-107 testified that his PJP Platoon came upon three Bosnian Muslims—two men aged 35 to 40 years old and one sixteen-year old—who came out of the woods, shouting not to shoot. PW-107, T. 4112–4113 (17 Nov 2006). PW-107 also testified that other members of his PJP Platoon gave statements that there were four Bosnian Muslim men. PW-107, T. 4113 (17 Nov 2006). Given that PW-106 could name all but one of the men in his group and also that these

into custody, about 20 members of the Bosnian Serb Forces suddenly arrived, wearing olive-coloured military uniforms similar to those of the PJP.<sup>2120</sup> One of them wore a band tied around his head, and he shot four of the Bosnian Muslims in the head.<sup>2121</sup> Thinking that one of the prisoners was a minor, one of the members of the PJP Platoon took him aside and turned his gaze away from the shooting.<sup>2122</sup>

581. The surviving Bosnian Muslim prisoner was frightened and traumatised and remained with the PJP Platoon until they travelled to the Ugljevik SJB on 24 July 1995.<sup>2123</sup> Members of the PJP Platoon gave him food and water.<sup>2124</sup> Once at the Ugljevik SJB, the prisoner was interrogated and slapped by a man in camouflage uniform before he was taken, upon Kulić's order, to the Batković detention centre by a police officer in a civilian police car.<sup>2125</sup>

582. Kulić reprimanded the members of the PJP Platoon, making it clear that the Bosnian Muslim prisoner should not have been brought to the Ugljevik SJB.<sup>2126</sup> Members of the PJP Platoon were ordered to write reports explaining why they had failed to carry out orders, and were all suspended for between three and four days.<sup>2127</sup>

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men's names were recorded on the 2007 List of Missing and Deceased and the 2009 List of Deceased (*see infra*, para. 638), the Trial Chamber accepts the testimony of PW-106 that five men were taken into custody.

<sup>2119</sup> PW-107, T. 4112–4114 (17 Nov 2006); PW-106, T. 3949–3950, 3960–3965 (15 Nov 2006). PW-106 testified that he could recall the date based upon the fact that when he was captured, he had already spent 11 days in the woods. PW-106, T. 3963 (15 Nov 2006). This roughly corresponds with PW-107's testimony that he came across PW-106 four or five days into the assignment, which began on 14 July 1995. PW-107, T. 4108 (17 Nov 2006); Ex. P02295, (confidential). *But see* Ex. 6D00004, (confidential) (stating that the group were taken into custody on 22 July).

<sup>2120</sup> PW-107, T. 4112, 4114 (17 Nov 2006), T. 4171–4172 (20 Nov 2006). The Indictment alleges, at para. 123(d), that a "police officer from Eastern Bosnia municipal police station" was the physical perpetrator of this crime. The uniforms the newly arrived men wore were issued by the army. *Ibid.*, T. 4172 (20 Nov 2006). PW-107 does not say why he thought the newly arrived men were policemen. Given PW-107's uncertainty regarding the men's appearance, the Trial Chamber is not satisfied beyond a reasonable doubt that they were also members of a PJP Unit.

<sup>2121</sup> PW-106, T. 3969–3970 (15 Nov 2006); PW-107, T. 4114–4115 (17 Nov 2006). PW-107 did not know that man wearing a band, although he heard later that he was from Zvornik. PW-107, T. 4114 (17 Nov 2006). PW-107 testified that he was five to ten or twenty metres away, and that the Bosnian Muslims were searched and shot within ten minutes of being captured. PW-107, T. 4114–4115 (17 Nov 2006), T. 4176, 4231 (20 Nov 2006). By contrast, PW-106 testified that the group had their hands tied behind their backs, were taken 200 metres away and beaten severely for about 20 minutes, after which PW-106 was taken 200 to 300 meters from the group where he heard a burst of gunfire and individual shots. PW-106, T. 3965–3967, 3969–3970 (15 Nov 2006). Some of these discrepancies were put to PW-107 during cross-examination however he stood by his account of the events. *See* PW-107, T. 4231–4232 (private session) (20 Nov 2006). The Trial Chamber concludes that this discrepancy is not material and that PW-106 and PW-107 are in fact testifying about the same episode.

<sup>2122</sup> PW-107, T. 4114–4115 (17 Nov 2006), T. 4230–4231 (private session) (20 Nov 2006). This prisoner was not, in fact, a minor. He gave his captors a false date of birth which indicated that he was 14 years old in the hope that his life would be spared. PW-106, T. 3968 (private session) (15 Nov 2006).

<sup>2123</sup> PW-106, T. 3969–3970, 3973 (15 Nov 2006); PW-107, T. 4115, 4119, 4123 (private session) (17 Nov 2006); Ex. P02295, (confidential).

<sup>2124</sup> PW-106, T. 4060–4061 (private session) (16 Nov 2006); PW-107, T. 4119 (private session) (17 Nov 2006), T. 4180 (20 Nov 2006), T. 4185 (private session) (20 Nov 2006).

<sup>2125</sup> PW-106, T. 3974–3975, 3998 (private session) (15 Nov 2006); PW-107, T. 4127 (private session) (17 Nov 2006).

<sup>2126</sup> PW-107, T. 4124 (private session) (17 Nov 2006).

<sup>2127</sup> PW-107, T. 4125 (private session) (17 Nov 2006). *See also ibid.*, T. 4128 (private session) (17 Nov 2006), T. 4186–4187 (private session) (20 Nov 2006).

583. Forensic and demographic evidence indicates that the Bosnian Muslim prisoners who were killed are either listed as missing or deceased.<sup>2128</sup> Based upon eyewitness testimony, and considering the four men all disappeared at the same time never to be seen again, the Trial Chamber is satisfied beyond reasonable doubt that these four Bosnian Muslim men were killed near Snagovo on or around 22 July 1995. The Indictment alleges that six Bosnian Muslim men were killed in this incident; however, it is clear from the evidence that five Bosnian Muslim men were taken into custody, four were executed and one of them survived the execution.

(d) Four Branjevo Military Farm Survivors<sup>2129</sup>

584. On 16 July 1995, Ahmo Hasić survived the execution at Branjevo Military Farm along with four other Bosnian Muslims: Almir Halilović, Sakib Kivirić, Emin Mustafić, and Fuad Dozić (“the four Bosnian Muslims”).<sup>2130</sup> The four Bosnian Muslims parted ways with Hasić in a forest adjacent to the execution site at Branjevo Military Farm on the evening of 16 July 1995.<sup>2131</sup>

585. On 18 July 1995 at Lokanj, in the Zvornik municipality, the four Bosnian Muslims came upon Neško Đokić, a local farmer and VRS soldier. Đokić brought them food and fresh clothes, as the clothes they were wearing were covered in blood.<sup>2132</sup> Eventually Đokić’s son, Slobodan (who was also a VRS soldier), told the four Bosnian Muslims the quickest way to reach Teočak.<sup>2133</sup>

586. The four Bosnian Muslims had followed the road indicated by Slobodan, but they got lost and came upon a Serbian village. They surrendered to a Serbian soldier named “Bojo”, who fed

<sup>2128</sup> The remains of two of the Bosnian Muslim men have been identified through DNA analysis, with one set of remains found in a grave at Snagovo. Another of the Bosnian Muslim men is still missing. It is unclear whether the fourth Bosnian Muslim man is missing or deceased, as his name appears twice on the 2007 List of Missing and Deceased. Ex. P04494, (confidential), pp. 29, 106; Ex. P03159a (confidential), pp. 68, 107.

<sup>2129</sup> The Indictment alleges that around 19 July 1995, four Bosnian Muslim men who had survived the Branjevo Military Farm execution were captured by VRS and/or MUP forces in the zone of responsibility of the Zvornik Brigade. They were handed over to security personnel of the Zvornik Brigade, under the supervision of **Nikolić**, to be interrogated. After a few days in custody, the four Bosnian Muslim men were summarily executed by Zvornik Brigade personnel. Indictment, para. 30.14.

<sup>2130</sup> Hasić testified that the men he met were aged between 16 and 25 years of age, and one of them was from Jagodnja. Ahmo Hasić, T. 1205–1206 (6 Sept 2006). This corresponds with the witness statements taken from the men later on at the Standard Barracks Detention facility, which detail that the men were born in 1964, 1965, 1969 and 1980. Ex. P00392, “Zvornik Military Police document, statement of Halilović, Almir”, p. 1; Ex. P00389, “Zvornik Military Police Document, Statement of Kivirić, Sakib”, p. 1; Ex. P00390, “Zvornik Military Police Document, Statement of Mustafić, Emin”, p. 1; Ex. P00391, “Zvornik Military Police document, statement of Dozić, Fuad”, p. 1.

<sup>2131</sup> Ahmo Hasić, T. 1205–1206 (6 Sept 2006). Hasić testified that he later heard that the four Bosnian Muslims with whom he escaped were captured and taken to Zvornik. *Ibid.*

<sup>2132</sup> Ex. P00393 “Zvornik Military Police document, statement of Đokić, Neško”, p. 1. Đokić was a member of the 1st Battalion of the Zvornik Brigade. Đokić stated that he “knew immediately that they were Muslims since they were covered in blood and also by their clothes, because they had been fleeing from Srebrenica towards their territory at that time”. *Ibid.*

<sup>2133</sup> *Ibid.*, Exs. P00345, P00386 “Zvornik Brigade Report No. 17/94, signed by Drago Nikolić”, p. 1; Ex. P00389, “Zvornik Military Police document, statement of Kivirić, Sakib”, p. 1; Ex. P00390, “Zvornik Military Police document, statement of Emin Mustafić”, p. 1. *See also* Nebojša Jeremić, T. 10428–10430 (24 Apr 2007).

them and afterwards took them to the VRS command in Teočak, from where they were escorted to Ugljevik and interrogated.<sup>2134</sup> On 23 July 1995, the four Bosnian Muslims were brought to the Standard Barracks detention facility.<sup>2135</sup> Upon arrival, Nebojša Jeremić, a Military Policeman of the Crime Prevention Service of the Zvornik Brigade, took statements from three of the Bosnian Muslim prisoners, namely Almir Halilović, Sakib Kivirić and Emin Mustafić.<sup>2136</sup> Jeremić's colleague in the Crime Prevention Service, Čedo Jović, took a statement from the fourth prisoner, Fuad Đozić.<sup>2137</sup> The four Bosnian Muslims revealed they had received help from two VRS soldiers.<sup>2138</sup> That was the last time Jeremić saw the four Bosnian Muslims; he did not know what ultimately happened to them.<sup>2139</sup>

587. Around the same time, Neško and Slobodan Đokić were brought to the Standard Barracks for interrogation.<sup>2140</sup> At some point during the investigation, **Nikolić** told Jeremić that these were "our fighters who had assisted the enemy" and that criminal charges should be filed against them.<sup>2141</sup> **Nikolić** slapped Slobodan Đokić, because he would not admit the reasons why he and his father had been brought into the Standard Barracks.<sup>2142</sup> Jeremić's colleague took statements from the men.<sup>2143</sup> **Nikolić** ordered Jeremić to draft an order on behalf of the Brigade Commander imposing a penalty of 60 days military imprisonment for the two men.<sup>2144</sup> Soon after the two men made their statements, **Nikolić** left the office.<sup>2145</sup>

<sup>2134</sup> Ex. P00392, "Zvornik Military Police document, statement of Halilović, Almir"; Ex. P00389, "Zvornik Military Police Document, Statement of Kivirić, Sakib"; Ex. P00390, "Zvornik Military Police Document, Statement of Mustafić, Emin"; Ex. P00391, "Zvornik Military Police document, statement of Đozić, Fuad".

<sup>2135</sup> PW-168, T. 15916–15917 (27 Sept 2007) (closed session). *See also* Ex. P00392, "Zvornik Military Police document, statement of Almir Halilović", p. 1; Ex. P00389, "Zvornik Military Police document, statement of Sakib Kivirić", p. 1; Ex. P00390, "Zvornik Military Police document, statement of Emin Mustafić", p. 1 (all indicating that the statements were taken on 23 July 1995).

<sup>2136</sup> Nebojša Jeremić, T. 10431–10433 (24 Apr 2007); Ex. P00392, "Zvornik Military Police Document, statement of Almir Halilović"; Ex. P00389, "Zvornik Military Police document, statement of Kivirić, Sakib"; Ex. P00390, "Zvornik Military Police document, statement of Emin Mustafić".

<sup>2137</sup> Nebojša Jeremić, T. 10419, 10433 (24 Apr 2007); Ex. P00391, "Zvornik Military Police document, statement of Fuad Đozić".

<sup>2138</sup> PW-168, T. 15916–15917 (27 Sept 2007); Ex. P00392, "Zvornik Military Police Document, Statement of Almir Halilović"; Ex. P00389, "Zvornik Military Police document, statement of Kivirić, Sakib"; Ex. P00390, "Zvornik Military Police document, statement of Emin Mustafić"; Ex. P00391, "Zvornik Military Police document, statement of Fuad Đozić".

<sup>2139</sup> Nebojša Jeremić, T. 10439 (24 Apr 2007).

<sup>2140</sup> *Ibid.*, T. 10427 (24 Apr 2007).

<sup>2141</sup> Nebojša Jeremić, T. 10427 (24 Apr 2007).

<sup>2142</sup> *Ibid.*, T. 10427–10428 (24 Apr 2007).

<sup>2143</sup> *Ibid.*, T. 10427–10429 (24 Apr 2007).

<sup>2144</sup> *Ibid.*, T. 10427, 10473–10474 (24 Apr 2007). Jeremić could not, however, recall, whether an order for imprisonment for 60 days was actually written, on behalf of the Brigade Commander. *Ibid.*, T. 10438 (24 Apr 2007). Contrary to these verbal instructions, **Nikolić** signed an order for detention of Neško and Slobodan Đokić for just three days from 24 July 1995 until 27 July 1995. Ex. P00385 "Judgement against Nesko Đokić and Slobodan Đokić (for aiding four Bosnian Muslim males)".

<sup>2145</sup> Nebojša Jeremić, T. 10428 (24 Apr 2007).



588. The four Bosnian Muslims were reported missing following the fall of Srebrenica and have not yet been identified or confirmed dead through DNA analysis.<sup>2146</sup>

589. In light of the evidence before it, and considering that the four Bosnian Muslims were in the custody of the Zvornik Brigade having recently escaped a mass execution, the Trial Chamber is satisfied beyond a reasonable doubt that these four Bosnian Muslim men were killed sometime after 23 July 1995.

#### 4. Transfer to Batković

590. The Batković detention centre for POWs was located at approximately ten kilometers northeast of Bijeljina and 50 kilometres northeast of Zvornik, in the East Bosnia Corps area of responsibility.<sup>2147</sup> In mid July 1995, the commander of the Batković detention centre, in conjunction with the ICRC, prepared accommodation as well as food and medical provisions in anticipation of the arrival of about 1,300 prisoners.<sup>2148</sup>

591. On 18 July, approximately 20 prisoners, most of them wounded, arrived at Batković.<sup>2149</sup> They came from Bratunac Hospital, escorted by the military policemen of the East Bosnian Corps, following an order from the VRS Main Staff.<sup>2150</sup>

592. After 17 July, **Pandurević** ordered that the Bosnian Muslim prisoners who surrendered were to be handed over to the Military Police, who detained them in the military prison of the Standard Barracks.<sup>2151</sup> By 20 July, the Zvornik Brigade already had a number of prisoners and **Pandurević**

<sup>2146</sup> Ex. P03159a, (confidential), pp. 39, 52, 93, 126.

<sup>2147</sup> Novica Simić, T. 28706 (24 Nov 2008); Ljubomir Mitrović, T. 23615–23616, 23658 (11 July 2008); Ex. P03132, (confidential). See Ex. P03521, “Aerial image of Batković”.

<sup>2148</sup> On 13 July, Milenko Todorović, Chief of Security of the East Bosnia Corps, informed Ljubomir Mitrović, of the Commission for Exchange of Prisoners and Bodies of the East Bosnia Corps, that preparations were being carried out in the Batković camp for the arrival of 1,300 Bosnian Muslim soldiers to be accommodated in two hangars. Ljubomir Mitrović, T. 23608, 23638–23639, 23642–23643 (11 July 2008). Mitrović could not explain the discrepancy between the 1,300 prisoners that were expected at Batković and the mere 200 who actually came. Ljubomir Mitrović, T. 23663–23666 (11 July 2008). He stated that “one could assume that bad things were happening” because the men failed to arrive and the country was at war, but he “did not receive information [...] from anybody”. Ljubomir Mitrović, T. 23644, 23670–23671 (11 July 2008). See also, PW-162, T. 9215 (22 Mar 2007) (testifying that a police officer told him on 11 July that Bosnian Muslim prisoners from Bratunac were to be transferred to Batković). PW-168 told the OTP that “**Drago Nikolić** told me that they were not gonna be sending prisoners to Batković because the Red Cross knew about Batković. He said that the orders were that the prisoners were to be brought to Zvornik to be shot”, PW-168, T. 17092-17093 (closed session) (29 Oct 2007). PW-168 adopted a previous statement recorded in Ex. 7D00289 (confidential), p. 12.

<sup>2149</sup> Ljubomir Mitrović, T. 23643–23644 (11 July 2008); Novica Simić, T. 28729–28730 (24 Nov 2008); Ex. P03522, (confidential); Ex. 3D00017, (confidential).

<sup>2150</sup> Novica Simić, T. 28729–28730 (24 Nov 2008). Simić could not remember who at the Main Staff gave the order. *Ibid.*

<sup>2151</sup> Vinko Pandurević, T. 32438 (3 Mar 2009); Miodrag Dragutinović, T. 12711, 12740 (15 June 2007).

was seeking to have them exchanged.<sup>2152</sup> By 22 July, the military prison, which could hold no more than 30 or 40 people, was full.<sup>2153</sup> On 22 July, **Pandurević** issued an interim combat report requesting from the Drina Corps Commission that “the Exchange Commission start work as soon as possible.”<sup>2154</sup> He also asked for instructions as to “what to do with the prisoners, where to put them, and to whom we should hand them over”.<sup>2155</sup>

593. On the morning of 23 July, **Pandurević** was still attempting to move the prisoners from his overcrowded detention facility and he demanded that part of the prisoners be transferred to Batković detention centre.<sup>2156</sup> The Drina Corps decided to transfer them from the Standard Barracks to Batković.<sup>2157</sup> Between 23 and 26 July, about 140 to 150 POWs were transferred to Batković.<sup>2158</sup>

594. On 26 July, the civilian police from Bijeljina escorted prisoners from Pilica to Batković.<sup>2159</sup> In the area of the Bratunac Brigade, in mid to late July 1995, a number of Bosnian Muslims from Srebrenica and Potočari, who had crossed into Serbia, were returned to the Bratunac Brigade and then transferred to the detention centres in Knezina, Batković, or Vlasenica, pursuant to an order of the Drina Corps Command.<sup>2160</sup>

<sup>2152</sup> Vinko Pandurević, T. 31137 (9 Feb 2009); Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 167. **Pandurević**, according to his own account, wanted to exchange the prisoners immediately but was prevented from doing so between 20 July and 22 July because of the combat and his feeling that it would have been too risky to attempt to move. Vinko Pandurević, T. 31144 (9 Feb 2009).

<sup>2153</sup> Vinko Pandurević, T. 31142–31146 (9 Feb 2009); Ex. P01307B, “Intercept, 23 July 1995, 06:40”.

<sup>2154</sup> Vinko Pandurević, T. 31142, 31146 (9 Feb 2009); Ex. 7DP00340, “Zvornik Brigade combat report, 22 July 1995”, para. 3.

<sup>2155</sup> Ex. 7DP00340, “Zvornik Brigade combat report, 22 July 1995”, para. 3.

<sup>2156</sup> Vinko Pandurević, T. 31145–31147 (9 Feb 2009); Ex. P01309a, “Intercept, 23 July 1995, 08:00.” **Pandurević** explained that he considers “matković,” as recorded on Ex. P01309a, to be a misprint as they were talking about Batković. Vinko Pandurević, T. 31147 (9 Feb 2009).

<sup>2157</sup> Vinko Pandurević, T. 32435 (3 Mar 2009); Miodrag Dragutinović, T. 12711, 12740 (15 June 2007).

<sup>2158</sup> Vinko Pandurević, T. 31168–31169 (10 Feb 2009), T. 32325 (2 Mar 2009); Ex. P03522, (confidential) (listing 171 persons exchanged from Batkovci at the end of 1995). Reporting captured enemy soldiers was standard practice and the Zvornik Brigade daily combat report to the Drina Corps for 24 July noted that 14 ABiH soldiers were captured. On 25 July, it was reported that another 25 were captured and sent to Batković; and for 26 July, an additional 34 ABiH soldiers were captured and sent to Batković. Vinko Pandurević, T. 31163–31166 (10 Feb 2009); Ex. P00342, “Zvornik Brigade daily combat report, 24 July 1995”, para. 3; Ex. 3DP00344, “Zvornik Brigade daily combat report, 25 July 1995”, para. 3; Ex. 3DP00346, “Zvornik Brigade daily combat report, 26 July 1995”, para. 2.

<sup>2159</sup> Novica Simić, T. 28642 (21 Nov 2008); P00346, “Zvornik Brigade daily combat report, 26 July 1995,” para. 2.

<sup>2160</sup> Momir Nikolić, T. 33147–33148 (24 Apr 2009). Nikolić testified that he knows the prisoners were transferred to Batković and Vlasenica because Zlatko Cejanović was the person in charge of drafting the supporting documents for sending these people to these facilities; Nikolić had seen lists from Batković and Knezina containing the names and where they came from. Momir Nikolić, T. 33148 (24 Apr 2009). Nikolić rejected the possibility that the prisoners had not been transported to Batković but killed at Glogova. Momir Nikolić, T. 33152 (24 Apr 2009).

595. On 26 July, prisoners at Batković were registered by the ICRC, which had no restrictions on access to the detention centre.<sup>2161</sup> In total, approximately 185 prisoners were registered as prisoners of war at the Batković detention centre in the second half of July 1995.<sup>2162</sup>

596. Exchange of the Bosnian Muslim prisoners at Batković started in July 1995 and ended by 24 December 1995, when the detention centre was closed down.<sup>2163</sup>

##### 5. Other Killings – near Trnovo<sup>2164</sup>

597. The Scorpions combat unit (“Scorpions”) was deployed approximately 150 kilometres from Zvornik at the Trnovo/Treskavica front, within the area of responsibility of the Sarajevo Romanija Corps.<sup>2165</sup> In July 1995, after the fall of Srebrenica, the Scorpions brought six Bosnian Muslim men from Srebrenica to an isolated location near two abandoned buildings in Godinjske Bare, near the town of Trnovo.<sup>2166</sup> Two of the men were forced to lie face down and the remaining four were lined

<sup>2161</sup> Ex. 2D00522, “ICRC update on ICRC activities in the former Yugoslavia”; Ahmo Hasić, T. 1282–1283 (7 Sept 2006); Ljubomir Mitrović, T. 23646 (11 July 2008); Novica Simić, T. 28568–28569 (20 Nov 2008); PW-139, T. 3687 (7 Nov 2006). *See also* Ex. P02265, “Agreement between Smith and Mladić, 19 July 1995”.

<sup>2162</sup> Ex. 3D00017, (confidential); Ex. P03522, (confidential). *See also* Ahmo Hasić, T. 1283 (7 Sept 2006); PW-139, Ex. P02288, “confidential - 92 *ter* statement,” 28 May 2000, para. 13, *ibid.*, T. 3699, 3745–3746 (7 Nov 2006); Novica Simić, T. 28568–28569 (20 Nov 2008), T. 28642 (21 Nov 2008); PW-107, T. 4226–4227 (private session) (20 Nov 2006); Novica Simić, T. 28731 (24 Nov 2008); PW-106, T. 4006 (private session) (16 Nov 2006).

<sup>2163</sup> Ljubomir Mitrović, T. 23648 (11 July 2008); Ahmo Hasić, T. 1230 (private session) (6 Sept 2006). *But see* PW-106, T. 3980 (private session) (15 Nov 2006) (testifying he was at Batković until 26 December 1995). Simić testified that first, 30 men were exchanged for VRS prisoners at Lisaca. Novica Simić, T. 28711–28712 (24 Nov 2008). On 27 July, the Tuzla Commission, which dealt with exchanges for the Bosnian Muslims offered to exchange 101 Serb prisoners for all the Bosnian Muslims that were held in Batković, which was an offer Ljubomir Mitrović, President of the Commission for Exchange of Prisoners and Bodies of the East Bosnia Corps, could not accept, because, according to him throughout the negotiations, the deal had been “one fighter for one fighter”. However, later in September two groups of prisoners were eventually transferred out of Batković—45 prisoners were transferred to Kotorsko in the area of the Krajina Corps, and 88 Bosnian Muslim prisoners were transferred from Batković in exchange for 66 men. Ljubomir Mitrović, T. 23647–23648 (11 July 2008).

<sup>2164</sup> The Indictment alleges that “[s]ometime in July or August 1995, after the fall of the Srebrenica enclave, a Serbian MUP unit called the Scorpions, working with the VRS and/or RS MUP, summarily executed six Muslims from Srebrenica near the town of Trnovo in Bosnia and Herzegovina [...]”. Indictment, para. 30.16.

<sup>2165</sup> Ex. P03248, “Stipulation on Trnovo”, para. 1. *See* T. 21188–21189 (7 Feb 2008).

<sup>2166</sup> Ex. P03248, “Stipulation on Trnovo”, paras. 2, 4. The men were Safet Fejzić, Azmir Alispahić, Smajil Ibrahimović, Sidik Salkić, Juso Delić and Dino Salihović. Osman Salkić and his brother-in-law Azmir Alispahić were part of the column of people attempting to reach ABiH territory after the fall of Srebrenica. The column was ambushed on 12 July 1995 between Buljim and Kamenica, and Salkić never saw Alispahić again, although he was told that he survived that ambush. Salkić was able to identify Alispahić on photographs that were shown to him. He was not able to identify Alispahić’s remains in the morgue in Visoko, however he was told that there was a positive DNA match. Osman Salkić. Ex. P02225, “92 *bis* statement” (4 Dec 2004), pp. 4–5. According to the 2009 ICMP List of Deceased, remains of Azmir Alispahić were found at two sites: Han Pijesak and Godinjska Bare. Ex. P04494, (confidential), p. 93. PW-125 identified Safet Fejzić in a still photograph from the video recorded by the Scorpions near Trnovo in July 1995. PW-125, T. 3304–3305, 3314 (private session) (31 Oct 2006); Ex. P02278 (confidential). Safet Fejzić’s name with particulars matching those provided by PW-125 appears on the 2009 ICMP List of Deceased, which indicates that his remains were found in both Han Pijesak and Godinjska Bare. Ex. P04494 (confidential) p. 119. The remains of three of the other men—Sidik Salkić, Juso Delić, Dino Salihović—were also found in Godinjska Bare. Ex. P04494 (confidential), pp. 119, 145, 133. The Trial Chamber finds that the Bosnian Muslim men who appear in Ex. P03249, “Scorpion video and accompanying transcripts” are the men named in Ex. P03248, “Stipulation on Trnovo”, para. 4. One of the men, Samil Ibrahimović, does not appear on the 2009 ICMP List of Deceased.

up one in front of the other.<sup>2167</sup> Members of the Scorpions shot the four men one at a time with automatic rifles, then untied the hands of the two men who were lying on the ground and forced them to carry the bodies to one of the abandoned buildings.<sup>2168</sup> Once the two men had done this, members of the Scorpions shot them with automatic rifles.<sup>2169</sup> The members of the Scorpions left the bodies in the abandoned building.<sup>2170</sup> These events were captured on videotape by Slobodan Stojković, himself a member of the Scorpions.<sup>2171</sup>

598. Human remains of the six Bosnian Muslim men were later discovered in and around the abandoned buildings at Godinjske Bare.<sup>2172</sup> The bodies were recovered by a team from the Bosnian Commission for Missing Persons, and autopsy reports concluded that each victim died from gunshot wounds.<sup>2173</sup>

599. The Trial Chamber finds that after the fall of Srebrenica, members of the Scorpions Unit killed six Bosnian Muslim men, namely Safet Fejzić, Azmir Alispahić, Smajil Ibrahimović, Sidik Salkić, Juso Deliće and Dino Salihović.

### I. Reburials<sup>2174</sup>

600. As previously found, Bosnian Muslim men were buried in July at Branjevo Military Farm, Kozluk, the Petkovci Dam, Orahovac,<sup>2175</sup> and Glogova.<sup>2176</sup> During September and October 1995, primary graves at these locations were exhumed and bodies were reburied in secondary graves.<sup>2177</sup>

601. Pursuant to orders from the VRS Main Staff, **Popović** instructed Momir Nikolić to conduct a reburial of the bodies of Bosnian Muslims at Glogova.<sup>2178</sup> Momir Nikolić was given the same

<sup>2167</sup> Ex. P03248, “Stipulation on Trnovo”, para. 2; Ex. P03249, “Scorpion video and accompanying transcripts”.

<sup>2168</sup> *Ibid.*

<sup>2169</sup> *Ibid.*

<sup>2170</sup> *Ibid.*

<sup>2171</sup> Ex. P03248, “Stipulation on Trnovo”, paras. 1–2; Ex. P03249, “Scorpion video and accompanying transcripts”.

<sup>2172</sup> Ex. P03248, “Stipulation on Trnovo”, para. 3.

<sup>2173</sup> *Ibid.*

<sup>2174</sup> The Indictment alleges that from about 1 August 1995 to about 1 November 1995 “VRS and MUP personnel” participated in an organised and comprehensive effort to conceal the killings and executions in the Zvornik and Bratunac Brigade zones of responsibility by transferring bodies from primary mass graves to secondary gravesites. More specifically, the Indictment alleges that bodies were exhumed from Branjevo Military Farm, Kozluk, the Petkovci Dam, Orahovac, and Glogova and subsequently transferred to and buried at sites along Čančari Road (bodies from Branjevo Military Farm and Kozluk), sites near Liplje (bodies from the Dam near Petkovci), sites near Hodžići (bodies from Orahovac), and sites near Zeleni Jadar (bodies from Glogova). Indictment, para. 32.

<sup>2175</sup> The graves at Orahovac are also referred to as Lazete. Dean Manning, T. 18937 (10 Dec 2007).

<sup>2176</sup> *See supra*, paras. 438–439, 489–490, 501, 521, 545–547.

<sup>2177</sup> Dean Manning, T. 18933–18938 (10 Dec 2007); Krsto Simić, Ex. 4D00608, “92 bis statement”, BT. 7336–7337 (23 Feb 2004); Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 7; Damjan Lazarević, T. 14468–14469 (29 Aug 2007). *See also supra*, paras. 440–443, 491, 502, 523, 548–549, 608, 653–658.

<sup>2178</sup> Ex. C00001, “Statements of facts and acceptance of responsibility, 6 May 2003”, p. 7; Momir Nikolić, T. 32960–32962 (21 Apr 2009). *See also* PW-138, T. 3865, 3867 (private session) (9 Nov 2006).

instruction by his Commander, Blagojević.<sup>2179</sup> **Popović** also told Momir Nikolić that the Security Organ of the Drina Corps was tasked to ensure the necessary quantity of fuel to carry out the operation.<sup>2180</sup> Once the task was completed, Momir Nikolić was to report back accounting for the use of the fuel received from the Drina Corps.<sup>2181</sup>

602. On 14 September 1995, the Main Staff sent an urgent order, type-signed Mladić, to the Command of the Drina Corps and the Logistics Sector of VRS Main Staff, approving five tonnes of D-2 diesel for engineering work in the zone of responsibility of the Drina Corps to be delivered to Captain Milorad Trbić, Deputy Chief of Security in the Zvornik Brigade.<sup>2182</sup> The order further states that “Trbić [was] responsible for the accurate maintenance of the records on the number of engine work hours of engineering machines and account accordingly for consumption of fuel.”<sup>2183</sup> This order was implemented on the same day by the Chief of the Technical Division of the logistics sector of the Main Staff, Colonel Žarko Ljuboječić, who issued the 5,000 litres of D-2 Diesel to the Drina Corps.<sup>2184</sup> The Drina Corps then provided the fuel for the operation to Trbić.<sup>2185</sup>

603. In the area of the Bratunac Brigade, the exhumation and transfer of corpses from Glogova to Zeleni Jadar took place at night over a period of time.<sup>2186</sup> Following instructions from **Popović** and Blagojević, Momir Nikolić assisted in the exhumation and reburial operation.<sup>2187</sup> The Bratunac Brigade received two consignments of fuel for the operation, one for five tonnes and the other for three tonnes.<sup>2188</sup> Momir Nikolić kept records of the quantities of fuel and vehicles used and a working log of the people involved, which he submitted to the Bratunac Brigade upon finalisation of the task.<sup>2189</sup> Momir Nikolić also reported on the operation to his Commander during regular meetings.<sup>2190</sup> The reburial operation was termed “*asanacija*” in BCS, meaning hygiene and

<sup>2179</sup> Momir Nikolić, T. 32960 (21 Apr 2009).

<sup>2180</sup> *Ibid.*, T. 32961–32962 (21 Apr 2009).

<sup>2181</sup> *Ibid.*, T. 32962–32963 (21 Apr 2009).

<sup>2182</sup> Ex. P00041, “VRS Main Staff Order on assignment of fuel, type-signed Mladić, 14 September 1995”; Vinko Pandurević, T. 31243 (11 Feb 2009). *See also* Ex. 3D00217, “Excerpt from Ex. P379 - Duty Officer's Notebook for 27 Jul–29 Oct 95 - Entry for 14 Sept 95”.

<sup>2183</sup> Ex. P00041, “VRS Main Staff Order on assignment of fuel, type-signed Mladić, 14 September 1995”.

<sup>2184</sup> Ex. P00042, “VRS Main Staff Order issuing 5,000 litres of D-2 diesel fuel, type-signed Zarko Ljuboječić, 14 September 1995”. The Zvornik Brigade was copied on this implementation order.

<sup>2185</sup> PW-168, T. 15921–15922 (closed session) (27 Sept 2007).

<sup>2186</sup> Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 7; PW-170, Ex. P02960, “confidential – 92 *ter* transcript”, BT. 7889 (closed session) (20 Apr 2004); Krsto Simić, Ex. 4D00608, “92 *bis* transcript”, BT. 7336–7339, 7344 (23 Feb 2003); Dragoslav Trišić, T. 27169 (21 Oct 2008).

<sup>2187</sup> Momir Nikolić, Ex. C00001, “Statements of facts and acceptance of responsibility, 6 May 2003”, p. 7; Exs. C00002, P04483, “Supplementary statement by Momir Nikolić, 16 April 2009”, p. 4. *See also* Krsto Simić, Ex. 4D00608, “92 *bis* transcript”, BT. 7336–7337 (23 Feb 2003).

<sup>2188</sup> Momir Nikolić, T. 33058 (23 Apr 2009).

<sup>2189</sup> Momir Nikolić, T. 32962–32963 (21 Apr 2009). Momir Nikolić testified that he submitted the logs on the issuance and consumption of fuel upon completion of the operation to the Drina Corps Command. *Ibid.*, T. 33059 (23 Apr 2009).

<sup>2190</sup> Exs. C00002, P04483, “Supplementary statement by Momir Nikolić, 16 April 2009”, p. 4.

sanitation measures.<sup>2191</sup> According to Momir Nikolić, “*asanacija*” normally involved the removal and burial of the dead from a battle-field, however, in this particular case, the term referred to the relocation of the bodies buried in Glogova to smaller secondary graves in the area surrounding Srebrenica.<sup>2192</sup> The operation was supposed to be a covert one but everything was done openly and publicly<sup>2193</sup> and required the involvement of a lot of people, resources, assets, and vehicles.<sup>2194</sup>

604. Momir Nikolić requested Miroslav Deronjić to secure the assistance of the civilian authorities with regard to the reburial operation.<sup>2195</sup> Upon instructions of Deronjić, workers from the Municipal Staff for Civilian Protection of Bratunac reported at the Bratunac Brigade Headquarters, where Momir Nikolić instructed them to assist in the reburial operation.<sup>2196</sup> The Bratunac Brigade conducted the reburial operation in coordination with elements of the 5th Engineering Battalion of the Drina Corps.<sup>2197</sup> The Bratunac Brigade Military Police secured the road from Bratunac to Srebrenica in order to facilitate the movement of the vehicles through inhabited areas.<sup>2198</sup> They also secured the grave sites as the workers from the Municipal Staff for Civilian Protection of Bratunac carried out their tasks.<sup>2199</sup> The civilian police were involved as well.<sup>2200</sup> Bodies from primary graves in Glogova were reburied in secondary graves in the area around Zeleni Jadar sometime between 24 August and 23 October 1995.<sup>2201</sup> An excavator loader and a backhoe excavator were used for the digging and four to five trucks were used to transport the bodies from Glogova to Zeleni Jadar.<sup>2202</sup>

<sup>2191</sup> Momir Nikolić, T. 32959–32960 (21 Apr 2009); Momir Nikolić, Ex. C00001, “Statements of facts and acceptance of responsibility, 6 May 2003”, p. 7; Ex. P00219, “Bratunac Brigade Reports and Meetings Journal, 28 June 1995–May 1997”, p. 25. Dragoslav Trišić, T. 27169–27170 (21 Oct 2008) also testified Nikolić reported on “*asanacija*” during the meeting.

<sup>2192</sup> Momir Nikolić, T. 32960–32961 (21 Apr 2009), T. 33052 (22 Apr 2009). Nikolić testified he considered this an incorrect use of the term “*asanacija*”.

<sup>2193</sup> Momir Nikolić, T. 32964 (21 Apr 2009).

<sup>2194</sup> *Ibid.*, T. 32962, 32964 (21 Apr 2009).

<sup>2195</sup> *Ibid.*, T. 33060 (23 Apr 2009).

<sup>2196</sup> PW-170, Ex. P02960, “confidential – 92 *ter* statement”, BT. 7886–7887, 7927–7929 (closed session) (20 Apr 2004). Momir Nikolić confirmed that at the beginning of the operation people were reporting to him. When asked if he could confirm Deronjić sent people to him, Momir Nikolić replied he could not exclude the possibility Deronjić was involved. However, he did not know if Deronjić was sending the people to him and thought this was not the case. Momir Nikolić, T. 33061–33062 (23 Apr 2009). The Trial Chamber does not consider this to affect the credibility of PW-170.

<sup>2197</sup> Momir Nikolić, Ex. C00001, “Statements of facts and acceptance of responsibility, 6 May 2003”, p. 7.

<sup>2198</sup> *Ibid.*; PW-138, T. 3863–3864 (closed session) (9 Nov 2006). *See also* Krsto Simić, Ex. 4D00608, “92 *bis* transcript”, BT. 7337 (23 Feb 2004).

<sup>2199</sup> Krsto Simić, Ex. 4D00608, “92 *bis* transcript”, BT. 7337 (23 Feb 2004). *See also* PW-170, Ex. P02960, “confidential – 92 *ter* statement”, BT. 7886–7887, 7928–7929 (closed session) (20 April 2004).

<sup>2200</sup> Momir Nikolić, Ex. C00001, “Statements of facts and acceptance of responsibility, 6 May 2003”, p. 7.

<sup>2201</sup> Ex. P01652, “Aerial Zeleni Jadar, 24 Aug and 2 Oct 1995 (with marking ZJ-2)” (which Manning interprets as evidence that Zeleni Jadar 2 was created between 24 Aug and 2 Oct 1995); Ex. P01653, “Aerial Zeleni Jadar, 20 and 23 Oct 1995 (with markings ZJ-2)” (which Manning interprets as evidence the grave was sealed between 20 and 23 Oct 1995); Ex. P01654, “Aerial Zeleni Jadar, 7 Sept and 2 Oct 1995 (with marking ZJ-3)” (which Manning interprets as evidence Zeleni Jadar 3 was created between 7 Sept and 2 Oct 1995); Ex. P01655, “Aerial Zeleni Jadar, 20 Oct 1995” (which Manning interprets as evidence that Zeleni Jadar 3 was sealed by 20 Oct 1995); Ex. P01656, “Aerial Zeleni Jadar, 7 Sept and 12 Oct 1995 (with markings ZJ-4 & ZJ-5)” (which Manning interprets as evidence that Zeleni Jadar 4 and 5 were created between 7 Sept and 12 Oct 1995); Ex. P01657, “Aerial Zeleni Jadar, 18 Oct 1995 (with markings ZJ-4 & ZJ-5)” (which Manning interprets as evidence Zeleni Jadar 4 and

605. In the Zvornik Brigade's area of responsibility, the exhumation and relocation of bodies from the primary gravesites was conducted during several nights, in September and October 1995.<sup>2203</sup> Milorad Trbić coordinated the operation.<sup>2204</sup> Photographic evidence was presented to the Trial Chamber showing activity on the sites between 7 September and 2 October 1995.<sup>2205</sup>

606. Machine operators of the Engineering Company of the Zvornik Brigade who conducted the initial burials<sup>2206</sup> were asked to exhume the bodies at Branjevo Military Farm, Kozluk, and Orahovac,<sup>2207</sup> together with additional machine operators from other units of the Zvornik Brigade.<sup>2208</sup> Members of the Engineering Battalion of the Drina Corps also assisted.<sup>2209</sup> Excavators were used for the digging<sup>2210</sup> and trucks from various companies were used to carry the bodies to

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5 were sealed by 18 Oct 1995); Dean Manning, T. 18939–18942 (10 Dec 2007); Dušan Dunjić, T. 22869 (26 June 2008); Ex. P00649, “Summary of Forensic Evidence - Execution Points and Mass Graves, Dean Manning”, p. 14; Ex. P02994, “Summary of Forensic Evidence by Dean Manning, 24 Aug 2003”, p. 4; Richard Wright, T. 7499 (21 Feb 2007); Ex. P00560, “Report by Jose Pablo Baraybar on Anthropology Examination of Mass Grave sites in Eastern Bosnia, 8 December 1999”, pp. 6, 33; Ex. P02476, “Report by Jose Pablo Baraybar on Zeleni Jadar 6, 2001, 25 Aug 2003,” pp. 12–13. *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 488.

<sup>2202</sup> Krsto Simić, Ex. 4D00608, “92 *bis* statement”, BT. 7337–7339 (23 Feb 2004). Richard Wright testified that Zeleni Jadar was not dug by a frontloader as it had no entrance ramp, whole tracks, or teeth marks. Wright believed Zeleni Jadar was dug by a backhoe, which is a “machine with an arm that can dig”. Richard Wright. Ex. P02162, “92 *ter* transcript”, KT. 3666 (26 May 2000).

<sup>2203</sup> Damjan Lazarević, T. 14485–14487 (29 Aug 2007), T. 14509–14511 (30 Aug 2007); PW-168, T. 15920, 15927 (closed session) (27 Sept 2007); Vinko Pandurević, T. 31242 (11 Feb 2009), T. 32304 (2 Mar 2009). *See also* Ex. 7D00681, “Zvornik Brigade Regular Combat Report, signed by Pandurević, 27 September 1995,” para. 6 (recording the use of 3,870 litres of D2-Diesel though not mentioning what is was used for).

<sup>2204</sup> Damjan Lazarević, T. 14488–14489 (29 Aug 2007). Lazarević testified that at the end of each job, Trbić would summon the workers for an update on the work carried out. Lazarević testified he received the assignment to assist in the reburial operation from Major Jokić and Slavko Bogičević. *Ibid.*, T. 14468 (29 Aug 2007).

<sup>2205</sup> Ex. P01723, “Aerial Orahovac, 7 and 27 Sept 1995 (with markings LZ-01 and LZ-01)”; Ex. P01747, “Aerial Petkovci Dam, 7, 27 Sept 1995”; Ex. P01763, “Aerial Kozluk, 7 and 27 Sept 1995”; Ex. P01800, “Aerial, 21 Sept 95 (with markings of the Biljeljine - Zvornik road)”; Ex. P01801, “Aerial, 27 Sept 1995”; Ex. P01835, “Aerial Snagovo, 7 Sept 1995 (no markings)”; Ex. P01836, “Aerial Snagovo 2 Oct 1995 (with markings LP-1 & LP-2)”; Ex. P01838, “Aerial Snagovo, 7 Sept 1995 (no markings)”; Ex. P01839, “Aerial Snagovo, 2 Oct 1995 (with marking LP-4)”; Ex. P01847, “Aerial Ravne, 7 Sept 1995 (no markings)”; Ex. P01848, “Aerial Ravne, 2 Oct 1995 (with marking CR-2)”; Ex. P01849, “Aerial Ravne, 7 Sept 1995 (no markings)”; Ex. P01850, “Aerial Ravne, 2 Oct 1995 (with marking CR-3)”; Ex. P01851, “Aerial Ravne, 7 Sept 1995 (no markings)”; Ex. P01852, “Aerial Ravne, 2 Oct 1995 (with markings CR-4 & CR-5)”; Ex. P01853, “Aerial Redzici, 7 Sept 1995 (no markings)”; Ex. P01854, “Aerial Redzici, 2 Oct 1995 (with marking CR-6)”; Ex. P01855, “Aerial Redzici, 7 Sept 1995 (no markings)”; Ex. P01856, “Aerial Redzici, 2 Oct 1995 (with marking CR-7)”. *See also* Dean Manning, T. 18933–18939, 18943–18944 (10 Dec 2007); Jean-René Ruez, T. 1537–1541 (12 Sept 2007); Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, pp. 240–244, 247; Richard Wright, Ex. P02162, “92 *ter* transcript”, KT. 3658–3659 (26 May 2000); Ex. P00649, “Summary of forensic evidence - execution points and mass graves, by Dean Manning”, pp. 14–15; Ex. P00665, “Report by Richard Wright on Kozluk, 24 June–6 Aug 1999”, p. 14; Ex. P00666, “Report by Richard Wright on exhumations in Eastern Bosnia in 1998”, pp. 20–22. *See also* Prosecution Adjudicated Facts Decision, Annex, Facts 404, 488.

<sup>2206</sup> *See supra*, paras. 482, 486, 490, 521–522, 546–547.

<sup>2207</sup> Damjan Lazarević, T. 14468 (29 Aug 2007).

<sup>2208</sup> *Ibid.*, T. 14484 (29 Aug 2007).

<sup>2209</sup> Vinko Pandurević, T. 31243 (11 Feb 2009).

<sup>2210</sup> Damjan Lazarević, T. 14529 (30 Aug 2007). *See also* Richard Wright, Ex. P02162, “92 *ter* transcript”, KT. 3661 (26 May 2000). During exhumation by the investigators, it was noted the secondary sites largely mirrored one another in terms of size and shape as well as the machinery with which they were created. All sites, except Zeleni Jadar, showed traces of the wheels and teeth of an excavator, called a front loader, indicating that they were created by such a machine. Richard Wright, Ex. P02162, “92 *ter* transcript”, KT. 3661, 3669 (26 May 2000). Lazarević testified that a BGH is an excavator, also called a backhoe. The machine has a bucket at the front and is mainly used to dig canals and building foundations. It is a tracked vehicle and can turn in any direction. Damjan Lazarević,

the secondary gravesites as the trucks of the Engineering Company were old and could not be used “to complete the work.”<sup>2211</sup> The Commander of the Roads and Bridges Platoon of the Engineering Company of Zvornik Brigade stated that, although a broader circle of soldiers and civilians might have been aware to some extent of what was going on, only very few people were aware of the details of the operation.<sup>2212</sup> The trucks carrying the corpses passed through Zvornik leaving an unbearable stench and upsetting the local population.<sup>2213</sup>

## **J. Total Number of Deceased: Forensic and Demographic Evidence**

### **1. Introduction**

607. There is an extensive body of forensic and demographic evidence before the Trial Chamber in relation to the number of persons killed following the fall of Srebrenica. The Trial Chamber notes that a precise number of deceased is not necessary in order to reach a conclusion regarding the crimes alleged in the Indictment.<sup>2214</sup> However such an estimate is relevant, particularly to the crime of genocide and extermination, a crime against humanity. Therefore, the Trial Chamber will review the body of evidence before it with a view to reaching an estimated number of persons killed in the mass executions following the fall of Srebrenica. Where appropriate, some forensic evidence (along with relevant challenges) is addressed in the section dealing with the specific crime site to which it applies.<sup>2215</sup>

### **2. The Graves**

608. The Prosecution conducted exhumations in and around Srebrenica from 1996 until 2001, when responsibility for exhuming the remaining graves was handed over to the BiH Government, in conjunction with the International Commission on Missing Persons (“ICMP”).<sup>2216</sup> As of March 2009, 73 graves had been identified, and all but one exhumed: 31 primary graves,<sup>2217</sup> 37 secondary

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T. 14445 (29 Aug 2007). Lazarević further testified that a ULT is construction machine with a loading bucket in the front, mainly used to load construction material. Although the machine can be used for smaller excavations on flat areas, it cannot dig deeply. *Ibid.*, T. 14446 (29 Aug 2007). See also Ex. P02174, “Brochure for a ULT-200”.

<sup>2211</sup> Damjan Lazarević, T. 14485 (29 Aug 2007).

<sup>2212</sup> *Ibid.*, T. 14511 (30 Aug 2007).

<sup>2213</sup> Vinko Pandurević, T. 31242 (11 Feb 2009), T. 32304 (2 Mar 2009); Damjan Lazarević, T. 14485 (29 Aug 2007).

<sup>2214</sup> A conclusion as to the number of persons killed does not form an element of the crimes alleged. See *Brdanin* Appeal Judgement, para. 471; *Stakić* Appeal Judgement, para. 260, citing *Ntakirutimana* Appeal Judgement, para. 516; *Krstić* Trial Judgement, para. 501.

<sup>2215</sup> See, for example, *supra*, paras. 439–443.

<sup>2216</sup> Ex. P02993, “Summary of Forensic Evidence by Dean Manning, 27 November 2007”, p. 1.

<sup>2217</sup> Ex. P04490 “Srebrenica Investigation – Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, Annex A, pp. 1–9, 25, 28–33. Prosecution Investigator Dušan Janc identified the 31 primary graves—including mass graves, smaller graves and individual graves—in the following areas: Cerska; Nova Kasaba (2 graves); Orahovac (2 graves, also known as Lažete 1 and 2); Pilica (Branjevo Military Farm); Petkovci Dam; Kozluk; Kozluk surface remains; Glogova (2 graves); Ravnice (2 graves); Konjević Polje (2 graves); Godinjske Bare; Bišina; Sandići; Potočari; Srebrenica Hospital; Nova



graves,<sup>2218</sup> and five graves for which no information was available as to whether they were primary or secondary<sup>2219</sup> (together, the “Srebrenica Related Graves”). A primary grave is the first grave in which remains are buried after death, and a secondary grave is a grave to which remains are transferred to after initially being buried in a primary grave.<sup>2220</sup>

### 3. The Exhumations

609. Several experts who exhumed the graves for the Prosecution testified before the Trial Chamber, notably anthropologists William Haglund,<sup>2221</sup> Jose Pablo Baraybar,<sup>2222</sup> Richard Wright<sup>2223</sup> and Fredy Peccerelli,<sup>2224</sup> as well as forensic pathologists John Clark<sup>2225</sup> and Christopher Lawrence.<sup>2226</sup> Findings from individual reports pertaining to particular gravesites are set out in the Potočari,<sup>2227</sup> Bratunac<sup>2228</sup> and Zvornik<sup>2229</sup> sections of this Judgement.

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Kasaba (2 graves); Kaldrmice; Brežljak; Motovska Kosa; Križevići; Vlasenička Jelovačka Česma; Kaldrmice (1 individual grave); Pasmulići (1 individual grave); Šeher (1 individual grave); Krušev Dol-Vukotin Stan (1 individual grave). *Ibid.* The Trial Chamber notes that Janc included surface remains in his list of graves if he had information that the deaths can be linked to the events at Srebrenica. One such example is Godinjske Bare.

<sup>2218</sup> Ex. P04490, “Srebrenica Investigation – Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, Annex A, pp. 9–28. Dušan Janc identifies 37 secondary mass graves at the following locations: 13 gravesites along Čančari Road; 7 gravesites along Hodžići Road; 5 gravesites in Liplje; 7 gravesites in Zeleni Jadar, 3 gravesites in Blječeva and 2 gravesites in Budak. *Ibid.* The grave known as Čančari Road 1 had not been exhumed at the time of Janc’s testimony. Dušan Janc, T. 35621 (4 May 2009).

<sup>2219</sup> Ex. P04490, “Srebrenica Investigation – Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, Annex A, pp. 20–21, 32 (These graves were found in Liplje (3 graves) and Nova Kasaba (2 individual graves)).

<sup>2220</sup> Dean Manning, T. 18930 (10 Dec 2007).

<sup>2221</sup> William Haglund led exhumations at Nova Kasaba, Lažete near Orahovac, the Cerska Valley and Pilica (Branjevo Military Farm). Ex. P00621, “Report by William Haglund - Forensic Investigation of four graves in Nova Kasaba, 15 June 1998”; Ex. P00616, “Report by William Haglund on the Lažete 2 gravesite, 15 June 1998”; Ex. P00611, “Report by William Haglund - Forensic Investigation of the Cerska Grave Site - Volume I, 15 June 1998”; Ex. P00622, “Report by William Haglund - Forensic Investigation of the Pilica (Branjevo Military Farm) Grave Site - Volume I, 15 June, 1998”.

<sup>2222</sup> Jose Pablo Baraybar gave evidence on the exhumations at Kozluk, Čančari Road, Glogova, Zeleni Jadar, Nova Kasaba, Konjević Polje, Lažete, Hodžići Road, Pilica (Branjevo Military Farm) and Ravnice. Ex. P00559, “Report by Jose Pablo Baraybar - Anthropology Examination of Human Remains from Eastern Bosnia in 1999”; Ex. P00561, “Report on the Anthropological Examination of Human Remains from Eastern Bosnia in 2000, by Jose Pablo Baraybar, 2 February 2001”; Ex. P02476, “Report on Excavations at the Site of Zeleni Jadar 6 in 2001, 25 August 2003”; Ex. P00560, “Report by Jose Pablo Baraybar on Anthropology Examination of Mass Grave sites in Eastern Bosnia, 8 December 1999”.

<sup>2223</sup> Richard Wright worked on exhumations at Petkovci Dam, Kozluk, Glogova, Liplje, Čančari Road, Hodžići Road and Zeleni Jadar. Ex. P00666, “Report by Richard Wright on exhumations in Eastern Bosnia in 1998”; Ex. P00665, “Report by Richard Wright on Kozluk in 1999, 2 February 2000”; Ex. P00674, “Prof. Richard Wright report titled Report on Excavations and Exhumations at the Glogova 1 Mass Grave in 2000, 9 Feb 2001”.

<sup>2224</sup> Fredy Peccerelli worked on the exhumations at Lažete. Fredy Peccerelli, T. 8773–8776 (13 Mar 2007); Ex. P02459, “Lažete 1, Bosnia Herzegovina, Excavation and Exhumation Report”.

<sup>2225</sup> John Clark worked on exhumations at Kozluk, Nova Kasaba, Konjević Polje, Glogova, Lažete, Ravnice and Zeleni Jadar. Ex. P02446, “Report titled - ICTY Operations in Bosnia Herzegovina in 2001, 14 May 2003”; Ex. P00598, “Report by Dr. John Clark - ICTY Operations in Bosnia Herzegovina, in 2000, Srebrenica related grave sites, 24 February 2001”; Ex. P00575, “Report by Dr John Clark - ICTY Operations in Bosnia-Herzegovina in 1999, Srebrenica Grave Sites”.

<sup>2226</sup> Christopher Lawrence worked on exhumations at Petkovci Dam, Liplje, Hodžići Road and Čančari Road and Zeleni Jadar. Ex. P02160, Christopher Lawrence, “92 ter transcript”, KT. 3979–3980 (31 May 2000).

<sup>2227</sup> See *supra*, para. 358.

<sup>2228</sup> See *supra*, paras. 411–413, 416–419, 422, 439–443.

(a) Challenges regarding the Timeframe

610. The forensic reports presented by the Prosecution do not generally imply a precise time of death for those buried in the Srebrenica Related Graves. Dušan Dunjić, a professor of forensic medicine who appeared as an expert witness for the Defence, stated that a precise time of death for the bodies could not be ascertained. Having reviewed some of the Prosecution expert reports,<sup>2230</sup> Dunjić noted errors and inconsistencies when observing changes in the putrefaction of corpses,<sup>2231</sup> and insufficiencies when recording the state in which the bodies were found.<sup>2232</sup> Dunjić emphasised the importance of performing these procedures properly, because analysing the articulation of the joints and examining the degree of preservation, putrefaction, or skeletonisation can allow for an estimation of the time of death.<sup>2233</sup>

611. The Trial Chamber accepts Dunjić's opinion that based *solely* on the autopsy and exhumation reports, a determination of the precise time of death of the victims in the Srebrenica Related Graves can, at times, be problematic. In this regard, the Trial Chamber notes that many of the exhumation reports do not estimate a precise time of death of the victims based upon autopsy results.<sup>2234</sup> However, the Trial Chamber notes that although Dunjić acknowledged that an anthropologist may consider factors other than the state of the body in order to reach conclusions,<sup>2235</sup> when estimating the time of death, Dunjić nevertheless appears to have looked at the exhumation reports in isolation. Dunjić's report and testimony on this issue show no consideration of what took place in and around Srebrenica in July 1995. The Trial Chamber has an extensive amount of such evidence before it. Most notably, it has evidence that multiple large scale

<sup>2229</sup> See *supra*, paras. 491–492, 502–503, 523–524, 548–549.

<sup>2230</sup> Dunjić examined reports from Nova Kasaba (primary grave site), Pilica (Branjevo Military Farm) (primary grave site), Zeleni Jadar (secondary grave site), and Ravnice (where corpses were found on the surface). Dušan Dunjić, T. 22778 (25 June 2008).

<sup>2231</sup> For example, Dunjić noted errors and inconsistencies when recording the degree of putrefaction of the corpses compared with the putrefaction of the external part of the corpses. Additionally, Dunjić noted that this is particularly important to establish the time of death. Dušan Dunjić, T. 22790 (25 June 2008); Ex. 1D01070 "Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008", pp. 42–44.

<sup>2232</sup> Dušan Dunjić, T. 22856, 22873, 22906 (26 June 2008). Dunjić disputed the description of the status of the preservation, putrefaction, and partial skeletonisation of the bodies. He criticised that words used by Clark, such as "complete" or "articulation, partial", which, according to Dunjić, were "absolutely an insufficient description of the situation or the status of the joints". *Ibid.*, T. 22786 (25 June 2008).

<sup>2233</sup> *Ibid.*, T. 22786–22788 (25 June 2008). There are several stages in the process leading to complete putrefaction of the soft tissues (skeletonisation), and multiple factors, such as the environment, the manner of death, or the wounds suffered, can influence the putrefaction process. *Ibid.*

<sup>2234</sup> See, for example, Ex. P02446, "Report - ICTY Operations in Bosnia Herzegovina in 2001 Season, 14 May 2003" (where no estimation of the time of death is given); Ex. P00598 "Report by Dr. John Clark - ICTY Operations in Bosnia Herzegovina in 2000, Srebrenica related grave sites, 24 February 2001" (where no estimation of the time of death is given); Ex. P00666, "Report by Richard Wright on exhumations in Eastern Bosnia in 1998", pp. 28–31 (where the only evidence as to the time of death was the date upon which the wrist watch found in the grave had stopped); and Ex. P00665, "Report by Richard Wright on Kozluk in 1999, 2 Feb 2000", p. 14 (where the only evidence referred to regarding the time of death was the flowering plants found in the grave).

<sup>2235</sup> Dušan Dunjić, T. 22894–22895 (26 June 2008).

mass executions took place in July 1995 in the area around where these mass graves were exhumed. The Trial Chamber is not persuaded that problems with the calculation of a precise time of death for each of the thousands of individuals exhumed from the Srebrenica Related Graves should call into question the reliability of the expert reports tendered by the Prosecution.

(b) Challenges regarding the Manner and Cause of Death

612. The forensic evidence presented by the Prosecution indicates that the main cause of death was determined to be gunshot injury.<sup>2236</sup> However, the cause of death could not be determined in a “significant number of cases” because body parts and soft tissue were missing, and no cause of death could be determined from the bones alone.<sup>2237</sup> Clark observed that of the graves he exhumed, there was “certainly nothing to suggest that these were combat casualties”.<sup>2238</sup>

613. Dunjić reviewed reports and autopsy records from a selection of the Srebrenica Related Graves exhumed by Haglund, Lawrence and Clark (both primary graves and secondary graves) and surface remains.<sup>2239</sup> He opined that many of the conclusions concerning the cause and manner of death were arbitrary and not based upon scientific proof, particularly in cases where it was concluded that the deceased met a violent death.<sup>2240</sup> Dunjić stated that in some of the cases he reviewed, the person conducting the exhumation and/or autopsy reached arbitrary conclusions not supported by findings;<sup>2241</sup> reached a conclusion without recording a detailed description of the wound, thereby rendering the finding impossible to verify;<sup>2242</sup> or recorded the manner of death as homicide, but failed to reach a conclusion as to the cause of death.<sup>2243</sup>

614. In particular, Dunjić criticised the work of Haglund, Lawrence and Clark. In relation to Nova Kasaba, Dunjić stated that the description of injuries in the graves exhumed by Haglund was

<sup>2236</sup> Dean Manning, T. 18956 (10 Dec 2007); Ex. P02994, “Summary of Forensic Evidence by Dean Manning, 24 Aug 2003”, p. 2–3.

<sup>2237</sup> Dean Manning, T. 18956 (10 Dec 2007).

<sup>2238</sup> John Clark, Ex. P02128, “92 *ter* transcript”, KT. 3939 (31 May 2000) (concerning only the bodies autopsied in 1999); John Clark, T. 7342–7344 (20 Feb 2007). However, Clark admitted several times that he was not in a position to completely exclude the possibility that some of the victims died in combat. John Clark, T. 7344, 7368, 7369, 7371, 7372 (20 Feb 2007).

<sup>2239</sup> Dušan Dunjić, T. 22774–22778 (25 June 2008); Ex. 1D01070 “Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008”, pp. 4–5. Dunjić examined reports from Nova Kasaba (primary grave site), Pilica (Branjevo Military Farm) (primary grave site), Zeleni Jadar (secondary grave site), and Ravnice (where corpses were found on the surface). Dušan Dunjić, T. 22778 (25 June 2008).

<sup>2240</sup> Dušan Dunjić, T. 22857–22858 (26 June 2008). For example, Dunjić indicated that for Nova Kasaba 1, 2, and 3, the conclusion that the victims had met a violent death was arbitrary because of the presence of multiple injuries caused by shrapnel. *Ibid.*

<sup>2241</sup> *Ibid.*, T. 22792–22793 (25 June 2008). Dunjić also found that the notations concerning evidence of trauma did not comply with accepted standards of forensic medicine because the conclusion that a gunshot wound existed was not supported by any detail in the trauma finding—the diagnosis is simply made without any accompanying description of the wound or the injury (for example, size, edges, canals, remaining tissues, etc). *Ibid.*

<sup>2242</sup> *Ibid.*, T. 22816 (25 June 2008).

“disastrous”, seriously lacking in precision and detail.<sup>2244</sup> According to Dunjić, this rendered the results unreliable because they could not be verified.<sup>2245</sup> Dunjić had the same criticism for Haglund’s report on Pilica (Branjevo Military Farm), stating that the conclusion reached as to the cause of death cannot be tested based upon the descriptions in the report,<sup>2246</sup> and Clark’s work at Ravnice, stating that the insufficient description of trauma made it impossible to verify that the injuries occurred as described.<sup>2247</sup>

615. Dunjić also highlighted the fact that many of the bodies in the Srebrenica Related Graves were in an advanced state of putrefaction at the time of exhumation, which means that it is almost impossible to conclude whether a wound found on a body was inflicted before or after death.<sup>2248</sup>

<sup>2243</sup> Dušan Dunjić, T. 22816–22818 (25 June 2008).

<sup>2244</sup> *Ibid.*, T. 22784–22790 (25 June 2008); T. 22857–22858 (26 June 2008); Ex. 1D01070 “Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008”, pp. 4, 35–65. In relation to the Nova Kasaba autopsy reports, Dunjić noted: “[T]he trauma reports (where everything observed on the body should be described in detail) of some autopsy reports contain cut-and-dried diagnoses and conclusions, which are even incorrect in some cases. For some skull fractures lacking the characteristic description of an entry-and-exit wound due to a projectile, it is claimed that they were caused by a projectile, and in another case, for a similar description of the injuries to another skull it is said to have been caused by blunt force – for both cases the cause of death is said to be linked to skull injury – this is professionally unacceptable. The autopsy results are thin – incomplete, with a very inadequate description of the injuries”. Ex. 1D01070, “Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008”, p. 29.

<sup>2245</sup> Dušan Dunjić, T. 22816 (25 June 2008); T. 22904–22905 (26 June 2008).

<sup>2246</sup> *Ibid.*, T. 22865 (26 June 2008). For example, regarding one case from the Pilica exhumation, Dunjić noted the description of injuries provided (“Condition: not complete – missing head, only base of skull present. Preservation: Purification / Saponification”), and stated: “Insufficient description of injuries, not possible to verify the finding, cut-and-dried diagnosis of the injury given. As in the other cases, the cause of death is debatable”. Ex. 1D01070 “Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008”, p. 74.

<sup>2247</sup> Ex. 1D01070, “Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008”, pp. 105–122. *See* Ex. P00598 “Report by Dr. John Clark - ICTY Operations in Bosnia Herzegovina in 2000, Srebrenica related grave sites, 24 February 2001”. For example, Dunjić noted the following description in one of the autopsy reports: “Main injuries described: Head & Neck: The skull was fragmented into pieces of different sizes. Following reconstruction it revealed a small hole in the right parietal bone with internal bevelling. The frontal and maxillary parts, and part of the occipital bone were missing. Trunk: There was a small hole in the blade of the left scapula. All the ribs and most of the vertebrae were missing. Extremities: All bones of both arms were missing except for the left ulna. Fractured upper third of the right tibia with fragmented bones of the middle part of the shaft. Fractured medial part of the ilium of the right hip bone. Fractured lower third of the left femur with fragmented pieces. Fractured upper end of both left tibia and fibula with missing parts. Projectiles: two bullets, fragment of copper jacket of bullet. Two metal fragments from a sock. Shell case from a plastic bag in the body bag. Cause of death: Gunshot injury of the head”. Of this, Dunjić observed “Incomplete description of the injuries, report on gunshot injuries superficial. As in most cases, the conclusion is debatable. Cut-and-dried diagnoses are given regarding the gunshot injuries, but they were not described as such”. Ex. 1D01070, “Expert Report, Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008”, p. 107.

<sup>2248</sup> Dušan Dunjić, T. 22796–22797 (25 June 2008). Clark acknowledged this difficulty, stating “Strictly speaking therefore, in these often incomplete and decomposed bodies, it was virtually impossible to be certain that any of the injuries found necessarily occurred in life, and theoretically all of them could have occurred after death, even the very obvious gunshot injuries. Such comments however, have to be balanced against the observations that these people were all in mass graves, that they must have died in some way, and that if it was not predominantly from violence, then it must be from some cause which was no longer obvious. That may still have been possible, e.g. poisoning, suffocation etc, but such suggestions must be viewed in the context that most of these victims had nevertheless still been shot, often several times, and in different parts of the body.” Ex. P02446, “Report - ICTY Operations in Bosnia Herzegovina in 2001, 14 May 2003”, p. 3.

616. Dunjić acknowledged that there are many factors other than the state of the remains (for example, witness testimony and other evidence) that should be considered when reaching a determination as to the cause of death.<sup>2249</sup> In this regard, the Trial Chamber notes that ligatures and blindfolds were found in the graves, indicating that the bodies exhumed were victims of mass executions.<sup>2250</sup> Dunjić agreed that in regard to those bodies which had ligatures associated with them, one could find that they were victims of execution by shooting.<sup>2251</sup> Prosecution experts also indicated that several blindfolds had bullet holes through the material and the posture of several bodies exhumed at different sites indicated that their wrists were bound.<sup>2252</sup> Large numbers of shell casings were also found at some grave sites indicating that the individuals were killed at the gravesite.<sup>2253</sup>

617. Dunjić examined a number of cases from Nova Kasaba for which he concluded that the cause of death could have been the consequence of legitimate combat operations.<sup>2254</sup> Prosecution investigator Dušan Janc agreed that some persons found in the Srebrenica Related Graves may have died as a result of land mines, suicide or legitimate combat operations, and stated that such cases were most likely to be found among the surface remains.<sup>2255</sup> Janc estimated that such cases could total 1,000, based upon the 648 persons identified thus far from the surface remains, but the number

<sup>2249</sup> Dušan Dunjić, T. 22895 (26 June 2008).

<sup>2250</sup> According to Manning's Report, ligatures and/or blindfolds were found at the following gravesites: Cerska (48 ligatures); Nova Kasaba 1996 (27 ligatures); Orahovac (also known as Lažete 2 A & B) (1 ligature and 107 blindfolds); Orahovac (also known as Lažete 2C) (40 blindfolds and 4 ligatures); Orahovac (also known as Lažete 1) (138 blindfolds); Hodžići Road 3 (16 blindfolds), Hodžići Road 4 (40 blindfolds), Hodžići Road 5 (34 blindfolds and 1 ligature); Pilica (Branjevo Military Farm) (83 ligatures and 2 blindfolds); Čančari Road 3 (37 ligatures and 8 blindfolds), Čančari Road 12 (16 ligatures and 8 blindfolds); Petkovci Dam (1 ligature); Liplje (23 ligatures); Zeleni Jadar 5 (2 ligatures); Glogova 1 (12 ligatures); Kozluk (168 ligatures and 55 blindfolds). Ex. P02994, "Srebrenica Investigation – Summary of Forensic Evidence – Executions Points and Mass Graves 2001", Annex D. See also Dušan Janc, T. 33614–33616 (4 May 2009).

<sup>2251</sup> Dušan Dunjić, T. 22935–22936 (27 June 2008); Ex. 1D01070, "Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008", p. 23.

<sup>2252</sup> Dean Manning, T. 18930–18931 (10 Dec 2007).

<sup>2253</sup> Hundreds of shell casings were found at the Kozluk grave site. Ex. P00665, "Report by Richard Wright on Kozluk in 1999, 2 Feb 2000", pp. 11, 13, 14; Richard Wright, Ex. P02162, "92 ter transcript", KT. 3688, 3716–3717 (29 May 2000); Richard Wright, T. 7507–7508 (21 Feb 2007). See also Ex. P00649, "Summary of Forensic Evidence – Executions Points and Mass Graves 2000, Report by Dean Manning, 16 May 2000". Prosecution investigator Dean Manning indicated that shell casings were found at Zeleni Jadar 5, linking this mass grave to the Kravica Warehouse. Shell cases were also found at Cerska by the side of the road next to the grave. Shell cases were also at the Lažete mass grave identical to shell cases found at three secondary graves Hodžići Road 3, 4, and 5. Lastly, shell cases were found on the surface of the Petkovci Dam and within the Petkovci Dam grave. *Ibid.*, Annex A, pp. 56, 9–11, 23–37, 40–41.

<sup>2254</sup> Ex. 1D01070, "Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008". In total, Dunjić reviewed approximately 159 individual autopsy reports from six locations where mass graves were found: Nova Kasaba (33); Pilica (Branjevo Military Farm) (52); Zeleni Jadar (20); Ravnice (20); Potočari (11) and Sandići (23). There were several autopsy reports from Nova Kasaba, including some where Dunjić concluded the cause of death could have been obtained during combat and others where Dunjić did not reach this conclusion. Dunjić reviewed 31 autopsy reports from Nova Kasaba 8 in his Expert report, and concluded that in 25 cases, it was possible that the injuries were sustained in armed combat. This was evident in cases Nova Kasaba 8:48, 8:49, 8:50, 8:51, 8:52, 8:55, 8:56, 8:57, 8:58, 8:61, 8:62, 8:63, 8:64, 8:65, 8:66, 8:67, 8:69 because projectiles, shrapnel, or metal fragments were found in the body. *Ibid.*, pp. 44–65. See Dušan Dunjić, T. 22837–22854 (26 June 2008).

could be higher.<sup>2256</sup> Combat operations occurred close to the Srebrenica Related Gravesites (specifically at Ravni Buljim, Kamenica, Sandići and Konjević Polje and Udrc), however Janc did not consider that the persons buried in the graves close by may have died as a result of these operations, because—in particular in the Nova Kasaba and Cerska graves—evidence of ligatures and blindfolds was found.<sup>2257</sup>

618. Dunjić also examined the work of Lawrence at Zeleni Jadar 5 and because of the evidence of wounds caused by shell and shrapnel, he argued that the injuries sustained could have been the result of combat activities.<sup>2258</sup> However, the Trial Chamber notes that Zeleni Jadar 5 is a secondary grave linked to the Glogova grave, a primary grave associated with the Kravica Warehouse executions. There is evidence before the Trial Chamber of damage caused by grenades and explosives at the Kravica Warehouse.<sup>2259</sup>

619. The Trial Chamber notes that the advanced state of putrefaction and skeletonisation of the bodies presented problems for those exhuming the Srebrenica Related Graves, particularly when determining the cause of death. Nevertheless, when the exhumation reports are considered together with the other evidence before the Trial Chamber in relation to the large scale mass executions which took place in the Srebrenica area in July 1995, the Trial Chamber is satisfied with the reliability of the conclusions in relation to the cause of death reached in the Prosecution expert reports.

620. Haglund appeared as a Prosecution witness in the case of *Prosecutor v. Rutaganda*, where the Trial Chamber in that case held that “on the basis of the testimony of Dr. Kathleen Reich, a

<sup>2255</sup> Dušan Janc, T. 33593 (4 May 2009).

<sup>2256</sup> *Ibid.*, T. 33594–33604 (4 May 2009). Janc did not agree with Butler’s statement in this regard that “1,000 to 2,000 [...] would be reasonable”. *Ibid.* Janc calculated a total of 648 individuals whose remains have been found on the ground or surface. The total number of surface remains collected is 957. *Ibid.*, T. 33515 – 33517 (1 May 2009). See also Ex. P04490, “Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, Annex B, p.2. See Richard Butler, T. 20251 (23 Jan 2008). Janc did not accept the suggestion that 2,000–3,000 bodies were found on a battlefield in the Pobudje region. Dušan Janc, T. 33595–33599 (4 May 2009). See also Ex. 2D00702, “Statement of Mr. Velid Mujkić, 23 Aug. 1995” (where a man from the column stated that 500 men were killed on the battlefield). Janc categorized the locations where surface remains have been collected into four “wider areas: the Pobudje area (stretching south of the Bratunac-Konjević Polje road); the Baljkovica area (stretching north-west of Zvornik); the Snagovo area (stretching south-west of Zvornik); other areas (outside the above mentioned areas, but still relatively close to them).” Ex. P04490, “Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica, March 2009”, Annex B, p. 2. Cf. Ex. 1D00374, “UNPROFOR,”Srebreniča-Tuzla Update, 17 July 1995”. According to this UNPROFOR report, dated 17 July 1995, “Escapees from Srebrenica have arrived at Tuzla Air Base to join up with their family. UNMOs, Civil Affairs, and others have spoken separately to several individuals who describe a similar ordeal: [...] Up to three thousand were killed on the way, mostly by mines and BSA engagements. Unknown others were captured. Others committed suicide. Unknown others went to Zepa”. *Ibid.*, p. 2. See also, Borovčanin Final Brief, para. 522.

<sup>2257</sup> Dušan Janc, T. 33611–33616 (4 May 2009). See Ex. 2DIC00252, “Prosecution 65<sup>ter</sup> document 2110 marked in court by Witness Mr. Janc, 04 May 2009” for a map of the combat areas in relation to the graves.

<sup>2258</sup> Dušan Dunjić, T. 22869–22873 (25 June 2008); Ex. 1D01070, “Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dunjić Dušan, March, April 2008”, pp. 93–104.

forensic pathologist called by the Defence as an expert witness, [it was] not satisfied that the scientific method used by Professor Haglund is such as to allow the Chamber to rely on his findings in the determination of the case” and that “above all, the Chamber notes that the Prosecutor failed to show a direct link between the findings of Professor Haglund and Dr. Peerwani and the specific allegation in the indictment.”<sup>2260</sup> It appears that while Dr. Reich criticised Haglund’s method in determining the cause of death, such determination was actually made by another expert in that case, Dr. Peerwani.<sup>2261</sup> In the *Rutaganda* case, Dr. Reich also criticised Haglund’s method in determining time of death, as he did not consider insect information and fabric and clothing analysis and did not take casts of skulls or use stature estimates. Haglund responded that such methods are either not routine practice in Canada or in the United States or could not be used in the context of Rwanda.<sup>2262</sup> Haglund also appeared as Prosecution expert in the case of *Prosecutor v. Kayishema* and he was not criticised in this context.<sup>2263</sup> An Expert Panel set up by the Prosecution to investigate complaints against Haglund and another pathologist cleared Haglund of any wrongdoing, stating that nothing regarding the conduct of the exhumations jeopardised their scientific validity.<sup>2264</sup> The Trial Chamber is of the opinion that nothing raised by the Defence can create a reasonable doubt as to the reliability of Haglund’s work, which the Prosecution has proven before the Trial Chamber.

(c) Minimum Number of Individuals in Each Grave

621. It is not possible to determine the number of persons buried in each Srebrenica Related Grave via a simple body count, because of the degree of disarticulation of the remains.<sup>2265</sup> When determining the number of dead at a grave site, the anthropologists measured the Minimal Number of Individuals (MNI). The MNI is an estimate of the minimum number of individuals necessary to account for the number of body parts or bones exhumed from a given grave.<sup>2266</sup> The estimate is reached by counting the most widely present type of bone in a given gravesite.<sup>2267</sup> Bones other than

<sup>2259</sup> See *supra*, para. 437.

<sup>2260</sup> William Haglund, T. 8923 (15 Mar 2007), citing *Rutaganda* Trial Judgement, paras. 257–258.

<sup>2261</sup> *Ibid.*, T. 8924–8927 (15 Mar 2000).

<sup>2262</sup> *Ibid.*, T. 8928–8929 (15 Mar 2007).

<sup>2263</sup> *Ibid.*, T. 8904 (15 Mar 2007).

<sup>2264</sup> Ex. 2D00070, “Haglund – Report of the Oversight Committee, 2 February 1998”, p. 7; William Haglund, Ex. P02150, “92 *ter* transcript”, KT. 3760 (29 May 2000); T. 8913, 8921, 8974 (15 Mar 2007).

<sup>2265</sup> Debra Komar, T. 23903–23904 (23 July 2008); Ex. P00559, “Report by Jose Pablo Baraybar - Anthropology examination of human remains from Eastern Bosnia in 1999 (Exh. P-233 Krstić case)”, pp. 5–6.

<sup>2266</sup> Jose Pablo Baraybar, Ex. P02474, “92 *ter* transcript”, KT. 3793 (29 May 2000); T. 8797, 8865 (14 Mar 2007).

<sup>2267</sup> Jose Pablo Baraybar, T. 8798 (14 Mar 2007); Ex. P02474, “92 *ter* transcript”, KT. 3804 (29 May 2000). The most widely present bone should be an unpaired bone or one bone of a pair. Ex. P00559, “Report by Jose Pablo Baraybar - Anthropology examination of human remains from Eastern Bosnia in 1999 (Exh. P-233 Krstić case)”, p. 6.

the bone chosen for the MNI calculation are only considered to represent individuals if it is so obvious that that bone does not represent an individual already accounted for by the other bones.<sup>2268</sup>

622. Dean Manning, an investigator working for the Prosecution, wrote in his report that previously, the Office of the Prosecutor relied upon the anthropological MNI when assessing the remains. However, as DNA identification data became available through the ICMP, the Office of the Prosecutor used this data in preference over the anthropological MNI because the ICMP data “provides a much more accurate indication of the number of individuals located within the graves”.<sup>2269</sup>

623. Debra Komar, an anthropologist who appeared as an expert witness for the Defence, reviewed the work of Wright, Baraybar and Lawrence, and identified methodological deficiencies in their calculations of the MNI in each grave.<sup>2270</sup> For example, in exhumations supervised by Wright, the lead pathologist at the morgue did not attempt to re-associate the body parts; the body bags were simply evaluated as they arrived.<sup>2271</sup> According to Komar, re-association is necessary for proper analysis of the number of individuals, and failing to re-associate the remains compromises the integrity of the conclusions in Wright’s report.<sup>2272</sup>

624. Even if Komar is correct in terms of the methodological deficiencies she identified in the MNI calculation, her conclusion can have no material importance in this case because the DNA evidence before the Trial Chamber supersedes MNI as a method of calculating the total number of remains in each grave. The Trial Chamber will rely upon the ICMP data when assessing the total number of deceased in the Srebrenica Related Graves.

#### 4. Demographic Evidence

625. Helge Brunborg, a demographer working for the Prosecution, compiled a list of 7,661 persons who went missing in Srebrenica around the time of the fall (“2005 List of Missing”).<sup>2273</sup> Ewa Tabeau, another demographer working for the Prosecution, compiled an update to the 2005 List of Missing, which gives the names of each of the 7,661 listed individuals on the 2005 List of Missing and additionally indicates whether the remains of each listed individual have been

<sup>2268</sup> Jose Pablo Baraybar, T. 8802, 8865–8866 (14 Mar 2007). For example, if one hundred right femurs of adults are found, one hundred adults are accounted for. However, if, in addition, an arm bone of a child is found, but no femur of a child is found, the arm bone will be counted as one additional individual, although no additional femur was found. *Ibid.*, T. 8802 (14 Mar 2007).

<sup>2269</sup> Ex. P02993, “Summary of forensic evidence by Dean Manning, 27 November 2007”, p. 2.

<sup>2270</sup> Debra Komar, T. 23889–23890 (23 July 2008); Ex. 2D00534, “Dr. Komar, Expert Witness report, 28 February 2008”, pp. 2–5.

<sup>2271</sup> Debra Komar, T. 23898–23900 (23 July 2008). *See* Ex. P00666, “Report to ICTY by Richard Wright, exhumations in Eastern Bosnia in 1998”.

<sup>2272</sup> Debra Komar, T. 23900 (23 July 2008).



identified by the ICMP.<sup>2274</sup> The 2005 List of Missing and the update prepared by Ewa Tabeau use ICMP data, ICRC records<sup>2275</sup> and records of Physicians for Human Rights (“PHR”).<sup>2276</sup> Unlike the 2009 ICMP List of Deceased, the List of Missing prepared by Ewa Tabeau includes the names of persons who have been reported missing, but for whom no DNA identification has yet been made.

626. Brunborg checked the ICRC data on persons reported missing as much as possible by comparison with other sources.<sup>2277</sup> As previously mentioned, the total number of persons recorded on the 2005 List of Missing is 7,661.<sup>2278</sup> The Prosecution submits that 165 individuals should be added to this list.<sup>2279</sup> These people were identified through DNA analysis but could not be matched with any identities listed on the 2005 List of Missing.<sup>2280</sup>

627. The 2005 List of Missing was compared with the 1991 Population Census for Bosnia and Herzegovina (“1991 Census”) to ascertain whether missing persons had been recorded in the 1991 Census.<sup>2281</sup> If missing people were recorded in the 1991 Census, Brunborg concluded that they did,

<sup>2273</sup> Ex. P02413, “Updated Report by Helge Brunborg - Missing and dead from Srebrenica: The 2005 Report and List”.

<sup>2274</sup> Ewa Tabeau, T. 21032 (5 Feb 2008); Ex. P02413, “Updated Report by Helge Brunborg - Missing and Dead from Srebrenica: The 2005 Report and List, 16 November 2005”; Ex. P03159, “Report titled Srebrenica Missing: The 2007 Progress Report on the DNA-Based Identification by ICMP, by E. Tabeau and A. Hetland, 11 January 2008, with Annexes I and II”; Ex. P03159a, (confidential). Ewa Tabeau also provided a further list of 426 ICMP records which are not found in the 2005 List of Missing (165 individuals) or which represent less certain matches (261 individuals). Ex. P03159a, (confidential).

<sup>2275</sup> More than 95% of the information on missing persons on the ICRC list was reported by family members. The ICRC data contained date of birth, sex, name, family name, father’s name, place and dates of disappearance and, perhaps, place of birth or place of residence. Brunborg did not receive the original ICRC questionnaires, which contained more details, because of the ICRC’s neutrality policy. Helge Brunborg, T. 6779–6782 (1 Feb 2007); T. 11184, 11185, 11189 (9 May 2007); T. 11255, 11285 (10 May 2007); Ex. P00571 “Report by Helge BRUNBORG - Report on the number of missing and dead from Srebrenica”, pp. 3–4.

<sup>2276</sup> Ewa Tabeau, T. 21032–21033, 21042, 21050, 21063 (5 Feb 2008); Ex. P02412, “Report by Helge Brunborg - Rebuttal Report regarding Report on the number of missing and dead from Srebrenica, 25 August 2004”, pp. 5–6. PHR collected ante-mortem data to help identify missing persons. The PHR list contained data provided by family members on physical characteristics, special clothing and special dental features. PHR collected similar data to the ICRC, but additionally registered the ethnicity of missing persons. The PHR list has fewer cases than the ICRC, most likely because PHR started later than ICRC and worked actively to register persons in only Tuzla and Sarajevo. Helge Brunborg, T. 6783 (1 Feb 2007); Ex. P02413, “Updated Report by Helge Brunborg - Missing and Dead from Srebrenica: The 2005 Report and List, 16 November 2005”, p. 7.

<sup>2277</sup> Helge Brunborg, T. 11285–11286 (10 May 2007).

<sup>2278</sup> *Ibid.*, T. 6783–6784 (1 Feb 2007); Ex. P02413, “Updated Report by Helge Brunborg - Missing and dead from Srebrenica: The 2005 Report and List, 16 November 2005”, p. 19; Ex. P02423, “Number of Cases on the 2005 Prosecution list of missing and dead persons related to the fall of Srebrenica”. The figure of 7,661 is a minimum. Ex. P02413, “Updated Report by Helge Brunborg - Missing and dead from Srebrenica: The 2005 Report and List”, p. 2. An Addendum to this Report, emphasises that 103 names that appear on the list of identified dead provided by the ICMP but were not successfully matched with the ICRC list of missing people can be seen as an extension of the 2005 Prosecution list of missing persons. Ex. P02416 (confidential), p. 10; Ex. P02418 (confidential). 96.4% of the victims were reported as disappearing in July 1995, the vast majority of them in the period from 11 to 18 July. By the end of August 1995, almost 99% of the victims had been reported missing (i.e. 7,558); “only” 103 victims disappeared in the period from September to December 1995. Potočari was the place of disappearance for the largest number of those who disappeared (2,070), followed by the forest (1,085), Kravica (811), Konjević Polje (804) and Kamenica (723). Ex. P02413, “Updated Report by Helge Brunborg - Missing and Dead from Srebrenica: The 2005 Report and List, 16 November 2005”, pp. 20–22.

<sup>2279</sup> Prosecution Final Brief, para. 1134.

<sup>2280</sup> Ex. P03159a (confidential), p. ii.

<sup>2281</sup> Helge Brunborg, T. 6792 (1 Feb 2007).

in fact, exist.<sup>2282</sup> The census collected information on a total of 4.3 million individuals,<sup>2283</sup> and contained data on name, father's name, date of birth, place of residence, marital status, income, education and a unique identification number.<sup>2284</sup>

628. The 2005 List of Missing was also compared with the list of voters collected in 1997 and 1998 and the UNHCR database of Displaced Persons and Refugees.<sup>2285</sup> Brunborg explained that doing this checked the validity of the missing lists because survivors who may have been wrongly reported as missing might register to vote.<sup>2286</sup> Brunborg excluded 12 persons from the list in this way.<sup>2287</sup>

629. Only 68 persons on the 2005 List of Missing are female<sup>2288</sup> and the majority are aged between 16 and 60 years;<sup>2289</sup> 87.9% were of Muslim ethnicity,<sup>2290</sup> 30 persons were below 16 years of age and 360 persons (including one woman) were older than 60 years of age.<sup>2291</sup>

630. Miladin Kovačević, a demographer who appeared as an expert witness for the Defence, repeated the exercise undertaken by Brunborg when compiling the 2005 List of Missing, *i.e.* Kovačević compared the 2005 List of Missing against the lists of voters and the 1991 census.<sup>2292</sup>

<sup>2282</sup> Helge Brunborg, T. 6792 (1 Feb 2007). *See also Ibid.*, T. 11186 (9 May 2007).

<sup>2283</sup> *Ibid.*, T. 6791 (1 Feb 2007). *See also* Ex. P02413, "Updated Report by Helge Brunborg - missing and dead from Srebrenica: The 2005 Report and List", p. 7. The census covered the entire population of Bosnia and Herzegovina as of 31 March 1991. *Ibid.*

<sup>2284</sup> Helge Brunborg, T. 6788-6789 (1 Feb 2008). The census also included information on a large number of variables, including, *inter alia* municipality and settlement of residence, name and surname, father's name, household sequential number, personal ID number, date and place of birth, sex, occupation, ethnicity, mother tongue, religion and the number of children born. Ex. P02413, "Updated Report by Helge Brunborg - Missing and Dead from Srebrenica: The 2005 Report and List, 16 November 2005", p. 7.

<sup>2285</sup> Helge Brunborg, T. 6792-6793 (1 Feb 2007); T. 11190 (9 May 2007); Ex. P02413, "Updated Report by Helge Brunborg - missing and dead from Srebrenica: The 2005 report and List", pp.17-18.

<sup>2286</sup> Helge Brunborg, T. 6793-6794 (1 Feb 2007). Brunborg said that while the voters' lists included the date of birth, a unique identification number and municipality of residence, an important drawback was that they only covered the population over the age of 18 and that on average only 70% registered to vote. *Ibid.*

<sup>2287</sup> Helge Brunborg, T. 6793, 6796, 6811 (1 Feb 2007); Ex. P02413, "Updated Report by Helge Brunborg - missing and dead from Srebrenica: The 2005 report and list", p. 18; Ex. P02423 "Document titled - Number of Cases on the 2005 OTP List of Missing and Dead Persons Related to the Fall of Srebrenica by Victim Categories." Brunborg pointed out that it is more likely that all or most of those excluded were wrongly registered as voters or displaced persons, rather than being wrongly registered as missing. Ex. P02413, "Updated Report by Helge Brunborg - missing and dead from Srebrenica: The 2005 Report and List", p. 18.

<sup>2288</sup> Helge Brunborg, T. 6800 (1 Feb 2007).

<sup>2289</sup> *Ibid.*, T. 6800 (1 Feb 2007); Ex. P02424, "Chart - Age Distribution of Srebrenica-Related Missing and Dead (Absolute Numbers)".

<sup>2290</sup> Ex. P03159, "Report titled Srebrenica Missing: The 2007 Progress Report on the DNA- Based Identification by ICMP, by E. Tabeau and A. Hetland, 11 January 2008, with Annexes I and II", pp. 8-9.

<sup>2291</sup> Ex. P03159, "Report titled Srebrenica Missing: The 2007 Progress Report on the DNA- Based Identification by ICMP, by E. Tabeau and A. Hetland, 11 January 2008, with Annexes I and II", pp. 8-9.

<sup>2292</sup> Miladin Kovačević, T. 22652-22655 (23 June 2008); T. 22677-22678 (24 June 2008).

Kovačević found that 57 individuals out of the 7,661 on the List could not be matched to anyone in the census through criteria adopted by Brunborg.<sup>2293</sup>

631. Kovačević also used a different approach than Brunborg in order to estimate the number of missing persons following the fall of Srebrenica. He compiled tables showing *inter alia* (i) the total population of the Srebrenica enclave, including soldiers, in specific time periods ranging from 1991 until January 1995,<sup>2294</sup> (ii) the number of displaced persons for each time period,<sup>2295</sup> and (iii) the difference between these figures.<sup>2296</sup> In relation to each time period considered, the table lists four figures for the inhabitants of Srebrenica, ranging from 36,051 to 37,255.<sup>2297</sup> According to Kovačević, all the figures listed in the table are based on the 1991 census and BiH government documents.<sup>2298</sup> With regard to the number of displaced persons, Kovačević eventually arrived at a single figure of 34,537 as the minimum number of displaced persons, by merging several documents, only taking into account those who were listed as becoming displaced in 1995, and eliminating any duplicates.<sup>2299</sup> When subtracting the number of displaced persons from the total population—for each time period considered—the highest figure was 2,988.<sup>2300</sup> These findings led Kovačević to conclude that the number of missing persons in Srebrenica after the fall could not be greater than 3,000.<sup>2301</sup>

632. Kovačević stated that when calculating the number of displaced persons (34,537), he only counted people who became displaced in 1995.<sup>2302</sup> The Trial Chamber notes that the situation in Bosnia and Herzegovina in 1995 was such that many people would have been displaced in and around Srebrenica throughout that year. This means that there is a likelihood that the number

<sup>2293</sup> Miladin Kovačević, T. 22665 (23 June 2008); T. 22676, 22684 (24 June 2008); Ex. 1D01129 “Report on the number of People Missing in Srebrenica in July 1995, by Miladin Kovačević”, para. 14.

<sup>2294</sup> The time periods considered in the table are listed as follows: January 1994, 1991, 11 January 1995, and 11 January 1994. Ex. 1D01129 “Expert Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, table 1, p. 8.

<sup>2295</sup> This figure was concluded based upon various documents from the Srebrenica Municipality Presidency, the Tuzla Bureau of Statistics, and the Srebrenica Municipality Civilian Protection Municipal Staff. Ex. 1D01129 “Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, pp. 10–11.

<sup>2296</sup> Ex. 1D01129 “Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, table 1, p. 8.

<sup>2297</sup> *Ibid.*

<sup>2298</sup> Miladin Kovačević, T. 22696 (24 June 2008); Ex. 1D01129 “Expert Report on the number of People Missing in Srebrenica in July 1995, author: Miladin Kovačević”, pp. 8, 9–13, table 1; Ex. 1D00312, “Document from the Statistics Institute of the Republic of BH Department for Statistics District secretariat of Defence in Tuzla signed by Fahrudin Salihović, 11 January 1994”.

<sup>2299</sup> Miladin Kovačević, T. 22697–22698 (24 June 2008); Ex. 1D01129 “Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, table 1, pp. 8, 11–12.

<sup>2300</sup> Miladin Kovačević, T. 22687, 22696 (24 June 2008).

<sup>2301</sup> Miladin Kovačević, T. 22687 (24 June 2008). In relation to his figures—2,988—Kovačević testified that “it is far less than 7,661. These indicators bring into question the 7,661 figure that is mentioned.” *Ibid.*; Ex. 1D01129 “Expert Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, para. 35.

<sup>2302</sup> Miladin Kovačević, T. 22697–22698 (24 June 2008); Ex. 1D01129 “Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, table 1, p. 8, paras. 41–42.

34,537 includes persons who became displaced either before or well after July 1995. In the opinion of the Trial Chamber, this lack of precision renders Kovačević's analysis unreliable.

633. Furthermore, the Trial Chamber notes that Kovačević's analysis excludes any data concerning the number of persons *reported* missing following the fall of Srebrenica, thereby ignoring an important source used by Brunborg. Kovačević set out to determine how many people went missing following the fall of Srebrenica and declined to consider data from the ICRC and PHR on persons who were reported missing following the fall of Srebrenica. Of the documents available to Kovačević, it is clear that he chose to ignore important sources and he provides no explanation for why he may have done so. In the opinion of the Trial Chamber, this approach is not only puzzling, it is fundamentally flawed and renders Kovačević's analysis unreliable.<sup>2303</sup>

634. Svetlana Radovanović, another demographer who testified as an expert witness for the Defence, criticised Brunborg's approach on the basis that it ignored many other available sources which, if used in his study, would have produced a more reliable list of missing persons.<sup>2304</sup> Examples of such sources include a Bulletin of Displaced Persons published by the BiH Ministry, various ABiH databases, a database compiled by a group called Muslims Against Genocide,<sup>2305</sup> and the DEM 2T database, compiled by the Bureaux of Statistics in BiH and RS pursuant to an order of the Tribunal.<sup>2306</sup>

<sup>2303</sup> **Judge Kwon's Separate Opinion:** While I concur with the Trial Chamber's finding that Kovačević's analysis is unreliable for the reason provided in para. 632, I respectfully disagree with the majority's further assessment of Kovačević's analysis, discussed in para. 633. The majority finds that Kovačević's analysis is unreliable because he took a "puzzling" and "fundamentally flawed" approach of ignoring important data from the ICRC and PHR on persons who were reported missing following the fall of Srebrenica, which were the main sources of the report of Helge Brunborg, a demographer working for the Prosecution. I note that the tasks given to Kovačević by the defence counsel of **Popović** and **Pandurević** were to "[provide] his opinion on the number of people who went missing in Srebrenica in July 1995" and also to "assess the method used by Brunborg in his report". *Ex. 1D01129 "Expert Report by Miladin Kovačević", p. 1.* I am of the view that Kovačević, as a defence expert, in performing his task of examining the objectivity and accuracy of the Brunborg's report, was entitled to select any method available to him to estimate the number of missing persons in Srebrenica in that time period and challenge Brunborg's analysis. Indeed, he may have chosen to criticise the accuracy of the main source in Brunborg's report, which is the data from the ICRC and PHR; he may have chosen to point out the deficiencies in Brunborg's methodological approach; and/or he may have chosen to conduct an analysis of his own without relying on any of Brunborg's sources and then compare his results with those of Brunborg. Kovačević chose the last approach, which I find particularly plausible in this case. While the Trial Chamber's assessment on whether Kovačević's analysis was precise in its own merit is a separate matter, I do not find his approach "fundamentally flawed" or "puzzling" solely for the fact that he did not consider the ICRC and PHR data as a source for his analysis. I consider it perfectly reasonable that Kovačević would not use the ICRC and PHR data in his analysis, given that this data formed the basis of Brunborg's report, the very report he was tasked to challenge.

<sup>2304</sup> Svetlana Radovanović, T. 24326–24327 (29 July 2008); T. 24475–24476 (31 July 2008); Ex. 3D00398, "Demographic Report by Prof. Dr. Svetlana Radovanović, March 2008", pp. 6, 21–23.

<sup>2305</sup> Svetlana Radovanović, T. 24326–24327 (29 July 2008); T. 24345–24347 (30 July 2008).

<sup>2306</sup> *Ibid.*, T. 24355–24358 (30 July 2008).

635. Radovanović concluded that the 7,661 persons on the 2005 List of Missing should be reduced by one quarter, representing two categories of persons wrongly included.<sup>2307</sup> The first category were persons who, according to Radovanović, could not be found on the 1991 census, and therefore, according to Brunborg's methodology, should not be counted.<sup>2308</sup> Radovanović counted 1,002 individuals, approximately 13% of 7,661, who did not match with the census records.<sup>2309</sup> Radovanović maintained that even though the disappearance of these people had been reported to the ICRC, to include them in the 2005 List of Missing without matching them against the census was improper according to the methodology set out by Brunborg.<sup>2310</sup> Brunborg testified that the likely reason that these 1,000 individuals could not be matched was because of spelling errors or lack of full date of birth and other particulars—because the forms were scanned, errors could result through unclear handwriting.<sup>2311</sup> A date of birth was lacking for “just a handful of persons” and in such cases Brunborg used other available data, such as place of birth and place of residence.<sup>2312</sup> The Trial Chamber accepts the work of Brunborg, particularly because he addressed this issue raised by Radovanović and tried to fill gaps in his work using other available data.

636. Radovanović's second category is made up of people who Brunborg was able to match with the 1991 census, but are not associated with the July 1995 events in Srebrenica because they either died prior to 10 July 1995 or they cannot be territorially linked to the Srebrenica enclave.<sup>2313</sup> Based on Brunborg's data, Radovanović estimated that there are a further 1,000 such people.<sup>2314</sup> The Trial Chamber notes Tabeau's evidence that persons on the ABiH List who were recorded as missing prior to July 1995, and who Radovanović presumably included in her tally of wrongly included persons, were ultimately identified in Srebrenica Related Graves.<sup>2315</sup> On this basis, the Trial Chamber cannot agree with Radovanović's assertion that these people were wrongly included on the 2005 List of Missing.

<sup>2307</sup> Svetlana Radovanović, T. 24363–24365 (30 July 2008); Ex. 3D00398, “Demographic Report by Prof. Dr. Svetlana Radovanović, March 2008”, p. 19.

<sup>2308</sup> Svetlana Radovanović, T. 24363–24365, 24403–24404 (30 July 2008); Ex. 3D00398, “Demographic Report by Prof. Dr. Svetlana Radovanović, March 2008”, p. 13, 19.

<sup>2309</sup> Svetlana Radovanović, T. 24408–24409 (30 July 2008); T. 24497 (31 July 2008).

<sup>2310</sup> *Ibid.*, T. 24497–24499 (31 July 2008).

<sup>2311</sup> Helge Brunborg, T. 6789 (1 Feb 2007); T. 11186 (9 May 2007). *Cf.* Ex. P02413, “Updated Report by Helge Brunborg - missing and dead from Srebrenica: The 2005 Report and List”, pp. 7–8. Brunborg said that such scanning would usually be checked, but the Statistical Office in Sarajevo said that there had not been time to do this. Helge Brunborg, T. 11202 (9 May 2007).

<sup>2312</sup> Helge Brunborg, T. 11203–11205 (9 May 2007).

<sup>2313</sup> Svetlana Radovanović, T. 24363–24365 (30 July 2008); Ex. 3D00398, “Demographic Report by Prof. Dr. Svetlana Radovanović, March 2008”, p. 19.

<sup>2314</sup> Svetlana Radovanović, T. 24364 (30 July 2008).

<sup>2315</sup> Ewa Tabeau, T. 21052 (5 Feb 2008).

637. In calculating the number of displaced persons following the fall of Srebrenica, both Kovačević and Radovanović use documents identified in their reports only by number.<sup>2316</sup> Neither report explains the source nor the content of these documents. When Radovanović was asked about the origin of these documents, she replied that she did not know where they came from.<sup>2317</sup> The Trial Chamber notes in this regard that Radovanović and Kovačević both rely upon documents and sources which provide the Trial Chamber with no basis to assess their reliability. This is particularly so in the case of Radovanović, given that she cannot identify the source of these documents when asked. Without sufficient information to substantiate the findings of Radovanović and Kovačević, the Trial Chamber considers their evidence to be pure speculation.

#### 5. ICMP Data on Deceased Persons

638. The International Commission on Missing Persons (“ICMP”) compiled a list of individuals whose remains have been exhumed in the Srebrenica Related Graves and identified (“2009 ICMP List of Deceased”).<sup>2318</sup> The identification was established by matching a DNA sample from the remains against a DNA sample from a relative of the person reported missing.<sup>2319</sup> The 2009 ICMP List of Deceased also includes 294 “unique” DNA profiles. A unique DNA profile means that a profile has been established, however no donor matching those remains could be found and therefore an identification could not be made.<sup>2320</sup>

639. Thomas Parsons, Director of Forensic Science at the ICMP, testified that, as of 30 November 2007, the ICMP had obtained samples from relatives of 7,772 individuals reported missing in July 1995 and DNA profiles from 8,445 sets of remains found on the surface and in the Srebrenica Related Graves representing 5,280 different individuals.<sup>2321</sup> Of these 5,280 DNA profiles, the ICMP has matched 5,055 sets of remains with the DNA of family members.<sup>2322</sup>

<sup>2316</sup> The documents are identified by both Radovanović and Kovačević as “D000-2101, D000-2102, D000-2103 and D000-2104”. Ex. 1D01129 “Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, para. 41; Ex. 3D00398, “Demographic Report by Prof. Dr. Svetlana Radovanović, March 2008”, p. 22.

<sup>2317</sup> Svetlana Radovanović, T. 24503–24504 (31 July 2008) (“Those are CDs that I have received from the Defence as materials disclosed by the OTP. Q. Okay. Do you know who compiled these lists? A. You mean the list containing names, family names, and so on and so forth? Well, I really couldn't be able to tell you. I don't remember. I really can't remember, as I sit here, who it was. It was a long time ago when I did that, and at this moment I can't remember who the author of the lists is, but I can check. There are CDs, there are lists, and it's easy to establish who the author of those lists is.”)

<sup>2318</sup> Ex. P04494 (confidential).

<sup>2319</sup> Thomas Parsons, T. 20872–20873; 20876; 20889–20903 (1 Feb 2008). The information about the location of disappearance of the missing person was provided directly to the ICMP by a family member. Thomas Parsons, T. 20873 (1 Feb 2008).

<sup>2320</sup> Dušan Janc, T. 33507 (1 May 2009); Ex. P04494a (confidential). See Ex. P04491 (confidential), p. 150, which shows individuals found in the Zeleni Jadar 1B grave for whom an identification has not been made. Dušan Janc, T. 33510–33511 (1 May 2009).

<sup>2321</sup> Thomas Parsons, T. 20878 (1 Feb 2008); Ex. P03005 (confidential).

<sup>2322</sup> Thomas Parsons, T. 20878, 20904 (1 Feb 2008).

640. Differing interpretations of the ICMP data have been presented to the Trial Chamber with a view to calculating the total number of persons buried in the Srebrenica Related Graves.

641. Parsons used data gathered as of 30 November 2007 by the ICMP to estimate the total number of persons buried in the Srebrenica Related Graves, including those buried in graves not yet exhumed. His estimate was based on two assumptions. First, that the bone samples tested so far are representative, in terms of the chance for a DNA match, of all persons found in the Srebrenica Related Graves. Second, that the reason for failing to make a DNA match on a given bone sample is that there is no reference sample in the database of DNA profiles from living family members of the missing.<sup>2323</sup> On this basis, Parsons calculated that reference samples had been collected for 95.7% of the individuals reported missing to the ICMP.<sup>2324</sup> Parsons used the data available to him to estimate the total number of persons who perished following the fall of Srebrenica, taking into account the 4.3% of individuals reported missing for whom a sample has not yet been recovered. Parsons estimated this total number to be approximately 8,100.<sup>2325</sup>

642. Debra Komar, an anthropologist who appeared as an expert witness for the Defence, criticised Parsons's finding, arguing that there is no basis for assuming that the samples collected by the ICMP are representative of the population as a whole or in terms of the chance for a DNA match and that, therefore, to extrapolate based upon the available data is unreliable.<sup>2326</sup> Komar examined ICMP raw data and after eliminating duplicate matches, she found a total of 3,959 identified individuals.<sup>2327</sup> However, Komar did not state in her report or testify about how she arrived at this figure and on what basis, and one cannot be sure from the information in her report exactly what ICMP data she examined.

643. Komar warned of the danger of relying upon the ICMP data in isolation. She testified that in an ideal situation, samples would be taken from both parents of a missing individual and used to identify the individual in question, as a person's DNA is a combination of the DNA of each parent.<sup>2328</sup> In many situations, including those at the ICMP, the DNA of one or both parents is not

<sup>2323</sup> Ex. P03005 (confidential). Parsons stated that "these assumptions are likely to be nearly true, but ICMP does not represent that they are strictly true, or that the degree of uncertainty can be empirically estimated with accuracy. [...] A wide range of variables that are beyond the ICMP's ability to consider with empirical accuracy could have a minor effect on the estimate either upward or downward, but the overall high matching rate supports an estimate close to 8,100 [missing] individuals". *Ibid.*

<sup>2324</sup> This percentage was arrived at by taking the number of matched remains (5,055) and dividing it by the number of collected DNA profiles (5,280). [ $5,055 \div 5,280 = 95.7\%$ ].

<sup>2325</sup> Ex. P03005 (confidential). This number was arrived at by taking the number of samples collected (7,772) and multiplying it by 100/95.7.

<sup>2326</sup> Ex. 2D00534, "Dr. Komar, Witness Report, 28 February 2008", p. 2.

<sup>2327</sup> *Ibid.*

<sup>2328</sup> Debra Komar, T. 23940 (24 July 2008). Komar testified that the DNA of both parents and their child forms a 'triangle' and that in an ideal world all three pieces of the triangle are needed to make an identification. *Ibid.*

available, and thus samples from more distant relatives are used.<sup>2329</sup> However, since a DNA test may identify a match in a situation where multiple identifications are possible, it is necessary to add an anthropological component to the identification in order to prevent “multiple individuals who have essentially been lumped in falsely or inaccurately into representing one individual”.<sup>2330</sup> Komar provided such an example: a case where the anthropological age estimate was 45–55 years and the estimate represented by the DNA was 23 years. Re-examination of these remains revealed that while they were initially thought to represent only one individual, the bone from which the DNA sample was taken belonged to a different individual than the balance of the remains.<sup>2331</sup> The Trial Chamber notes that Komar’s concern that DNA identification should include an anthropological component to ensure greater accuracy is addressed by Parsons’ testimony, examined below, that the ICMP conducts further investigation into cases where it suspects that an identification may be erroneous.<sup>2332</sup>

644. Parsons emphasised that the 2009 ICMP List of Deceased does not represent a list of closed cases, but rather DNA match reports with “high statistical surety ascrib[ing] an individual name to a victim sample”.<sup>2333</sup> He testified that there are three reasons why an identification made by the ICMP may be erroneous, in which case the ICMP would be required to undertake additional investigation.<sup>2334</sup> These instances are: (a) where additional relatives of the victim are also missing persons, and this information has not been reported to the ICMP (this can lead to an ICMP match report being issued for the wrong relative); (b) where the original DNA sample is mislabelled before it reaches the ICMP (this can lead to a correct match being assigned to the wrong case); and (c) where a sample or a label is switched during the ICMP testing process.<sup>2335</sup> According to Parsons, there were just eight cases in the 2009 ICMP List of Deceased which required “a bit of additional investigation” due to apparent inconsistencies.<sup>2336</sup>

645. Oliver Stojković, a professor of forensic genetics who appeared as an expert witness for the Defence, noted that 4,000 identifications were conducted by the ICMP before it had received

<sup>2329</sup> Debra Komar, T. 23939–23941 (24 July 2008). The ICMP Standard Operating Procedures for statistical calculations of DNA-based identification lists anybody with a biological blood relationship to a missing individual as a potential donor. Ex. P03224, “International Commission on Missing Persons (ICMP) Standard Operating Procedure Statistical Calculation of DNA-Based Identifications Using DNA View”, p. 14. Komar said that using a parent or both sets of parents to generate a match would be “infinitely preferable” to using more distant family members, such as grandparents, cousins, or half-siblings. Debra Komar, T. 23941 (24 July 2008).

<sup>2330</sup> Debra Komar, T. 23943–23945 (24 July 2008). Komar outlines mistakes in the DNA identification process and the necessity for anthropological analysis by reference to Ex. 2D00540, “Yazedjian LN, Kesetovic R, Arlotti A, Karan Z, ‘The Importance of Using Traditional Anthropological Methods in a DNA-led Identification System’ Proceedings of the Annual Meeting of the American Academy of Forensic Sciences 2005.” *Ibid.*

<sup>2331</sup> Ex. 2D00534, “Dr. Komar, Witness Report, 28 February 2008”, para. 1.4.

<sup>2332</sup> *Infra*, para. 644.

<sup>2333</sup> Thomas Parsons, T. 33404 (29 Apr 2009).

<sup>2334</sup> Thomas Parsons, T. 33404–33405 (29 Apr 2009); Ex. P04526 (confidential).

<sup>2335</sup> Ex. P04526 (confidential), p. 1.



professional accreditation.<sup>2337</sup> He concluded that it was not possible to conclude whether or not the work done before the accreditation had been performed in a valid and professional manner.<sup>2338</sup> Parsons testified that since 2001, when the ICMP's DNA laboratories first became active, there has been ongoing evolution of the ICMP's procedures and methodologies to ensure that the manner in which the ICMP performs DNA profiling was always consistent with current industry standards.<sup>2339</sup> However, the Trial Chamber is of the opinion that the ICMP's lack of accreditation prior to October 2007<sup>2340</sup> does not undermine the authenticity of the identifications concluded before this time. While Stojković speculates that the lack of accreditation undermines the work of the ICMP, the Trial Chamber is of the opinion that the accreditation is rather an expression of approval of the ICMP's work.

646. Stojković also testified that he could not assess the reliability of the findings of the ICMP<sup>2341</sup> because electropherograms, which represent the results of the genetic analysis of a sample, had not been provided to him.<sup>2342</sup> Stojković was provided with DNA reports, methodology reports and standard operating procedures.<sup>2343</sup> However, he testified that in general, independent and autonomous testing of the validity of DNA profiles and reports can only be performed if electropherograms are made available.<sup>2344</sup>

647. Following Stojković's testimony, the **Popović** Defence filed a Motion pursuant to Rule 66(B) asking for the disclosure of records establishing the identity of exhumed persons, arguing that the testimony of Thomas Parsons and the 2009 ICMP List of Deceased tendered through him only provided a limited description of the procedures adopted in the ICMP's identification process, and no evidence was brought to show how the identifications were actually

<sup>2336</sup> Thomas Parsons, T. 33404 (29 Apr 2009).

<sup>2337</sup> Oliver Stojković, T. 23010 (30 June 2008). Stojković stated that accreditation, in the context of DNA analysis, means that a recognised organisation has checked to ensure that the DNA analysis, laboratories, and processes for measurement and calibration all meet international standards. Oliver Stojković, T. 23010–23011 (30 June 2008). See also Ex. 1D0169, "Analysis of the documents related to the DNA identification of post-mortem remains from Srebrenica performed by ICMP prepared by Oliver Stojković", p. 15.

<sup>2338</sup> Oliver Stojković, T. 23012 (30 June 2008). See also Ex. 1D1069, "Analysis of the documents related to the DNA identification of post-mortem remains from Srebrenica performed by ICMP prepared by Oliver Stojković," p. 15.

<sup>2339</sup> Thomas Parsons, T. 20868–20869, 20871 (1 Feb 2008).

<sup>2340</sup> Parsons testified that the ICMP received accreditation in October 2007. Thomas Parsons, T. 20872 (1 Feb 2008).

<sup>2341</sup> Two DNA reports were examined in court. See Ex. 1D01242 (confidential); Ex. 1D01243 (confidential).

<sup>2342</sup> Oliver Stojković, T. 22985, 22992–22993 (27 June 2008); T. 23016–23017 (30 June 2008). Stojković testified that "Electropherograms represent the results of specific genetic analysis from a specific biological sample analysed at each specific case. [...] These electropherograms [...] are collected together and stored in electronic form by the computer which is attached to the system for electrophoresis, and it is on the basis of these electropherograms that the computer, with the help of two separate [...] software programs is able to create [...] the DNA profile which represents a component part of the DNA report." *Ibid.*, T. 22984–22985 (27 June 2008).

<sup>2343</sup> Ex. 1D01069, "Analysis of the documents related to the DNA identification of post-mortem remains from Srebrenica performed by ICMP prepared by Oliver Stojković", pp. 9–11.

<sup>2344</sup> Oliver Stojković, T. 22984–22985 (27 June 2008); T. 23017 (30 June 2008). Stojković also stated that electropherograms carry high probative value in court proceedings and are necessary for an expert to pronounce his opinion on the reliability of DNA analysis. *Ibid.*, T. 22986, 22987, 22991–22992 (27 June 2008).

performed.<sup>2345</sup> The Trial Chamber denied the Motion noting first, that the request was late and the **Popović** Defence could have requested the material when it first received Stojković's expert report and second, that the Motion failed to show that the material was in the Prosecution's "custody or control".<sup>2346</sup>

648. Stojković was eventually provided with a sample bunch of DNA analyses, including electropherograms, relating to a grave at Bišina (one of the Srebrenica Related Graves). Stojković examined the material, and argued that despite Parsons' evidence that a conservative approach was adopted in relation to DNA extraction,<sup>2347</sup> this was not always practised.<sup>2348</sup> When Stojković gave an example in support of this conclusion, however, he conceded that the result still fell within the standard set by the ICMP, noting that it was in the "lower limit for reporting matches" required.<sup>2349</sup>

649. The Trial Chamber is of the opinion that Stojković's vigorous testing of the sample, only to come to the same conclusion as the ICMP, together with Parsons' evidence is so conclusive as to the reliability of the ICMP's analysis that disclosure of additional electropherograms would have made no difference. Therefore, Stojković's analysis of the sample electropherograms serves only to strengthen the conclusion that the DNA analysis conducted by the ICMP is reliable. There is no basis to conclude that further disclosure would have led to a different conclusion in this case.

## 6. Janc's Expert Report

### (a) Calculation of the Number of Deceased

650. Dušan Janc, an investigator working for the Prosecution, provided a summary of the forensic evidence related to the missing and dead following the fall of Srebrenica.<sup>2350</sup> The main basis for Janc's report was the 2009 ICMP List of Deceased.<sup>2351</sup> Based upon his analysis of this list,

<sup>2345</sup> Vujadin Popović's Motion for Disclosure Pursuant to Rule 66(B) and Request for Leave to File an Addendum to Prof. Stojković Expert Report, 6 August 2008.

<sup>2346</sup> Decision on Popović's Motion for Disclosure Pursuant to Rule 66(B) and Request to File an Addendum to Professor Stojković's Expert Report, 6 Oct 2008, paras. 6–11.

<sup>2347</sup> See Thomas Parsons, T. 33440(29 Apr 2009).

<sup>2348</sup> Oliver Stojković, Ex. 1D01448, "92 bis statement" (9 May 2009), paras. 22–28.

<sup>2349</sup> *Ibid.*, para. 26. Stojković stated that the estimated surety was reduced from 99.99999% to 99.95%. *Ibid.*

<sup>2350</sup> Dušan Janc, T. 33378–33379, 33382 (28 Apr 2009). Janc's report is also an update to the expert report prepared by Dean Manning in November 2007. *Ibid.*, T. 33378–33379 (28 Apr 2009). See Ex. P04490, "Summary of forensic evidence by Dušan Janc, 13 March 2009"; Ex. P02993, "Summary of Forensic Evidence by Dean Manning, 27 November 2007".

<sup>2351</sup> Dušan Janc, T. 33378–33382 (28 Apr 2009). Janc also used documents from the Prosecutor's Office at the Tuzla Cantonal Court and the BiH State Court, as well as documents from the Bosnian Institute on Missing Persons. *Ibid.* The 2009 ICMP List of Deceased is a list of individuals who were reported missing following the fall of Srebrenica and whose remains had been exhumed in the area around Srebrenica and identified. The identification was confirmed by matching a DNA sample from the remains against a DNA sample from a relative of the person reported missing. See *supra* para. 638.

Janc concluded that 5,358 individuals had, as of March 2009, been identified through DNA analysis in the Srebrenica Related Graves.<sup>2352</sup>

651. In addition to the 5,358 individuals identified in the Srebrenica Related Graves, Janc reported that a total of 648 sets of remains had been discovered on the ground around Srebrenica or buried in shallow graves.<sup>2353</sup> This number only includes remains for which a DNA match has been recorded on the 2009 ICMP List of Deceased, because without identification, Janc could not be sure that the remains belonged to individuals associated with the events following the fall of Srebrenica.<sup>2354</sup>

652. Janc identified three of the Srebrenica Related Graves as “mixed graves”, because they contain remains of individuals in relation to whom there is evidence that the circumstances of their death was unrelated to the events following the fall of Srebrenica.<sup>2355</sup> When calculating the total number of persons buried in the Srebrenica Related Graves,<sup>2356</sup> Janc did not include persons in relation to whom there was evidence that their death was not related to the events following the fall of Srebrenica.<sup>2357</sup>

(b) Connections Between the Primary and Secondary Graves

653. Janc’s report details links established between graves based upon DNA connections (established when the remains of one individual are found in at least two different graves) and forensic connections (established when a link exists between forensic evidence found in at least two different graves).<sup>2358</sup> Where a DNA connection is established between a primary grave and a

<sup>2352</sup> Dušan Janc, T. 33507 (1 May 2009); Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, p. 2. The number 5,358 includes 294 “unique” DNA profiles, which means that a DNA profile has been established, however there is no donor matching those remains and thereby positively identifying the individual to whom they belong. Dušan Janc, T. 33507 (1 May 2009). Janc did not include in this total people who had been identified but for whom information exists that their death was not related to the events following the fall of Srebrenica. *See supra*, para. 652.

<sup>2353</sup> Dušan Janc, T. 33513–33516 (1 May 2009); Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex B. Janc’s conclusion was based upon information obtained from the BiH Commission on Missing Persons regarding surface remains collected between 1996 and 2008. Ex. P03609, “BiH Federal Commission for Missing Persons – Information on locations of identified mortal remains, 28 December 2007”; Ex. P04501, “Institute for missing persons, Tuzla Unit – Table of exhumations in 2008”. *See also* Ex. P03901, “Maps of surface remains in the wider area of Srebrenica from July 1995” (depicting the areas in which surface remains have been found, including Snagovo and Baljkovica).

<sup>2354</sup> Dušan Janc, T. 33517–33518 (1 May 2009); Ex. P04490, “Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, p. 5.

<sup>2355</sup> Dušan Janc, T. 33508–9, 33519–33521, 33525–33526 (1 May 2009); T. 33640–33644, 33648–33649 (4 May 2009); Ex. P04492, “Corrigendum to the ‘Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc’, 9 April 2009”. The mixed graves are Glogova, Bljeceva 1 and Liplje 8. *Ibid*.

<sup>2356</sup> *See supra*, para. 650.

<sup>2357</sup> Dušan Janc, T. 33508–33509, 33526–33527 (1 May 2009). For details on exclusions from the Glogova grave, see *supra*, para. 443.

<sup>2358</sup> Ex. P04490, “Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, Annex C, p. 65.

secondary grave, unless he had evidence before him to indicate the contrary,<sup>2359</sup> Janc concluded that all of the bodies buried in the secondary grave could be linked to the execution with which the primary grave is associated.<sup>2360</sup>

654. Janc emphasised that where a DNA connection was established between graves, that individual was only counted once in his conclusion as to the total number of persons found in the Srebrenica Related Graves. Janc emphasised that the total number includes only “main cases”, that is to say, individuals who have been identified via DNA analysis.<sup>2361</sup> When separate body parts are collected, they are categorized as re-associations (linked to other body parts found in a separate grave), and are not added to the total number of victims in order to avoid duplication.<sup>2362</sup> Janc compiled a table setting out the number of forensic and DNA connections established between each of the primary and secondary Srebrenica Related Graves.<sup>2363</sup> This table is set out at the end of this Judgement.

655. Dušan Dunjić, a professor of forensic medicine who appeared as an expert witness for the Defence, challenged Janc’s conclusions regarding the DNA connections between primary and secondary graves, arguing that only those bodies for which a DNA connection exists can be considered to have originated from the primary grave with which the connection has been established.<sup>2364</sup> Analysing Janc’s report, Dunjić calculated that only 307 DNA connections had been established between primary graves and secondary graves. Dunjić did not have evidence of the forensic connections between the graves before him, and erroneously interpreted Janc’s report to mean that the DNA connections were the sole basis upon which Janc concluded that all of the 4,049 bodies from the secondary graves originated from primary mass graves.<sup>2365</sup> This is clearly not the case. The Trial Chamber emphasises that in addition to the DNA connections, all but one of the primary graves are also linked to secondary graves through forensic connections (including soil samples, pollen samples, blindfolds, ligatures, glass and shell cases).<sup>2366</sup>

656. Dunjić went on to criticise Janc’s classification of the graves as secondary. In Dunjić’s opinion, “a large number” of bodies found in the secondary graves had, in fact, been buried only

<sup>2359</sup> See, for example, Ex. P04492, “Corrigendum to the ‘Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc’, 9 April 2009” (stating that the remains of 12 individuals returned from Serbia were buried in the Glogova 1-grave).

<sup>2360</sup> Dušan Janc, T. 33534–33543 (1 May 2009).

<sup>2361</sup> *Ibid.*, T. 33540–33543 (1 May 2009).

<sup>2362</sup> *Ibid.*

<sup>2363</sup> Ex. P04490, “Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, Annex C, p. 65.

<sup>2364</sup> Dušan Dunjić, Ex. 1D01447, “92 bis statement” (10 May 2009), paras. 42–44, 58–59.

<sup>2365</sup> *Ibid.*, paras. 77–85.

once.<sup>2367</sup> According to Dunjić, this conclusion is supported by forensic evidence showing the different stages of putrefaction and skeletonisation of the corpses.<sup>2368</sup> Given the compelling evidence of the re-association of bodies in Janc's report, Dunjić's argument cannot raise a reasonable doubt as to the established connections between the gravesites. The Trial Chamber considers Dunjić's observations in this regard to be speculative at best, noting that there are many factors which may influence the level of putrefaction and skeletonisation of corpses.<sup>2369</sup> The Trial Chamber is of the opinion that Dunjić's general observation on the different stages of decomposition of corpses in the secondary graves, particularly in contrast to the compelling evidence of association, does not raise a reasonable doubt as to the reburial of those remains.

657. No DNA connection has been established for the secondary graves at Čančari Road 1, Čančari Road 4 and Čančari Road 8.<sup>2370</sup> Janc explained that the Čančari Road 1 grave has not yet been exhumed, and the graves at Čančari Road 4 and 8 were only recently exhumed and the Prosecution does not yet have all of the information on these exhumations.<sup>2371</sup> A forensic connection has been established linking the Čančari Road 8 grave to the grave at Branjevo Military Farm.<sup>2372</sup> The Trial Chamber notes that Janc counted 10 identified individuals from the Čančari Road 4 grave in his estimate.<sup>2373</sup> As there is no evidence before the Trial Chamber that the Čančari Road 4 grave is connected to any of the primary graves, the Trial Chamber will exclude these 10 individuals from its estimate.

658. Where there is evidence that the remains of individuals unrelated to the fall of Srebrenica have been buried in a grave, the Trial Chamber endorses Janc's approach that these individuals (whether they are found in a primary or a secondary grave) cannot be counted in the total number of deceased following the fall of Srebrenica. The Trial Chamber acknowledges that, even in the absence of specific evidence, there always exists a possibility that individuals who died in

<sup>2366</sup> Ex. P04490, "Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc", Annex C, p. 65. Of the seven primary graves, Glogova 1 is the only one without a forensic connection to a secondary grave. *Ibid.*

<sup>2367</sup> Dušan Dunjić, Ex. 1D01447, "92 bis statement" (10 May 2009), para. 76.

<sup>2368</sup> *Ibid.* For more on Dunjić's criticisms based on varying degrees of putrefaction between corpses, *see supra*, paras. 610–611.

<sup>2369</sup> Dušan Dunjić, T. 22787 (25 June 2008) (stating "Several factors influence the putrefaction process, the environment, the manner of death, the wounds, where it was [...] From the stage of putrefaction, changes are based on the stage of putrefaction, we can estimate the time of death. That's number 1. What external factors contributed to the fact that some parts of the body putrefy faster and the others putrefy slower? The first thing that's important here is this: What was the situation of the body before it was buried? And whether the putrefaction changes that were stated occurred exclusively in the grave from which the body was excavated").

<sup>2370</sup> Dušan Janc, T. 33621 (4 May 2009); Ex. P04490, "Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc", Annex C, p. 65.

<sup>2371</sup> Dušan Janc, T. 33621 (4 May 2009).

<sup>2372</sup> Dušan Janc, T. 33503–3505, 3505 (private session) (1 May 2009); Ex. P04504, "Record on exhumation (Kamenica locality - KAM08ZVO), 20 October 2008", p. 7; Ex. P04491 (confidential), p. 23.

<sup>2373</sup> Ex. P04490, "Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc", p. 3.

circumstances unrelated to the Srebrenica events were added to the secondary graves. However, given that this possibility is very slight, the Trial Chamber is satisfied that forensic and/or a DNA connection between the gravesites is a compelling basis on which to conclude that the victims buried in the secondary grave can be linked to the incident associated with the primary grave and the Trial Chamber so finds.

## 7. Conclusion

659. According to the Prosecution, “DNA evidence shows that as of March 2009, at least 6,006 persons [...] have been identified from Srebrenica related graves or surface remains”.<sup>2374</sup> The Prosecution arrives at this figure by adding the persons identified in the Srebrenica Related Graves (5,358) with those identified among the surface remains (648).<sup>2375</sup> The Prosecution also suggests that due to ongoing investigations, the figure is destined to grow and an estimate of the total number would be higher.<sup>2376</sup> In the Prosecution’s submission, the minimum number of persons that went missing or died following the fall of Srebrenica can be estimated to be 7,826.<sup>2377</sup> This figure is calculated by adding the number of persons on the 2005 List of Missing (7,661) with additional individuals who had not been reported missing in the ICRC or PHR data (165).<sup>2378</sup>

660. As stated above, the Trial Chamber is satisfied as to the reliability of Janc’s expert report. Janc acknowledged the possibility that some individuals counted in his expert report could have died as a result of land mines, suicide or legitimate combat operations, and stated that such cases were most likely to be found among the surface remains. The Trial Chamber therefore will not include the surface remains in its estimate.

661. In addition, the Trial Chamber will not include the ten persons identified in the Čančari Road 4 grave in its estimate, given that no connection has been established between this grave and any of the other Srebrenica Related Graves.

662. Moreover, the Trial Chamber notes that Janc’s calculation of 5,358 individuals identified in the Srebrenica Related Graves includes persons whom Janc wrongly thought to be victims of the Kravica Warehouse execution, addressed in the corrigendum to his report and in the Kravica Warehouse section of this judgement.<sup>2379</sup> These wrongly included persons include twelve who were returned to the VRS from Serbia, 80 from in or around the Vuk Karadžić School, 6–7 from

<sup>2374</sup> Prosecution Final Brief, para. 1130.

<sup>2375</sup> *Ibid.*, para. 1143.

<sup>2376</sup> *Ibid.*, paras. 1130, 1143.

<sup>2377</sup> *Ibid.*, para. 1134.

<sup>2378</sup> *Ibid.* See also Ex. P03159a (confidential), p. 2.

Potočari, 10–15 from near Konjević Polje and “one truckload” from the area along the Konjević Polje Road. The Trial Chamber notes that with the exception of the 12 individuals returned to the VRS, the circumstances surrounding the death of these individuals indicate that they died in the events following the fall of Srebrenica. Therefore, in addition to deducting the 10 individuals from Čančari Road 4, the Trial Chamber will also deduct these 12 individuals from Janc’s calculation of 5,358.

663. Considering the mass executions following the fall of Srebrenica, the burial operation, the reburial operation, the extensive amount of forensic evidence and demographic data on missing persons, as well as the established forensic and DNA connections between the gravesites, the Trial Chamber accepts the evidence of Janc concerning the links between the Srebrenica Related Graves.

664. The Trial Chamber is satisfied beyond reasonable doubt that at least 5,336 identified individuals were killed in the executions following the fall of Srebrenica.<sup>2380</sup> The Trial Chamber also notes that the evidence before it is not all encompassing. Graves continue to be discovered and exhumed to this day, and the number of identified individuals will rise. The Trial Chamber therefore considers that the number could well be as high as 7,826.<sup>2381</sup>

## K. Žepa

### 1. Situation in Žepa in 1995

665. While the living conditions in Žepa were difficult, its humanitarian situation was less desperate than in Srebrenica in 1995.<sup>2382</sup> In January 1995, however, the ABiH reported that the number of Bosnian Muslims “illegally” leaving the area of the responsibility of the ABiH Žepa Brigade was increasing.<sup>2383</sup> The ABiH suspected the VRS were assisting this movement.<sup>2384</sup>

666. Following the UN Security Council declaring Žepa a safe area in 1993, the enclave, like Srebrenica, was never completely demilitarised.<sup>2385</sup> In mid-February 1995, as military activities on

<sup>2379</sup> Ex. P04492, “Corrigendum to the Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009, by Dušan Janc 9 April 2009”. *See supra*, para. 443.

<sup>2380</sup> As explained at *supra*, para. 662, this number is calculated as follows: 5,358 – 12 – 10 = 5,336.

<sup>2381</sup> This estimate being the number of individuals reported missing following the fall of Srebrenica (7,661) and the additional number of unique DNA profiles identified but not matched to persons reported missing (165). Ex. P03159a (confidential), p. 2.

<sup>2382</sup> Meho Džebo, Ex. P02486, “92 *ter* statement” (23 Mar 2007), p. 2 (stating that people in Žepa still “had better food supplies than Srebrenica and that people from Srebrenica would walk to Žepa to get food”).

<sup>2383</sup> Ex. 6D00097, “Order from the ABiH Srebrenica 8th Operations Group Security Organ, 30 January 1995”; Meho Džebo, T. 9616–9617 (28 Mar 2007).

<sup>2384</sup> Ex. 6D00097, “Order from the ABiH Srebrenica 8th Operations group Security Organ, 30 January 1995”.

<sup>2385</sup> Exs. P02502, P02875, “UNPROFOR Sarajevo Sector Weekly Situation Report, 15 July 1995”, p. 3. *See also* Meho Džebo, T. 9599 (28 Mar 2007); Hamdija Torlak, T. 9819 (2 Apr 2007). Palić testified that while in 1992 two

both sides increased, the VRS requested UNPROFOR command to declare Žepa a “non-demilitarised zone” due to the activities of the ABiH, otherwise they would start offensive combat operations.<sup>2386</sup> The ABiH Žepa Brigade was ordered to increase its combat readiness “to the highest level”.<sup>2387</sup> The VRS Main Staff anticipated that the ABiH would launch an offensive to link the Žepa and Srebrenica enclaves, and therefore ordered the Drina Corps, and the 65th Protection Regiment, to send their troops towards the enclaves.<sup>2388</sup> In March 1995, the shelling of outlying areas re-commenced, and in June 1995 “the shelling started in earnest”, resulting in civilian casualties.<sup>2389</sup>

667. At the beginning of May 1995, the Žepa War Presidency<sup>2390</sup> informed the BiH leadership in Sarajevo, through the ABiH Žepa Brigade,<sup>2391</sup> that a part of the Bosnian Muslim population in Žepa was demanding their evacuation to other ABiH-held territories.<sup>2392</sup> During the war, at least two thirds of the population were refugees from the towns and villages surrounding Žepa.<sup>2393</sup> The Žepa War Presidency asked the BiH leadership whether, in its view, the “welfare evacuation” of this group of people was justified in the current military and political situation.<sup>2394</sup> The Žepa War Presidency also sought the BiH leadership’s view on whether it could negotiate the “welfare evacuation” with Milan Pećanac, the VRS Security Officer.<sup>2395</sup> The ABiH Žepa Brigade also expressed its concern to the ABiH General Staff about a possible “unauthorised and illegal” escape

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offensives were launched against Žepa accompanying by shelling and air strikes, from May 1993 to March 1995, the shelling ceased. Esmā Palić, T. 6910–6911 (6 Feb 2007).

<sup>2386</sup> Ex. 5D00228, “ABiH Order to raise the level of combat readiness in units signed by Enver Hadžihasanović, 17 February 1995”, p. 1 (Hadžihasanović stated that the VRS filed this request on the grounds that “[ABiH] helicopter flights supplying weapons and ammunition have been registered; movements of the [ABiH] have been registered in the Žepa sector; accusing members of the [UKRCoy] that they are covering up for the activities and intentions of [ABiH], which is why they no longer guarantee safety; on the night between 15 and 16 February 1995, [ABiH’s] helicopters were seen flying over and infantry fire was opened on them.”). See also Ex. 6D00073, “ABiH Order signed by Sead Delić, 17 February 1995”.

<sup>2387</sup> Ex. 5D01356, “Order to the ABiH Žepa Brigade signed by Naser Orić, 18 February 1995”. See also Slobodan Kosovac, T. 30141–30142 (15 Jan 2009).

<sup>2388</sup> Ex. 5D01055, “VRS Main Staff Order by Manojlo Milovanović, 28 February 1995”. See also Slobodan Kosovac, T. 30143–30144 (15 Feb 2009).

<sup>2389</sup> Esmā Palić, T. 6911 (6 Feb 2007). See also *ibid.*, T. 6914 (6 Feb 2007).

<sup>2390</sup> Torlak testified that in 1993 the Žepa War Presidency was established and the President was Benjamin Kulovac, who was succeeded by Mehmed Hajrić in 1995. Hamdija Torlak, T. 9713, 9716–9717 (29 Mar 2007).

<sup>2391</sup> Torlak testified that the document was sent by the ABiH Žepa Brigade because from mid-1994 onwards, the only communication system was under the control of the ABiH and thus every document could only be sent to Sarajevo via the ABiH Žepa Brigade. Hamdija Torlak, T. 9846–9847 (2 Apr 2007).

<sup>2392</sup> Ex. 5D00259, “Žepa War Presidency Request to the ABiH leadership, 5 May 1995”, p.1 (noting that “[o]f the total number of inhabitants of Žepa, 65% are refugees who arrived mainly from Han-Pijesak, Rogatica, Višegrad and Vlasenica municipalities. [...] This part of the population is continually pressuring the municipal authorities in Žepa with the demand that they be evacuated to other parts of the Republic of BH where their relatives live”; those who demanded the evacuation amounted to about 150).

<sup>2393</sup> Esmā Palić, T. 6909–6910 (6 Feb 2007).

<sup>2394</sup> Ex. 5D00259, “Žepa War Presidency Request to the ABiH leadership, 5 May 1995”, pp. 1–2.

<sup>2395</sup> Ex. 5D00259, “Žepa War Presidency Request to the ABiH leadership, 5 May 1995”, pp. 1–2 (noting that the negotiation was proposed for 10 May 1995). See also Hamdija Torlak, T. 9846 (2 Apr 2007). Torlak testified that in all parts of BiH there were no negotiations at the local levels without consent of the higher authorities. *Ibid.*, T. 9846–9867 (2 Apr 2007).



of the Bosnian Muslims in Žepa, including “civilians, women, children and [ABiH members]”, to ABiH-held territories.<sup>2396</sup> In response, ABiH General Staff Brigadier Enver Hadžihasanović instructed Commander Palić of the Žepa ABiH Brigade to “prevent certain civilians and any members of the [ABiH] from leaving the territory of Žepa without permission and illegally”.<sup>2397</sup>

668. During this period, the VRS believed that the ABiH was preparing offensive operations in the greater area of Tuzla, Kladanj, Srebrenica and Žepa with the aim of dividing VRS-held territories.<sup>2398</sup> The Drina Corps ordered reinforced defence of the front around Žepa.<sup>2399</sup> It reported that the “closing off” of the Žepa enclave was gradually being completed.<sup>2400</sup>

669. On 2 June 1995, the ABiH 28th Division ordered the ABiH Žepa Brigade not to allow UKRCoy soldiers to leave; to disarm and capture UKRCoy soldiers if they attempted to leave; and to inform UKRCoy that the ABiH was prepared to defend UKRCoy.<sup>2401</sup> In mid-June 1995, the ABiH Žepa Brigade carried out an attack outside the Žepa enclave with a view to lifting the pressure off the Sarajevo sector.<sup>2402</sup> Immediately after this attack, the VRS launched a counter-offensive against the enclave.<sup>2403</sup> Towards the end of June 1995, VRS mortars targeted UKRCoy

<sup>2396</sup> Ex. 5D00224, “Žepa Brigade Report to the ABiH General Staff signed by Salih Hasanović, 25 May 1995”. When shown this document, Torlak confirmed that he knew Salih Hasanović and that he was an officer in charge of the security of the Žepa Brigade. He further testified that what the ABiH Žepa Brigade did not want was the escape of the ABiH members. Hamdija Torlak, T. 9847–9849 (2 Apr 2007).

<sup>2397</sup> Ex. 6D00039, “ABiH General Staff Instruction to the Žepa Brigade signed by Enver Hadžihasanović, 26 May 1995”, p. 1. *See also* Ex. 5D00244, “ABiH 28th Division Order to Žepa Brigade signed by Ramiz Bečirović, 27 May 1995” (noting that, “The commands of all units of the 28th Division must take all measures to prevent Army members and civilians from leaving the demilitarised zones of Srebrenica and Žepa without prior permission obtained from the Division Command or unit commands. This shall apply to persons intending to go from one demilitarised zone to the other or to leave a demilitarised zone and go to other free territories in the Republic of BH or towards Serbia”). *See also* Ex. 5D00235, “ABiH 28th Division Order to Žepa Brigade signed by Ramiz Bečirović, 17 June 1995” (noting that, “Despite issuing orders preventing military personnel and civilians from leaving the demilitarised zones of Srebrenica and Žepa, individuals and small organised groups keep leaving these areas more and more frequently for Kladanj and Tuzla without the appropriate papers.”); Ex. 4D00301, “ABiH 2nd Corps Command Document, signed by Sead Delić, 28 June 1995”. When asked if he attempted to stop able-bodied men leaving the Žepa enclave, Torlak stated that “everybody as a rule wanted to get out of Žepa, but there was no way that this could be done. It just couldn’t be done”. Hamdija Torlak, T. 9781 (30 Mar 2007).

<sup>2398</sup> Ex. P00204, “Drina Corps Order type-signed Radislav Krstić, 15 May 1995”.

<sup>2399</sup> *Ibid.* *See also* Ex. P00205, “Drina Corps Order type-signed Radislav Krstić, 16 May 1995”; Ex. 5D01257, “Rogatica Brigade Report to Drina Corps signed by Rajko Kušić, 18 May 1995”.

<sup>2400</sup> Ex. 5D01237, “Drina Corps Order signed by Radislav Krstić, 18 May 1995”, p. 1.

<sup>2401</sup> Ex. 6D00075, “ABiH 28th Division Order to the Žepa Brigade, 2 June 1995”.

<sup>2402</sup> Hamdija Torlak, T. 9722–9723 (30 Mar 2007). Torlak testified that the attacks were counter-productive because they only provided an excuse for the VRS to attack Žepa. *Ibid.*, T. 9820–9821 (2 Apr 2007). *See also* Ex. 5D00229, “ABiH General Staff Order to the 28th Division signed by Sulejman Budaković, 17 June 1995”; Ex. 5D00227, “ABiH Žepa Brigade Combat Report to the 2nd Corps and 28th Division signed by Avdo Palić, 28 June 1995”; Ex. P02970, “Sarajevo Sector Weekly Situation Report, 2 July 1995”. The ABiH Žepa Brigade members acting in large sabotage groups killed civilians in the surrounding RS territory and received instructions from the 2nd Corps of the ABiH to engage the VRS in order to move them away from Sarajevo. Milan Vojinović, T. 23694–23695 (21 Jul 2008).

<sup>2403</sup> Hamdija Torlak, T. 9821 (2 Apr 2007).

checkpoints and the UKRCoy base.<sup>2404</sup> The local VRS commander told UKRCoy that the attacks would continue until it agreed to leave the enclave.<sup>2405</sup>

670. In 1995, there were 6,500 to 8,000 people living in Žepa.<sup>2406</sup> In July 1995, 1,200<sup>2407</sup> to 2,000<sup>2408</sup> of the inhabitants were able-bodied men albeit it was difficult to distinguish between the civilians and the army.<sup>2409</sup> According to Torlak, of these 1,200 men, 600 to 700 were ABiH Žepa Brigade soldiers, commanded by Palić.<sup>2410</sup>

671. At the beginning of July, the VRS reported that the ABiH was vigorously carrying out attacks against Drina Corps units in the Žepa and Srebrenica enclaves.<sup>2411</sup> Both the Drina Corps and the Bratunac Brigade issued orders to their respective units to continue active defence around the enclaves.<sup>2412</sup> On 9 July 1995, Palić reported to the ABiH General Staff that the VRS's five-day attack had been repulsed successfully; civilians had been wounded by mortar shelling; 30 houses had been destroyed in the surrounding villages and the villages had been evacuated.<sup>2413</sup> In response to an ABiH demand, UKRCoy released to the ABiH 127 weapons seized following the demilitarisation agreement of 1993, which UNPROFOR considered to be of no significant military value.<sup>2414</sup>

672. On 10 July 1995, Mladić ordered the Drina Corps and the 65th Protection Regiment to launch offensive combat activities on 12 July against the Žepa enclave.<sup>2415</sup> On the same day, Palić

<sup>2404</sup> Ex. P02970, "Sarajevo Sector Weekly Situation Report, 2 July 1995", p. 4. UNPROFOR reported that on 30 June, an UKRCoy APC was destroyed. Exs. P02502, P02875, "Sarajevo Sector Weekly Situation Report, 15 July 1995", p. 3.

<sup>2405</sup> Ex. P02970, "Sarajevo Sector Weekly Situation Report, 2 July 1995", p. 4 (reporting that "harassment of UNPROFOR may be a prelude to a general assault on the enclave").

<sup>2406</sup> Esma Palić, T. 6910 (6 Feb 2007) (testifying that 8,000 people lived in Žepa); Hamdija Torlak, T. 9718 (29 Mar 2007) (testifying that there were about 7,000 inhabitants in Žepa); Ex. 1D00019, "ABiH General Staff Report to the ABiH Commander, 23 February 1995", p. 5 (indicating that 6,500 people were living in Žepa).

<sup>2407</sup> Hamdija Torlak, T. 9721 (30 Mar 2007).

<sup>2408</sup> Ex. P03523 "RS MUP State Security Service Report, type-signed Dragan Kijac, 28 July 1995", p. 1.

<sup>2409</sup> Hamdija Torlak, T. 9832 (2 Apr 2007).

<sup>2410</sup> *Ibid.*, T. 9721 (30 Mar 2007).

<sup>2411</sup> Ex. P00107, "Drina Corps Command Order 04/156-2, Operations Order No.1 Krivaja-95, 2 July 1995"; Ex. P03025, "Order for active combat operations from Command of the Bratunac Brigade to Commands of the 1st, 2nd, 3rd and 4th Battalions signed by Blagojević, 5 July 1995". See also Exs. 1D00382, 4D00377, 4D00378, "Drina Corps Order signed by Milenko Živanović, 2 July 1995"; Ex. 4D00326, "ABiH 2nd Corp Command report, signed by Sead Delić, 8 July 1995".

<sup>2412</sup> Ex. P00107, "Drina Corps Command Order, Operations Order No.1 Krivaja-95, 2 July 1995"; Ex. P03025, "Order for Active Combat Operations from Command of the Bratunac Brigade to Commands of the 1st, 2nd, 3rd and 4th Battalions signed by Blagojević, 5 July 1995". See also Exs. 1D00382, 4D00377, 4D00378, "Drina Corps Order signed by Milenko Živanović, 2 July 1995".

<sup>2413</sup> Ex. P02951, "ABiH Žepa Brigade Report signed by Avdo Palić, 9 July 1995" (further noting that, "[I]f this situation continues, we have the approval of the commander of the Ukrainian unit to take back from them the weapons that we surrendered.").

<sup>2414</sup> Exs. P02502, P02875, "Sarajevo Sector Weekly Situation Report, 15 July 1995", p. 2. See also Louis Fortin, T. 18273 (27 Nov 2007); Meho Džebo, T. 9599-9600 (28 Mar 2007).

<sup>2415</sup> Ex. P00181, "VRS Main Staff Order to the Drina Corps and the 65th Protection Motorised Regiment signed by Ratko Mladić, 10 July 1995", p. 5.

threatened to seize UKRCoy's combat equipment and take their soldiers hostage in the event of a VRS attack.<sup>2416</sup> UNPROFOR reported that following the fall of Srebrenica, the mood in Žepa was "one of panic" and that Mladić had stated he expected "Muslim paramilitary forces" in the enclave to surrender within 48 hours.<sup>2417</sup> The VRS continued attacking UKRCoy checkpoints.<sup>2418</sup> There was also sporadic artillery, mortar, and heavy machine gun fire directed at Žepa town and the surrounding villages.<sup>2419</sup> The majority of the Bosnian Muslim population in Žepa had retreated to the surrounding forests and caves.<sup>2420</sup>

673. On 12 July 1995, **Pandurević** reported to Bojna and attended a meeting where Trivić, Colonel Andrić, Colonel Vičić, and Krstić were present.<sup>2421</sup> The VRS units received the tasks—to head towards Srebrenica-Viogor-Sučeska in the direction of Žepa and to move "as a reserve" along the axis, whereas two combat units from the Romanija Brigade and the Birać Brigade would search the terrain for elements of the ABiH 28th Division.<sup>2422</sup> The VRS advanced as planned towards Žepa.<sup>2423</sup>

674. In the evening of 12 July 1995, a meeting was held at the Bratunac Brigade Command,<sup>2424</sup> where Mladić ordered Krstić to prepare for the liberation of Žepa.<sup>2425</sup> During the meeting, Trivić and **Pandurević** requested replacement troops to carry out the Žepa operation, as their soldiers needed rest, but Mladić denied the request.<sup>2426</sup> They then requested that Mladić address their troops to raise morale.<sup>2427</sup> Mladić agreed to do this on 13 July before the move to Žepa.<sup>2428</sup> On the next morning, Mladić and Krstić went to Viogor.<sup>2429</sup> Mladić addressed the units and commanders,

<sup>2416</sup> Ex. P00076, "VRS MUP State Security Department Report signed by Dragan Kijac, 12 July 1995", pp. 1–2.

<sup>2417</sup> Exs. P02502, P02875, "Sarajevo Sector Weekly Situation Report, 15 July 1995", p. 2. On 11 July, it was reported that, "Any eventual withdrawal of [DutchBat] from Srebrenica will have serious implications for UNPROFOR troops in Žepa and Goražde: i) the governments contributing those forces may wish them to be withdrawn as well; ii) the viability of their continued presence will be cast into doubt in the event of a Dutch withdrawal, in the eyes of the warring parties, as well as the population of the enclaves; iii) a Serb attack on one or both of Žepa and Goražde would obviously place at grave risk the safety of the UN forces there". Ex. 5D00040, "UNPF Policy and Information for the Security Council, 11 July 1995", pp. 2–3.

<sup>2418</sup> Exs. P02502, P02875, "Sarajevo Sector Weekly Situation Report, 15 July 1995", pp. 2–3; Ex. 6D00204, "UNPF Situation Report, 10 July 1995", p. 3.

<sup>2419</sup> Exs. P02502, P02875, "Sarajevo Sector Weekly Situation Report, 15 July 1995", p. 2.

<sup>2420</sup> Ex. P00076, "VRS MUP State Security Department Report signed by Dragan Kijac, 12 July 1995" p. 1.

<sup>2421</sup> See *infra*, para. 1853.

<sup>2422</sup> Vinko Pandurević, T. 30897–30900 (30 Jan 2009). See also Mirko Trivić, T. 11835–11836 (21 May 2007).

<sup>2423</sup> Vinko Pandurević, T. 30899–30901 (30 Jan 2009); Ex. P00886, "Document from the Zvornik CJB to the RS MUP type-signed Vasić, 13 July 1995". The ABiH was preparing for the VRS advances. Ex. 4D00013, "ABiH General Staff Interim Report, 13 July 1995". On the same day, the 5th Podrinje Brigade sent a combat report to the Drina Corps Command, reporting that the brigade carried out tasks "in accordance with the plan". Ex. P02902, "5th Podrinje Brigade Combat Report signed by Radomir Furtula, 12 July 1995".

<sup>2424</sup> See *supra*, para. 376.

<sup>2425</sup> *Ibid.*

<sup>2426</sup> *Ibid.*

<sup>2427</sup> *Ibid.*

<sup>2428</sup> *Ibid.*

<sup>2429</sup> *Ibid.*

including **Pandurević** and Trivić.<sup>2430</sup> Mladić also announced that Krstić was now in command of the Drina Corps.<sup>2431</sup> Mladić ordered the tactical groups to be ready to march towards Žepa pursuant to the task of taking the Žepa enclave.<sup>2432</sup>

## 2. The First Round of Negotiations (13 July 1995)

675. On the evening of 12 July 1995, following the VRS's rapid advances towards Žepa, the VRS contacted Palić through the UKRCoy Commander, Semjon Dudnik, informing him that they were interested in holding discussions.<sup>2433</sup> The Žepa War Presidency first sought permission from the ABiH General Staff and the BiH political leadership in Sarajevo to engage in such discussions.<sup>2434</sup> The BiH political leadership was reluctant to authorise the Žepa War Presidency to undertake negotiations with the VRS, instead encouraging an organised resistance.<sup>2435</sup> The VRS later demanded that a meeting take place at the latest by 11 a.m. on 13 July 1995, or else combat activities and the advance towards Žepa would continue.<sup>2436</sup> The Žepa War Presidency ultimately received approval from Sarajevo on the condition that they would not sign anything.<sup>2437</sup>

<sup>2430</sup> Vinko Pandurević, T. 20904–30905 (30 Jan 2009). *See also* Mirko Trivić, T. 11853–11854 (21 May 2007).

<sup>2431</sup> Vinko Pandurević, T. 30905 (30 Jan 2009).

<sup>2432</sup> Miodrag Dragutinović, T. 12587 (13 June 2007); Ex. 7D00941, “Zvornik Brigade Order signed by Vinko Pandurević, 13 July 1995”, pp. 1–2. **Pandurević** testified that he issued his order orally and saw the written order prepared by Dragutinović for the first time in court. The exhibit also contains **Pandurević's** signature but he testified that he did not think that he had signed it. Vinko Pandurević, T. 30906–30907 (30 Jan 2009). *See also* Mirko Trivić, T. 11862–11863 (21 May 2007) (testifying that on the morning of 13 July 1995, Trivić had already been given the assignment to act as a backup force to elements of the Zvornik Brigade that were under the command of **Pandurević** in the Žepa operation). **Pandurević** testified that around midnight, they stopped in Vlasenići to refuel and then continued moving, first towards Han Pijesak and then stopped at around 2 a.m. on 14 July in the village of Rijeka to sleep for a few hours. Vinko Pandurević, T. 30908–30911 (30 Jan 2009); Ex. 7D00091, “Vehicle Logbook of July 1995”, p. 2. *See also infra*, para. 1856.

<sup>2433</sup> Hamdija Torlak, T. 9723 (30 Mar 2007), T. 9794–9795 (2 Apr 2007); Ex. P02745, “Drina Corps Report signed by Milenko Živanović, 13 July 1995”, p. 1.

<sup>2434</sup> Hamdija Torlak, T. 9723 (30 Mar 2007), T. 9794–9795 (2 Apr 2007). Torlak testified that an agreement was required in order for the Bosnian Muslims in Žepa to negotiate locally. *Ibid.*, T. 9795 (2 Apr 2007).

<sup>2435</sup> Ex. 5D00275, “ABiH General Staff Letter to the Žepa Brigade signed by Enver Hadžihasanović, 13 July 1995”, p. 1 (showing that Enver Hadžihasanović, Chief of Staff of the ABiH, informed the President of the Žepa War Presidency of the following: “[T]here should be no negotiations with the aggressor. You can expect unconditional ultimatums and requests for surrender from the aggressor. The people and fighters of Žepa should continue preparations for an organised resistance against the aggressor and prevent any emergence of panic by their resolute conduct convincing the people of the possibility of success in resisting the aggressor. The Presidency and the Government of [BiH] are investing the utmost effort at international military and political level.”). *See also* Ex. 6D00104, “ABiH General Staff Letter signed by Rasim Delić, 13 July 1995”, reporting that the ABiH had conveyed the BiH Government's view to the Žepa War Presidency, namely, “there should not be negotiations and [...] Žepa would be helped militarily and politically.” When asked if he knew that Hadžihasanović was against the fact he would participate in the negotiations, Torlak testified that “[a]s far as I remember, on that day, the 13th of July, in the morning, and let me repeat, all communication went via the communications centre held by the army. So most of those things we received orally, without any documents. As far as I remember, it was from two different places at our request that two opposing answers arrive. One in favour of us going, and the other, I don't know whether that was the military one, that was against, or whether it was the other way around. Which side was against and which side was in favour, but we decided to go and attend those talks anyway”. Hamdija Torlak, T. 9851–9852 (2 Apr 2007).

<sup>2436</sup> Ex. P02745, “Drina Corps Report signed by Milenko Živanović, 13 July 1995”, p. 2. *See also* Ex. P00077, “RS MUP State Security Department Report signed by Dragan Kijac, 13 July 1995”, p. 1 (noting that “[s]ome indicators

676. In the Drina Corps report dated 13 July, it was stated that Palić had repeatedly postponed meeting with the VRS because of ongoing consultation with the BiH political leadership.<sup>2438</sup> It was noted that: “[T]he Žepa leadership is ready for evacuation but [the BiH political] leadership in Sarajevo is having a negative influence on their decision.”<sup>2439</sup> Živanović considered that the Bosnian Muslims were using the same tactics as in Srebrenica—the Bosnian Muslim women and children would be evacuated in an organised manner and the able-bodied men would “cross illegally” to the ABiH-held territory.<sup>2440</sup> Živanović believed that in avoiding meeting with the VRS, the Bosnian Muslims in Žepa were buying time to evacuate the able-bodied men out of Žepa.<sup>2441</sup> He ordered that all measures for combat support be taken to prevent the ABiH formations from crossing the VRS-held territory.<sup>2442</sup>

677. At noon on 13 July 1995,<sup>2443</sup> a meeting was held at UKRCoy Checkpoint 2 in Bokšanica.<sup>2444</sup> Hamdija Torlak, the President of the Executive Board in Žepa and a member of the Žepa War Presidency,<sup>2445</sup> and Mujo Omanović, a member of the Executive Board,<sup>2446</sup> represented the Bosnian Muslims of Žepa.<sup>2447</sup> The VRS was represented by Tolimir and Colonel Rajko Kušić, the Commander of the Rogatica Brigade.<sup>2448</sup> Tolimir, who dominated most of the meeting, said: “Srebrenica had fallen and that it was Žepa’s turn now”.<sup>2449</sup>

678. The Bosnian Muslim representatives requested the VRS:

1. To enable them within three days to consult with the population of Žepa and the leadership in Sarajevo about the decision to leave Žepa and move to the destination of their own choosing;
2. To enable them to relocate all civilians and able-bodied population;
3. To carry out the evacuation from Žepa in the presence of UNPROFOR, UNHCR, ICRC and military observers;

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suggest that the Muslim leadership of Žepa is ready to accept calls from the [RS] authorities for a peaceful surrender.”).

<sup>2437</sup> Hamdija Torlak, T. 9794–9795 (2 Apr 2007). *See also ibid.*, T. 9851–9852 (2 Apr 2007).

<sup>2438</sup> Ex. P02745, “Report on Žepa signed by Milenko Živanović, 13 July 1995”, p. 1.

<sup>2439</sup> *Ibid.*

<sup>2440</sup> *Ibid.*

<sup>2441</sup> *Ibid.*

<sup>2442</sup> *Ibid.*, pp. 1–2.

<sup>2443</sup> Ex. P00188, “Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995”, p. 1. *See also* Hamdija Torlak, T. 9723–9724 (30 Mar 2007).

<sup>2444</sup> Hamdija Torlak, T. 9723–9724 (30 Mar 2007).

<sup>2445</sup> *Ibid.*, T. 9713 (29 Mar 2007).

<sup>2446</sup> *Ibid.*, T. 9724 (30 Mar 2007).

<sup>2447</sup> *Ibid.*, T. 9723–9724, 9729 (30 Mar 2007); Ex. P00188, “Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995”, p. 1. Torlak testified that Avdo Palić did not attend the meeting because he was afraid. Hamdija Torlak, T. 9729 (30 Mar 2007).

<sup>2448</sup> Hamdija Torlak, T. 9723–9724 (30 Mar 2007). *See also supra*, para. 135. Mladić and Tolimir arrived at the command post of the Protection Regiment in Borike on 23 June 1995 and Tolimir was still there on 14 July. Milomir Savčić, T. 15243, 15247 (12 Sept 2007).

<sup>2449</sup> Hamdija Torlak, T. 9725 (30 Mar 2007). *See also ibid.*, T. 9850–9851 (2 Apr 2007).

4. To have guarantees from the RS and VRS Main Staff leadership for the safe transportation via RS territory;

5. To enable them to stay in the territory – for the persons who choose to do so.<sup>2450</sup>

679. The VRS accepted all the requests except the first, insisting that the Bosnian Muslim representatives of Žepa should conclude all necessary consultations by 3 p.m., when the evacuation of all the Bosnian Muslim civilians and the able-bodied men who surrender their weapons would start.<sup>2451</sup> They were to be evacuated in buses from Žepa to Olovo or Kladanj.<sup>2452</sup> The VRS presented two alternatives: either complete evacuation of the entire population of Žepa or a military solution.<sup>2453</sup> The VRS also stipulated that all able-bodied men must be registered and exchanged with the Bosnian Serb prisoners of war detained by the ABiH.<sup>2454</sup>

680. Following this meeting, the Bosnian Muslim representatives of Žepa conferred with the rest of the Žepa War Presidency. After lengthy discussions, Palić informed the VRS, through Dudnik from UKRCoy, that the Bosnian Muslims in Žepa would not accept the VRS request.<sup>2455</sup> There was general fear that the proposed evacuation might not be carried out in the manner agreed.<sup>2456</sup> By that time, Srebrenica had fallen but news of what had happened to the Bosnian Muslim population in Srebrenica had not yet reached Žepa.<sup>2457</sup> The Bosnian Muslims in Žepa requested a postponement of their decision until noon on 14 July 1995.<sup>2458</sup> Tolimir reported to the VRS Main Staff and the Drina Corps Command that the VRS did not accept this request and noted that:

We did not let them change the deadline for the decision and requested a new contact and we are expecting it. We plan to offer them evacuation of all civilians and military aged men if they agree to do it today. If they continue postponing the deadline for evacuation we will demand to keep some able bodied men. According to our information, they postponed the decision making under pressure from the Sarajevo leadership, because they are promising them protection by the rapid reaction forces. We believe that with our proposal for evacuation we created disorganization in their ranks. All refugees in Žepa, as well as some local residents chose the evacuation. We expect

<sup>2450</sup> Ex. P00188, “Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995”, p. 2 (Tolimir also stated that he had guaranteed the safety for the Bosnian Muslim civilians who decide to stay and accept the RS authority). *See also* Hamdija Torlak, T. 9730 (30 Mar 2007), T. 9801–9802 (2 Apr 2007).

<sup>2451</sup> Ex. P00188, “Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995”, p. 2.

<sup>2452</sup> Hamdija Torlak, T. 9725 (30 Mar 2007).

<sup>2453</sup> Hamdija Torlak, T. 9724 (30 Mar 2007); Ex. P00188, “Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995”, p. 2.

<sup>2454</sup> Ex. P00188, “Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995”, p. 2 (Tolimir stated that this demand “was a tactical move so that during the follow-up discussions, which they conditioned with consultation with their leadership in Sarajevo, we could turn down any possible counter-argument.”).

<sup>2455</sup> Hamdija Torlak, T. 9726 (30 Mar 2007). The discussions was held between the President of the War Presidency, Mehmed Hajrić, who was sometimes referred to as “mayor” of Žepa. By profession Hajrić was also a religious cleric, or “hodža”. *Ibid.*, T. 9717 (29 Mar 2007). *See also* Thomas Dibb, T. 16287–16288 (15 Oct 2007) (testifying that the hodža was not a fighter, but associated with the mosque).

<sup>2456</sup> Hamdija Torlak, T. 9726 (30 Mar 2007). *See also ibid.*, T. 9862 (3 Apr 2007).

<sup>2457</sup> *Ibid.*, T. 9726–9727 (30 Mar 2007).

<sup>2458</sup> Ex. P00188, “Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995”, p. 2.

that some Muslim soldiers are going to desert their defence lines in order to organize their families for evacuation.<sup>2459</sup>

Shortly after the 13 July negotiations failed, the VRS attacked the Žepa enclave, conducting infantry assaults and shelling ABiH defence lines as well as inhabited areas.<sup>2460</sup> The ABiH organised resistance to meet these attacks.<sup>2461</sup>

681. Also on 13 July, Krstić gave the order to subordinate units including the Bratunac, Rogatica and Zvornik Brigades, to commence “*Stupčanica-95*”, the military operation against the Žepa enclave.<sup>2462</sup> In his order, Krstić stated that around 1,200 soldiers of the ABiH Žepa Brigade had organised the defence of the Žepa enclave and that

“[A]bout 700 to 1,000 soldiers from units that were routed in the Srebrenica enclave withdrew to Žepa and will probably join the defence of the Žepa enclave. [...] Benefiting from the outcome of the activities in the Srebrenica enclave, I have decided to immediately move onto the offensive and rout the enemy in the Žepa enclave in order to liberate and clear the Serbian Podrinje of Muslim forces and eliminate the enclaves.”<sup>2463</sup>

Krstić set 8 a.m. on 14 July as the time for combat readiness.<sup>2464</sup> Krstić further noted that the Bosnian Muslim civilian population and UNPROFOR were not targets of the operations, adding an instruction to “[c]ollect them together and keep them under guard, but crush and destroy armed Muslim groups.”<sup>2465</sup>

<sup>2459</sup> Ex. P00188, “Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995”, pp. 2–3.

<sup>2460</sup> Hamdija Torlak, T. 9727 (30 Mar 2007) (testifying that everything was shelled, including the “defence lines, the houses, the inhabited areas, the villages.”). In his report to the VRS Main Staff, Tolimir stated that if the Bosnian Muslims “reject the evacuation under already set conditions, we are planning to start with combat activities.” Ex. P00187, “Rogatica Brigade Report on Žepa type-signed Zdravko Tolimir, 13 July 1995”, p. 2.

<sup>2461</sup> Hamdija Torlak, T. 9728 (30 Mar 2007). On the same day, the ABiH Commander Rasim Delić informed the ABiH President that material and technical equipment had been delivered to Srebrenica and Žepa. Ex. 1D00464, “ABiH General Staff Interim Report signed by Rasim Delić, 13 July 1995”, p. 1.

<sup>2462</sup> Ex. P00114, “Order from Drina Corps Command regarding Žepa, signed by Radislav Krstic, 13 July 1995”, p. 1.

<sup>2463</sup> *Ibid.* Trivić testified that he was given an estimate that there were around 1,500 to 2,000 armed members of the ABiH forces in the Žepa area, that they were organised, and that another 500 to 700 people had arrived from Srebrenica after its fall to the VRS. Mirko Trivić, T. 11903 (22 May 2007). *See also* Ex. P6D00165 (confidential), pp. 119–120 (noting that, on 12 July “[t]he Bosnian forces [in Žepa], one brigade with five battalions and 2,000 soldiers, G2 [information officer at sector level] says 1,000, plus a battalion at Luka. The commander of the brigade is the same as in Srebrenica”). *See also* Louis Fortin, T. 18412 (28 Nov 2007).

<sup>2464</sup> Ex. P00114, “Order from Drina Corps Command regarding Žepa, signed by Radislav Krstic, 13 July 1995”, p. 1. *See also* Milenko Jevđević, T. 29611–29612 (12 Dec 2008) (testifying that this order was drafted by Colonel Vičić); Vinko Pandurević, T. 30914 (30 Jan 2009). With regard to the Zvornik Brigade, Krstić ordered it to “attack the enemy along the village of Purtići – village of Čavčići – Žepa axis in order to crush the enemy along the line of attack, reach the Palež-Borak line and continue the advance. The next task is to reach Žepa.” Ex. P00114, “Order from Drina Corps Command regarding Žepa, signed by Krstic, 13 July 1995”, p. 2. Kosovac testified that the Main Staff Department for Operations and Training did not receive nor did it have any role in the issuance of this order and that the parts relevant to the attack on the Žepa enclave from the 13 July 1995 contained no elements leading to the conclusion that it implied displacement of the Bosnian Muslim population or any activities against them. Slobodan Kosovac T. 30172–30173 (15 Jan 2009).

<sup>2465</sup> Ex. P00114, “Order from Drina Corps Command regarding Žepa, signed by Radislav Krstić, 13 July 1995”, p. 4. Krstić informed the VRS Main Staff that preparations for Žepa had reached their final phase. Ex. P00136, “Drina Corps Regular Combat Report signed by Radislav Krstić, 13 July 1995”, p. 1. The VRS Main Staff issued a report,

### 3. VRS's Military Attack on Žepa pursuant to *Stupčanica-95* (14–19 July 1995)

682. On the morning of 14 July 1995, Tolimir reported, *inter alia*, to the Drina Corps command and to Krstić that the ABiH soldiers were at the front line and the civilian population had taken refuge outside the inhabited area in Žepa.<sup>2466</sup> Tolimir further reported that all units of the Rogatica Brigade and elements of the 65th Protection Regiment had been in readiness since 8 a.m.<sup>2467</sup> Around this time, at the Krivače IKM of the Drina Corps located between Han Pijesak and Žepa,<sup>2468</sup> Krstić ordered **Pandurević** to mount an attack from Podžeplje<sup>2469</sup> in the direction of Žepa.<sup>2470</sup> The attack lasted the whole day.<sup>2471</sup>

683. On 14 July 1995, the VRS demanded that UKRCoy withdraw from its checkpoints as they would be attacked at 2 p.m.<sup>2472</sup> Shortly after 3 p.m., the VRS commenced infantry assaults and shelling against both UKRCoy and ABiH Žepa Brigade.<sup>2473</sup> The ABiH Žepa Brigade organised

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which was signed by **Miletić**, forwarding this information to the RS President. Ex. P00047, “Main Staff Report signed by Radivoje Miletić, 13 July 1995”, p. 3.

<sup>2466</sup> Ex. P00189, “Rogatica Brigade Report type-signed by Zdravko Tolimir, 14 July 1995”, pp. 1–2 (noting that the Bosnian Muslim representatives refused to come to a meeting scheduled that morning on the ground that the Sarajevo leadership did not approve evacuation. Tolimir also noted that he informed the UKRCoy of the Bosnian Muslim plans to block UKRCoy checkpoints and proposed that the UKRCoy set up two command posts so that the VRS could “control the work and the reports that UNPROFOR is making to their superior command.”).

<sup>2467</sup> Ex. P00189, “Rogatica Brigade Report type-signed Zdravko Tolimir, 14 July 1995”, p. 2.

<sup>2468</sup> Ex. 7DIC00126, “Ex. 7D00624 marked by Miodrag Dragutinović”; Miodrag Dragutinović, T. 12696 (15 June 2007); Milenko Jevđević, T. 29610 (12 Dec 2008). The Krivače IKM started functioning at 6 p.m. on 13 July 1995. Ex. P00114, “Order from Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995”, p. 4.

<sup>2469</sup> As for the location of Podžeplje, see Ex. 7DIC00126, “Ex. 7D00624 marked by Miodrag Dragutinović”.

<sup>2470</sup> Miodrag Dragutinović, T. 12592 (13 June 2007) (testifying that **Pandurević** was ordered to attack on the Podžeplje-Brložnik-Purtići axis).

<sup>2471</sup> Miodrag Dragutinović, T. 12592–12593 (13 June 2007) (testifying that **Pandurević**'s units took Brložnik and arrived above Purtići). As to the locations of Brložnik and Purtići, see Ex. 7DIC00126, “Ex. 7D00624 marked by Miodrag Dragutinović”. Savčić, Commander of the VRS Main Staff 65th Protection Regiment, testified that on 14 July 1995 he received a task in the Sjevsko sector to report to “Barrier 01”—a code name for Mladić—in the Laze sector. On his way to Laze, Savčić came across Colonel Svetozar Andrić, who told him that the Drina Corps had received an assignment to make sure that the boundaries of Žepa were brought to the “limits envisaged by the agreement.” Savčić also met the Bratunac Brigade Commander Vidoje Blagojević on that day and Krstić during this period in the same area. Milimir Savčić, T. 15246, 15278–15279, 15284 (12 Sept 2007). In Laze, Mladić ordered Savčić to launch an attack on the Laze-Gusinac-Brezova Ravan axis, to break up the combat security of the ABiH Žepa Brigade in the Gusinac sector, and to take the Brezova Ravan sector. *Ibid.*, T. 15246–15247 (12 Sept 2007). Savčić requested the Drina Corps Command to form two firing groups—one group of mortars of 120 millimetres from the Bratunac Brigade and another firing group of B-1 cannons from the Rogatica Brigade. These firing groups were set up at 4 p.m. next day. *Ibid.*, T. 15279 (12 Sept 2007), T. 15327, 15370 (13 Sept 2007). On the same day, 14 July, Blagojević sent a daily combat report to the Drina Corps Command, stating that the Red Berets platoon, which was part of the Bratunac Brigade, was sent at 10 a.m. to the area of Milići to join the task in the direction of Žepa. Ex. 4D00088, “Daily Combat Report signed by Vidoje Blagojević, 14 July 1995”; Dragoslav Trišić, T. 27086–27087 (20 Oct 2008). On the same day, Krstić informed the VRS Main Staff of its decision that “in order to liberate the Žepa enclave part of the forces will block the Žepa enclave and force the enemy to surrender”. Ex. 4D00084, “Drina Corps Regular Combat Report, type-signed Radislav Krstić, 14 July 1995”, p. 2.

<sup>2472</sup> Exs. P02502, P02875, “Sarajevo Sector Situation Report, 15 July 1995”, p. 2; Ex. 1D00373, “UNPROFOR Letter to UN Secretary General, 14 July 1995”, p. 2.

<sup>2473</sup> *Ibid.* On the same day, Tolimir sent a request to the Main Staff and to **Miletić** in particular, asking for radio and encryption equipment that would allow him to monitor radio communications of the formations engaged in military activities around Žepa. Ex. P00183, “Rogatica Brigade Report to the VRS Main Staff type-signed Zdravko Tolimir, 14 July 1995”.



resistance<sup>2474</sup> mainly around the UKRCoy checkpoints.<sup>2475</sup> By 15 July, the VRS had taken control of the UKRCoy Checkpoint 2 at Bokšanica.<sup>2476</sup>

684. On 15 July 1995, the VRS reported that ABiH had opened mortar fire against the Drina Corps units in the enclave.<sup>2477</sup> UNPROFOR reported, on the same day, that it was likely Žepa would fall “very soon” and that around 10,000 Bosnian Muslims in Žepa would be “relocated by the Serbs, as the people of Srebrenica have been.”<sup>2478</sup>

685. The fierce fighting between the ABiH and the VRS continued around the UKRCoy checkpoints.<sup>2479</sup> During the night of 15 and 16 July,<sup>2480</sup> ABiH soldiers took a UKRCoy soldier hostage, demanding that UKRCoy surrender all weapons, equipment and ammunition to ABiH, and threatening that they would otherwise kill him.<sup>2481</sup> After their discussions failed, the ABiH penetrated the UKRCoy base in Žepa and took all weapons, military equipment, vehicles and medicine.<sup>2482</sup> The VRS also threatened to kill UKRCoy soldiers at their checkpoints in the event of NATO air strikes.<sup>2483</sup>

<sup>2474</sup> Hamdija Torlak, T. 9728 (30 Mar 2007), testifying that the attacks lasted until 19 July 1995. The ABiH had small arms, infantry and anti-armour weapons and light rocket launchers. Milomir Savčić, T. 15327–15328 (13 Sept 2007). Savčić confirmed that when he reached Žepa, the Bosnian Muslim population had left the Žepa village and had gone up in the mountains to take refuge. *Ibid.*, T. 15331–15332 (13 Sept 2007).

<sup>2475</sup> Exs. P02503, P02671, “Rogatica Brigade Interim Combat Report type-signed Rajko Kušić, 14 July 1995”, p. 1.

<sup>2476</sup> Ex. P02799, “Rogatica Brigade Report signed by Zdravko Tolimir, 14 July 1995”, pp. 1–2 (Tolimir reported on 14 July that the VRS had taken full control over the UKRCoy Checkpoint 2 at Bokšanica, which would remain operational as if it was not “blocked and surrounded by [VRS] forces”; that the VRS had instructed the UKRCoy at Checkpoint 2 to issue orders not to open fire at VRS units and instead “simulate the action by shooting in the air if forced to do so by the Muslims”; and that the UKRCoy checkpoints would be kept to prevent any NATO air strike on the VRS combat formation.). *See also* Exs. P02503, P02671, “Rogatica Brigade Interim Combat Report type-signed Rajko Kušić, 15 July 1995”, p. 1. On 15 July 1995, Tolimir issued an order to the Security Department of the 1st Krajina Corps to transport a 5,000 Watts loudspeaker to the Rogatica Garrison. Ex. P02788, “Order regarding Transportation of Loudspeakers from Krajina Corps Press Centre to Rogatica Garrison, type-signed Zdravko Tolimir, 15 July 1995”.

<sup>2477</sup> Ex. P00049, “VRS Main Staff Daily Combat Report 03/3-196, type-signed Radivoje Miletić, 15 July 1995”, p. 3.

<sup>2478</sup> Exs. P02502, P02875, “Sarajevo Sector Situation Report, 15 July 1995”, p. 2.

<sup>2479</sup> *See* Exs. P02502, P02875, “Sarajevo Sector Situation Report, 15 July 1995”, p. 3; Ex. P02958, “UNPF Situation Report, 16 July 1995”; Hamdija Torlak, T. 9797 (2 Apr 2007) (testifying that the fighting in Žepa was at its fiercest on 18 July).

<sup>2480</sup> On 16 July, Blagojević informed the Drina Corps Command that part of the Bratunac Brigade units of 400 most qualified soldiers was engaged in four locations, including Žepa. Dragoslav Trišić, T. 27092 (20 Oct 2008); Ex. 4D00596, “Bratunac Brigade Request to the Drina Corps signed by Vidoje Blagojević, 16 July 1995”, p. 1.

<sup>2481</sup> Ex. 6D00132, “DutchBat Situation Report, 17 July 1995”, p. 1.

<sup>2482</sup> *Ibid.*, (noting that the ABiH also threatened to use UKRCoy soldiers as human shields against the VRS attacks). *See also* Rupert Smith, T. 17765 (9 Nov 2007); Ex. 5D01112, “Drina Corps Interim Combat Report signed by Radislav Krstić, 19 July 1995”; Ex. P02958, “UNPF Situation Report, 16 July 1995”. Avdo Palić reported to the ABiH Main Staff that he and his soldiers were “disarming UNPROFOR in accordance with the directive we received earlier.” Ex. 6D00034, “Letter from the Žepa Brigade to Asim Dzambasović signed by Avdo Palić, 16 July 1995”.

<sup>2483</sup> Ex. P02958, “UNPF Situation Report, 16 July 1995”, p. 2; Ex. P02959, “UNPROFOR Situation Report, 16 July 1995”; Ex. P02340f, “Intercept, 16 July 1995, 17:31 hours”. *See also* Hamdija Torlak, T. 9879–9880 (3 Apr 2007).

686. Meanwhile, the VRS continued its attacks against Žepa.<sup>2484</sup> Brezova Ravan, where UKRCoy Checkpoint 1 was located,<sup>2485</sup> and Vratar village, located behind Žepa,<sup>2486</sup> were taken by the VRS sometime between 15 and 25 July.<sup>2487</sup>

687. On 19 July 1995, in the midst of the operations,<sup>2488</sup> Mladić radioed an order to all the VRS units to discontinue fighting.<sup>2489</sup> Around noon on that day, accompanied by Tolimir and Lieutenant-Colonel Milenko Indić, Mladić met with General Smith from UNPROFOR at the Jela Restaurant in Han Pijesak,<sup>2490</sup> where the logistical (rear) command post of the VRS Main Staff was located.<sup>2491</sup> They discussed Srebrenica, including the withdrawal of DutchBat, and the freedom of movement for UNHCR and UNPROFOR in Srebrenica and Žepa.<sup>2492</sup> According to an UNPROFOR report,

<sup>2484</sup> Marinko Jevđević, a member of the Military Police Battalion of the Protection Regiment of the VRS Main Staff, testified that on 16 July 1995, his Commander Zoran Malinić informed him that Savčić, Commander of the 65th Protection Regiment, had left a message that his “package”—frequently referred to soldiers—was to set out at dawn toward the Žepa area and that on 17 July 1995, Mladić ordered Jevđević in Godenje to take his troops towards the Ljubomislje village. Marinko Jevđević, T. 23853, 23855 (23 July 2008). That evening, Jevđević joined a platoon under the command of Lieutenant Stojan Maksivović in accordance with Savčić’s order and attempted an attack in Brezova Ravan. *Ibid.*, T. 23857 (23 July 2008). The Drina Corps units, the Bratunac Brigade Battalion and elements of 2nd Romanija Brigade as well as of the Birač Brigade were also deployed around Žepa. *Ibid.*, T. 23860 (23 July 2008).

<sup>2485</sup> Marinko Jevđević, T. 23868 (23 July 2008). As to the location of UKRCoy Checkpoint 1, see Ex. P02799, “Rogatica Brigade signed by Zdravko Tolimir, 14 July 1995”, p. 1; Ex. PIC00082, “Map of Žepa and surrounding area (Brezova Ravan and Bokšanica), marked by Hamdija Torlak”; Hamdija Torlak, T. 9741–9742 (30 Mar 2007).

<sup>2486</sup> Milomir Savčić, T. 15333 (13 Sept 2007).

<sup>2487</sup> Marinko Jevđević, T. 23859–23860 (23 July 2008) (testifying that they took Brezova Ravan later on the morning of 18 July 1995. On cross-examination by the Prosecution, Jevđević reasserted that he took Brezova Ravan on that day, contrary to testimony of Savčić who said that it took approximately ten days—from 15 July until 25 July—to take the location. *Ibid.*, T. 23868 (23 Jul 2008); Milomir Savčić, T. 15280 (12 Sept 2007), T. 15333 (13 Sept 2007) (testifying that on 15 July 1995, his unit captured the Gusinac area and from that day to 25 July 1995, there was fierce combat to capture the feature of Brezova Ravan, which was eventually captured either on 24 or 25 July 1995); Meho Džebo, T. 9650 (29 Mar 2007) (testifying that Brezova Ravan fell into the hands of the Bosnian Serbs a day or two before the Bosnian Muslim population were evacuated); Ex. 1D00019, “ABiH General Staff Report to the ABiH Commander, 23 February 1996”, p. 5 (noting that on 23 July 1995, the VRS took the Brezova Ravan feature). From Vratar, Marinko Jevđević saw large numbers of Bosnian Muslim civilians coming from the surrounding villages to Žepa. Marinko Jevđević, T. 23861–23863 (23 July 2008).

<sup>2488</sup> On 19 July 1995, the 1st Battalion led by Blagojević carried out combat activities in the wider area of Žepa. Ex. 4DP00263, “Bratunac Brigade Daily Combat Report signed by Vidoje Blagojević, 19 July 1995”. *See also* Ex. 4D00592, “Bratunac Brigade Report signed by Dragomir Eskić, 19 July 1995”, p. 1.

<sup>2489</sup> Marinko Jevđević, T. 23860 (23 July 2008). *See also* Hamdija Torlak, T. 9798 (2 Apr 2007) (testifying that on 19 July 1995, the fighting stopped and Mladić asked for a negotiation with the Bosnian Muslims of Žepa); Ex. 5D01439, “Video Excerpt and Transcript of Meeting in Bokšanica”, p. 5 (in discussing the transportation of the Bosnian Muslims in Žepa on 19 July 1995, Mladić said that he had halted operations).

<sup>2490</sup> Rupert Smith, T. 17534 (6 Nov 2007); Ex. P02943, “Code Cable - Meeting between Smith and Mladić, 19 July 95 - from Smith to HQ UNPROFOR Zagreb, 19 July 1995”, p. 2. On 15 July 1995, Smith met with Milošević and Mladić in Belgrade. An UNPROFOR report describes that an informal agreement on a number of points was reached, which would be confirmed at a meeting between Smith and Mladić scheduled for 19 July and this should be kept confidential due to “the highly sensitive nature of the presence of Mladić at the meeting”. Ex. P02942, “Outgoing Code Cable - Meeting in Belgrade between UNPROFOR, Milošević, Mladić and Smith on 15 July 1995; Meeting between Gvero and UNHCR at Jahorina Hotel on 16 July 1995 - sent from UNPROFOR HQ Zagreb to Annan”, pp. 1–3.

<sup>2491</sup> *See supra*, para. 104.

<sup>2492</sup> Rupert Smith, T. 17537 (6 Nov 2007); Ex. P02943, “Code Cable - Meeting between Smith and Mladić, 19 July 95 - from Smith to HQ UNPROFOR Zagreb, 19 July 1995”, p. 2.

Mladić had a “clear intent” to sign an agreement on these issues;<sup>2493</sup> an agreement was reached at the end of the meeting.<sup>2494</sup> Mladić told Smith that Žepa had effectively fallen at about 1:30 p.m. on that day,<sup>2495</sup> but that was not actually the case, although the town was encircled by the VRS.<sup>2496</sup> Mladić also informed Smith that he had arranged a meeting with the Bosnian Muslim representatives of Žepa and Dudnik from UKRCoy to arrange the “evacuation of refugees” from the Žepa enclave.<sup>2497</sup>

688. The BiH political leadership in Sarajevo was in contact with the ABiH and the Žepa War Presidency regarding the negotiations on the transportation of the Bosnian Muslim population in Žepa.<sup>2498</sup> In a letter dated 18 July 1995 to the ABiH Commander Rasim Delić, the BiH President Izetbegović stated that Smith had said UNPROFOR could evacuate women, children and the elderly.<sup>2499</sup> Izetbegović further noted that a brigade or battalion of soldiers could be sent to Žepa in order to continue the combat, saying that between 500 and 1,000 volunteers could be found.<sup>2500</sup> In another letter dated 19 July 1995 to the President of Žepa War Presidency Mehmed Hajrić, Izetbegović proposed a plan to move out as many civilians as possible while the troops continue to

<sup>2493</sup> Ex. P02943, “Code Cable - Meeting between Smith and Mladić, 19 July 95 - from Smith to HQ UNPROFOR Zagreb, 19 July 1995”, p. 2. The agreement reached between the parties concerning Žepa includes: “4. A positive answer will be given to the request for logistic convoys assigned to UNPROFOR in Potočari and to Žepa, Goražde and Sarajevo. The convoy routes for the present will be: a. To Žepa – from Belgrade through Visegrad and Rogatica. [...] 6. A positive answer will be given to the UNHCR request for humanitarian aid convoys, according to assessed needs, to Goražde and Sarajevo, as well as to Srebrenica and Žepa.” *Ibid.*, p. 5.

<sup>2494</sup> *Ibid.*, pp. 5–6; Ex. P02265, “Agreement between Smith and Mladić, 19 July 1995”, pp. 1–2 (same as pp. 5–6 of Ex. P02943).

<sup>2495</sup> Rupert Smith, T. 17536 (6 Nov 2007); Ex. P02943, “Code Cable - Meeting between Smith and Mladić, 19 July 95 - from Smith to HQ UNPROFOR Zagreb, 19 July 1995”, p. 4. *See also* Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 2.

<sup>2496</sup> Rupert Smith, T. 17537–17538 (6 Nov 2007). An UNPROFOR report also notes that the BiH leadership in Sarajevo also denied that Žepa had surrendered. Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 2. Smith testified that he did not trust Mladić’s remark because the Bosnian Muslim side was not present at the meeting and that “it struck us that the besiegers had, as it were, got one group of people, the civilians, to start to negotiate with before they’d actually dealt with the military.” Rupert Smith, T. 17538 (6 Nov 2007).

<sup>2497</sup> Ex. P02943, “Code Cable - Meeting between Smith and Mladić, 19 July 95 - from Smith to HQ UNPROFOR Zagreb, 19 July 1995”, p. 4; Rupert Smith, T. 17537 (6 Nov 2007). Commander Palić received a request to meet with Mladić through UKRCoy’s radio at OP-2 in Bokšanica. Hamdija Torlak, T. 9728–9729 (30 Mar 2007). *See also* Edward Joseph, T. 14155 (22 Aug 2007). UNPROFOR reported on 20 July 1995 that this meeting was held at around 4 p.m. and was arranged to make the first steps towards the evacuation of the Bosnian Muslim civilian population in Žepa “as a result of the VRS capture of Žepa.” Ex. P02944, “UNPROFOR Code Cable, 20 July 1995”, p. 1. *See also* Ex. 6D00103, “ABiH Žepa Brigade Report, 20 July 1995”, p. 1.

<sup>2498</sup> Meanwhile, on 17 July 1995, Izetbegović tried to negotiate with the VRS through Smith on the conditions for the safe evacuation of the civilian population of Žepa. Mladić demanded a meeting with the BiH together with Smith but the BiH Government eventually declined to send any representatives with Smith for the reason that a meeting should take place on UN controlled or neutral territory. Mladić sent a new proposal to Smith that “there would have to be an unconditional surrender [by the ABiH in Žepa] and then discussions could take place to sort out the mechanics of the evacuation of civilians and any other details.” The BiH Government refused Mladić’s conditions. Ex. P03058, “UNPROFOR Notes on Negotiations with Bosnian Serbs on Movement of Civilians from Žepa, 17 July 1995”. In his letter of 17 July 1995, the RBiH Foreign Minister approached the UN Security Council with the request for the civilian population to be evacuated from Žepa. Ex. 5D01350, “Statement of the President of the UN Security Council, 20 July 1995”.

<sup>2499</sup> Ex. 6D00107, “Letter from Izetbegović to Delić, 18 July 1995”.

<sup>2500</sup> *Ibid.*

resist,<sup>2501</sup> or a joint withdrawal (of the Bosnian Muslim civilians and the soldiers).<sup>2502</sup> Torlak testified that he was unaware of the plans of the BiH political leadership in Sarajevo, that the situation on the ground was quite different from the way it was interpreted in Sarajevo and that he and the Bosnian Muslims negotiating in Žepa had to make their own decisions.<sup>2503</sup>

#### 4. The Second Round of Negotiations (19 July 1995)

689. At 4 p.m. on 19 July 1995, Mladić, Tolimir and Kušić met at UKRCoy Checkpoint 2 in Bokšanica with Torlak and Benjamin Kulovac, another member of the Žepa War Presidency, who were accompanied by Dudnik from UKRCoy.<sup>2504</sup> Torlak thought that, under the circumstances, “the best way to resolve the question of Žepa [was] for the entire population to leave the Žepa zone”.<sup>2505</sup> Mladić said that the VRS “would enable, according to the free choice of the population, their safe passage through [VRS] held territory”<sup>2506</sup> and would provide buses and trucks for the transportation with UNPROFOR escort.<sup>2507</sup> He then specified that the first convoy with the wounded and sick would leave for Kladanj at 10 a.m. on 20 July; and the convoy with the women and children would leave at 2 p.m. on the same day.<sup>2508</sup> When asked by Mladić how many people wanted to remain in Žepa, the Bosnian Muslim representatives replied that at least ten families wished to stay.<sup>2509</sup>

<sup>2501</sup> Ex. 6D00036, “Letter from Izetbegović to Hajrić, 19 July 1995” (noting that “We will do all to help you (1) by supplying material and technical equipment, (2) volunteers and (3) offensive action in your direction (I believe this is starting today). If we do not succeed in this, you try to push on those roads [...] but now without the burden of women and children who would in the meantime be taken out.”).

<sup>2502</sup> Ex. 6D00036, “Letter from Izetbegović to Hajrić, 19 July 1995” (Izetbegović asked Hajrić “which plan to push”). On the same day, at 2:30 p.m., Hajrić wrote a letter to Izetbegović, in which he raised some questions (“(1) What was the Security Council discussing, and can the UN compel the Chetniks to allow the entire population to be evacuated, perhaps by helicopter? (2) Has a request to ensure such an evacuation been offered to the Security Council? (3) Do you have any Chetnik prisoners who could be used as a kind of ransom?”) and noted that “I do not know what to say about your plan. In any event, it is better to save someone than no one. But keep insisting that the evacuation of the whole population be ensured. We are aware of the situation. We have no choice, we must fight to the last.”. Ex. 5D01366, “Letter from Hajrić to Izetbegović, 19 July 1995”. Kosovac, a military expert, testified that this document indicated that “there was antagonism between the local authorities and the authorities of the Republic of [BiH]. [...] The state authorities always insisted that the local population should remain in Žepa, and in this way they would achieve their goals, whereas the local authorities always insisted that they leave Žepa.” Slobodan Kosovac, T. 30173–30174 (15 Jan 2009).

<sup>2503</sup> Hamdija Torlak, T. 9797–9799 (2 Apr 2007).

<sup>2504</sup> *Ibid.*, T. 9728–9729 (30 Mar 2007); Ex. P02943, “Code Cable - Meeting between Smith and Mladić, 19 July 95 - from Smith to HQ UNPROFOR Zagreb, 19 July 1995”, p. 4. Torlak testified that the meeting was filmed. Hamdija Torlak, T. 9753–9758 (30 Mar 2007); Ex. P02489 (confidential); Ex. 5D01439, “Video Excerpt and Transcript of Meeting at Bokšanica on 19 July 1995”.

<sup>2505</sup> Ex. 5D01439, “Video Excerpt and Transcript of Meeting in Bokšanica”, p. 1.

<sup>2506</sup> *Ibid.*; Ex. 6D00103, “ABiH Žepa Brigade Report, 19 July 1995”, pp. 1–2.

<sup>2507</sup> Ex. 5D01439, “Video Excerpt and Transcript of Meeting in Bokšanica”, p. 2; Ex. 6D00103, “ABiH Žepa Brigade Report, 19 July 1995”, pp. 1–2. *See also* Hamdija Torlak, T. 9730 (30 Mar 2007), testifying that Mladić stipulated that the wounded, women, children and the elderly would be transported to Olovo or Kladanj and buses would be provided the following day; Ex. P02944, “UNPROFOR Code Cable, 20 July 1995”, p. 1.

<sup>2508</sup> Ex. 6D00103, “ABiH Žepa Brigade Report, 19 July 1995”, p. 2. *See also* Ex. P02944, “UNPROFOR Code Cable, 20 July 1995”, p. 1 (reporting that the elderly would also be evacuated with women and children using 50 buses and that three UKRCoy trucks would evacuate the wounded to Sarajevo).

<sup>2509</sup> Ex. P02490 (confidential).

690. Mladić also demanded that the Bosnian Muslim men between the ages of 18 and 55 lay down their weapons and go to the UKRCoy base in Žepa, where they would be taken to a detention centre in order to be exchanged for captured VRS soldiers.<sup>2510</sup> The Bosnian Muslim representatives from Žepa agreed to Mladić's demands, on condition that the ABiH soldiers in the Žepa enclave accepted.<sup>2511</sup> Torlak testified that there was no choice but to accept Mladić's demands and an outstanding, unresolved, issue at the time was the fate of the Bosnian Muslim men in Žepa,<sup>2512</sup> who did not want to surrender due to fear for their lives because of what happened in Srebrenica.<sup>2513</sup>

691. After the meeting, the Bosnian Muslim representatives conveyed Mladić's demands to the BiH political leadership in Sarajevo and asked them to find a way to ensure that the Bosnian Muslim men would be exchanged with the captured VRS soldiers.<sup>2514</sup> Later that evening, the Žepa War Presidency and the ABiH Žepa Brigade sent a request to the BiH political leadership in Sarajevo and Delić. The request was to provide 400 VRS soldiers for exchange<sup>2515</sup> and to arrange the helicopter transport of the Bosnian Muslim population, out of Žepa, excluding the wounded, sick and elderly.<sup>2516</sup>

692. At 6:15 p.m. on 19 July 1995, Delić issued an order to the 2nd Corps Command and the ABiH Žepa Brigade to organise defence and to continue "decisive action along with carrying out surprise attacks [...] and setting up ambushes".<sup>2517</sup> Torlak testified that he was unaware of this order as he was at the negotiations and there was a general sense that ABiH Žepa Brigade members would not surrender as they feared for their lives.<sup>2518</sup>

693. Late in the evening of 19 July 1995, Smith received a letter from Mladić, notifying him that Žepa had "surrendered" and that the Bosnian Muslim representatives had "accepted the surrender conditions."<sup>2519</sup> Mladić further asked Smith to send 50 trucks to transport the Bosnian Muslim

<sup>2510</sup> Hamdija Torlak, T. 9730–9731 (30 Mar 2007) (testifying that "the military-aged men from Žepa were not supposed to go to UNPROFOR and surrender there, but they were supposed to be taken out of the enclave by helicopter and then exchanged for the Serb soldiers who had been captured."), T. 9801–9802 (2 Apr 2007). See also Ex. P02944, "UNPROFOR Code Cable, 20 July 1995", p. 1; Ex. 6D00103, "ABiH Žepa Brigade Report, 19 July 1995," p. 2.

<sup>2511</sup> Ex. P02944, "UNPROFOR Code Cable to Secretary General, 20 July 1995", p. 1.

<sup>2512</sup> Hamdija Torlak, T. 9730–9731 (30 Mar 2007).

<sup>2513</sup> *Ibid.*, T. 9799, 9854 (2 Apr 2007). See also *ibid.*, T. 9862–9863 (3 Apr 2007).

<sup>2514</sup> *Ibid.*, T. 9731 (30 Mar 2007), T. 9802–9803 (2 Apr 2007).

<sup>2515</sup> Ex. 6D00102, "Transcript of conversation between Amor Mašović and 'Žepa', 20 July 1995", p. 1.

<sup>2516</sup> Ex. 6D00103, "ABiH Žepa Brigade Report, 19 July 1995", p. 2 (also noting that this arrangement had to be made with the VRS by 6 a.m. on 20 July 1995 and that "[t]he fate of 7,000 people from Žepa, including 2,000 men fit for military service, is at stake.").

<sup>2517</sup> Ex. 5D00270, "ABiH General Staff Order, signed by Rasim Delić, 19 July 1995".

<sup>2518</sup> Hamdija Torlak, T. 9853–9854 (2 Apr 2007).

<sup>2519</sup> Ex. P02944, "UNPROFOR Code Cable, 20 July 1995", p. 3. See also Rupert Smith, T. 17537 (6 Nov 2007) (testifying that he must have seen the letter on the morning of 20 July).

population and five fuel trucks for UKRCoy.<sup>2520</sup> The Main Staff was preparing to secure the necessary vehicles and taking measures to control the looting and seizure of war booty from the Žepa enclave.<sup>2521</sup> Smith testified that at the time, Žepa had not yet surrendered, and that “the whole arrangement was conditional” upon the ABiH agreeing to it.<sup>2522</sup>

694. At 2 p.m. on 20 July, upon Mladić’s request, a meeting was held at Sarajevo Airport between Lieutenant Colonel Indić, representing the VRS, and Amor Mašović, the President of the State Commission for the Exchange of Prisoners of War for the Bosnian Muslims, representing the BiH Government.<sup>2523</sup> Both sides agreed on an all-for-all prisoner exchange,<sup>2524</sup> namely 1,500 to 2,000 Bosnian Muslim able-bodied men in Žepa in exchange for VRS prisoners of war held by BiH.<sup>2525</sup> However, the agreement was not signed because of a dispute over the lists of Bosnian Muslim prisoners taken from Srebrenica.<sup>2526</sup> In the meantime, the VRS Main Staff authorised

<sup>2520</sup> Ex. P02944, “UNPROFOR Code Cable, 20 July 1995”, p. 3 (Mladić further stated, “Injured people will be transported by UNPROFOR vehicles to Sarajevo at 1000 hours. The rest of them will be transported to Kladanj, starting from 1400 hours in accordance with the prepared schedule.”).

<sup>2521</sup> Exs. P03065, 5D01113, “VRS Main Staff Logistics Sector Order on the Transport of Civilians from Žepa, 19 July 1995”, pp. 1–2 (the Logistics sector of the VRS Main Staff issued an order, which could have signed by Ratko Mijanović, to its Logistic Base Command, Drina Corps Command, the assistant commander for Logistics, and the chief of the Department for Operations and Logistics for “the transport of people and the pull-out of war booty from Žepa”). Mijanović testified that he probably signed and was responsible for this order, which provides: “1. The Chief of the Construction Services of the Main Staff of the VRS shall secure that the following is in Sjeversko village in Bokšanica on 20 July 1995: one bus for the transportation of the sick and wounded; at 1000 hours; 50 buses for the transport of people (women and children); at 1300 hours. [...] 2. The Chief of the Medical Service of the Main Staff of the VRS shall secure a medical team with an ambulance and all necessary medications and medical supplies. The team shall report to Sjeversko village at 1000 hours on 20 July 1995. 3. The 27th PoB [anti-armour combat] Command shall set up a team with the necessary number of vehicles to collect and pull out war booty. Assets and animals (cattle) from war booty shall be appropriately stored, entered into the material records and treated as material assets obtained through regular supply line. A report shall be submitted to the Main Staff of the VRS. 4. Colonel Milisav Jovanović shall be in charge of the collection and pull-out of war booty on behalf of the Main Staff of the VRS. If need be, he shall secure a police unit through the Chief of the Operations and Training Administration of the Main Staff of the VRS. 5. The Drina Corps Command shall order unit commands in the Žepa sector to provide all necessary assistance to the team charged with pulling out war booty.” Mijanović testified that he did not know of any plan for transporting the Bosnian Muslim population out of Žepa on 19 July. Ratko Mijanović, T. 28938–28942 (27 Nov 2008), T. 28984–28988 (28 Nov 2008). *See also* Ex. P01271d, “Intercept 19 July 1995, at 21:16 hours” (participants were talking about the organisation of vehicles that were to be sent to the Sjeversko sector); Ex. P03015, “Drina Corps Command document Requesting the Engagement of VRS Main Staff Military Police Battalion, type-signed by Krstić, 20 July 1995”.

<sup>2522</sup> Rupert Smith, T. 17538 (6 Nov 2007).

<sup>2523</sup> Ex. P02499, “UNPROFOR Sarajevo Sector Memo, 20 July 1995”, p. 2; Ex. P02871, “Sarajevo Sector Memo on Žepa Negotiations, 20 July 1995”, p. 1; Ex. 6D00102, “Transcript of conversation between Amor Mašović and ‘Žepa’, 20 July 1995”, p. 1; Hamdija Torlak, T. 9803 (2 Apr 2007).

<sup>2524</sup> *Ibid.*

<sup>2525</sup> *See* Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J Baxter, 26 July 1995”, p. 3.

<sup>2526</sup> Ex. P02499, “UNPROFOR Sarajevo Sector Memo, 20 July 1995”, p. 2; Ex. P02871, “Sarajevo Sector Memo on Žepa Negotiations, 20 July 1995”, p. 1; Ex. 6D00102, “Transcript of conversation between Amor Mašović and ‘Žepa’, 20 July 1995”, p. 1. The agreement included the release of all the ABiH soldiers detained in Bosnian Serb prisons and camps including some new captives from Srebrenica, and Bosnian Muslim civilians captured therein, and the evacuation of Bosnian Muslim population who wished to leave Žepa. Ex. 6D00102, “Transcript of conversation between Amor Mašović and ‘Žepa’, 20 July 1995”, p. 2. UNPROFOR reported that “[t]he Serbs worked from the assumption that [evacuations] would include everybody, including soldiers. The Bosnians worked from the assumption, put forward by President Izetbegović, that it should include only ‘vulnerable’ members of the population. These negotiations continued without any real progress through the weekend.” Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 2. UNPROFOR reported that at about the same time,

movement of an ICRC team in light of the need for “[u]rgent medical evacuation of the wounded and sick from Žepa” as well as movement of an UNPROFOR team on Sarajevo-Rogatica-Žepa route.<sup>2527</sup>

695. On the same day, UNPROFOR Civil Affairs officers Joseph and Bezrouchenko<sup>2528</sup> met Mladić and Tolimir on the perimeter of UKRCoy Checkpoint 2 in Bokšanica.<sup>2529</sup> Mladić reiterated his conditions for the “evacuation” of the Žepa enclave<sup>2530</sup> and stated that VRS forces would resume their attack against the enclave at 7 p.m. on that day if the Bosnian Muslims failed to agree to his conditions.<sup>2531</sup> Loudspeakers were broadcasting a message in the background that there was no chance for the Bosnian Muslim population and that the area was “controlled by General Mladić”.<sup>2532</sup> Torlak testified that “these [delay] tactics and failure to create the conditions for the evacuation as requested by General Mladić”, were considered by the VRS as a refusal of its demand.<sup>2533</sup>

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UNPROFOR representatives with international agencies made contact with the Bosnian Muslim representatives from Žepa, who agreed to the evacuation, whereas the ABiH Commander in Žepa, presumably Avdo Palić, contended that any evacuation would not take place unless he received direct orders to that effect from the BiH leadership in Sarajevo. Ex. P02871, “UNPROFOR Sarajevo Sector Memo on Žepa Negotiations, 20 July 1995”, p. 1.

<sup>2527</sup> Ex. 5D01114, “Drina Corps Notification re Approved Movement ICRC for Medical Evacuation to Romanija Brigade and Rogatica Brigade, signed by Krstić, 20 July 1995”; Ex. 5D01115, “Drina Corps notification re UNPROFOR convoy sent to the Romanija Brigade and the Rogatica Brigade, signed by Krstić, 20 July 1995”.

<sup>2528</sup> Joseph testified that Mladić requested the presence of the representatives of UNPROFOR Civil Affairs and that representatives of UNHCR and ICRC were also present. Edward Joseph, T. 14154 (22 Aug 2007), T. 14160 (23 Aug 2007). *See also* Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 2.

<sup>2529</sup> Edward Joseph, T. 14154–14155 (22 Aug 2007), T. 14160 (23 Aug 2007); Ex. P02871, “UNPROFOR Memo on Žepa Negotiations, 20 July 1995”, p. 1; Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 2. Joseph testified that this meeting was filmed, which gave an impression that it was held for propaganda purposes. Edward Joseph, T. 14161 (23 Aug 2007).

<sup>2530</sup> Ex. P02871, “UNPROFOR Memo on Žepa Negotiations, 20 July 1995”, pp. 1–2.

<sup>2531</sup> Edward Joseph, T. 14165–14166 (23 Aug 2007); Ex. P02871, “UNPROFOR Memo on Žepa Negotiations, 20 July 1995”, p. 2. In a phone conversation between Amor Mašović, the President of the State Commission for the Exchange of Prisoners of War and an unknown person in Žepa recorded at around 10 p.m. on 20 July, Mašović said that after having learnt about the ultimatum at 7 p.m., he made an offer to Lieutenant-Colonel Indić to inform Mladić that the Bosnian Muslims were ready to implement the first phase of the agreement from 21 July and that he did not get a reply from the Bosnian Serbs at that time. Ex. 6D00102, “Transcript of conversation between Amor Mašović and ‘Žepa’, 20 July 1995”, p. 1.

<sup>2532</sup> Edward Joseph, T. 14162 (23 Aug 2007). *See also* Esma Palić, T. 6912, 6951–6952 (6 Feb 2007) (testifying that a few days after the fall of Srebrenica from her house she heard a loudspeaker from the north-west—an area called Borovačke Sijene where Serb army positions were located—: “[t]he people of Žepa, this is Ratko Mladić speaking to you. You cannot stay in Žepa. Take white flags and move to Brezova Ravan where buses are awaiting [...] to take you to the territory controlled by Alija Izetbegović. Don’t listen to crazy Avdo. You are his hostages. He will take you to your deaths.”). Joseph also testified that during the meeting, he heard cannon and munitions firing from the VRS positions nearby and directed downwards at Žepa and that upon the onset of munitions fire Mladić suddenly became very serious with his demeanour changing from friendly to dismissive. *Ibid.*, T. 14162–14166 (23 Aug 2007). *See also* Ex. P02871, “UNPROFOR Memo on Žepa Negotiations, 20 July 1995”, p. 2.

<sup>2533</sup> Hamdija Torlak, T. 9731 (30 Mar 2007).

## 5. Resumed Fighting (20–24 July 1995)

696. Subsequently, the VRS intensified its attack against Žepa, targeting defence lines, buildings and houses, as well as UKRCoy.<sup>2534</sup> The ABiH also fired at UKRCoy positions.<sup>2535</sup> Around this period, **Miletić** issued an urgent report to the Main Staff's subordinate corps and Karadžić, indicating that part of the Drina Corps forces were carrying out combat tasks around the Žepa enclave.<sup>2536</sup>

697. At 11 a.m. on 21 July 1995, a meeting was held between the prisoner exchange commissions of each party, during which the Bosnian Serbs reiterated Mladić's demand that there could be no progress until the "Bosnian Muslim military commander" accepted the capitulation agreement reached two days earlier.<sup>2537</sup> An UNPROFOR report described the situation in Žepa as follows:

<sup>2534</sup> Hamdija Torlak, T. 9731–9732 (30 Mar 2007) (testifying that the UKRCoy headquarters was attacked); Ex. P02871, "UNPROFOR Memo on Žepa Negotiations, 20 July 1995", p. 2 (noting that the VRS resumed heavy bombardment of Žepa, and the UN convoy that had been sent to assist in transportation of the wounded was sent back to Sarajevo). *See also* Ex. 6D00133, "UNPROFOR Report, 20 July 1995" (noting that fighting between the VRS and the ABiH began that day); Ex. P02874, "UNPROFOR Sarajevo Sector Memo on Draft Demilitarization Agreement, 19 July 1995" (noting that the VRS continued to bombard Žepa and its civilian population with heavy weapons and that the VRS also targeted UKRCoy soldiers). Trivić testified that his unit was ordered to cease hostilities on 19 July, but soon after he was told that combat should resume as of the next day. Mirko Trivić, T. 11868 (21 May 2007). Marinko Jevđević testified that after the ceasefire on 19 July, his troops did not open fire and they were not fired upon, but there was fighting in the area around Žepa mountain and Zlovrh where the ABiH was trying to break through the front lines. Marinko Jevđević, T. 23867–23868 (23 Jul 2008). On 19 July, Krstić reported: "Pursuant to the order by the Commander of the Main Staff of the Army of [RS], I have decided to observe the cease-fire and the agreed manner of evacuating Muslims from Žepa. In the event that the Muslims violate the agreed procedure, commence combat operations, enter Žepa and smash the Muslim armed formations". Ex. 5D01112, "Drina Corps Interim Combat Report signed by Krstić, 19 July 1995". *See also* Ex. 5D01350, "Statement of the President of the UN Security Council, 20 July 1995" (condemning "in the strongest possible terms the offensive by the Bosnian Serb forces against the safe area.").

<sup>2535</sup> Ex. 6D00091, "UNPROFOR Situation Report, 20 July 1995" at 8:45 p.m. reads: "3 mortar rounds directly targeted the barracks of UKRCoy. Numerous explosions registered in the UKRCoy enclose. Also UKRCoy camp has been hit with SA and HMG. Origin of fire is ABiH"; Ex. 6D00092, "UNPROFOR Situation Report, 20 July 1995" at 8:55 p.m. reads: "ABiH is firing at UKRCoy camp with HMGs. Bosnian soldiers had thrown several grenades into the UKRCoy enclose. Ukrainian personnel took its defensive positions but didn't respond yet. Situation is extremely critical". *See also* Ex. P02871, "Sarajevo Sector Memo on Žepa Negotiations, 20 July 1995", p. 2; Ex. P6D00165 (confidential), p. 139. Torlak was sceptical about the information contained in Ex. 6D00091 and stated that at the time the ABiH in Žepa did not have mortar rounds, but mostly infantry weapons and a couple of anti-armour weapons, and that he saw the UNPROFOR compound being hit by the Bosnian Serbs when he was there. Hamdija Torlak, T. 9805–9806, 9821 (2 Apr 2007). According to UNPROFOR, the BiH Prime Minister Haris Silajdžić informed UNPROFOR that he had spoken to Avdo Palić, ordering him to stop firing at the UKRCoy base in Žepa. Silajdžić also said that most of the shooting came from a VRS tank bombarding the Žepa town. Ex. 5D00413, "Sarajevo Sector Memo on Žepa negotiations, 21 July 1995", p. 1. In light of evidence presented, the Trial Chamber finds that the ABiH fired at UKRCoy positions.

<sup>2536</sup> Ex. P03020, "VRS Main Staff Report by Radivoje Miletić, 21 July 1995", p. 4. On 20 July 1995 at 10:30 a.m., Krstić sent a request to **Miletić** personally in the Main Staff. Krstić requested that the Military Police Battalion of the Protection Regiment be deployed in order to prevent the looting of materials in Žepa after it was liberated by the VRS. Ex. P03015, "Drina Corps Command document requesting the engagement of VRS Main Staff Military Police Battalion, type-signed by Krstić, 20 July 1995".

<sup>2537</sup> Ex. 5D00413, "Sarajevo Sector Memo on Žepa negotiations, 21 July 1995", p. 2. On the afternoon of the same day, a meeting at Sarajevo airport on the exchange of prisoners and the evacuation of Žepa failed. Ex. P03251, "Collection of memoranda from David Harland, 20 July 1995–3 August 1995", tab 4, p. 2. The report states: "As



It seems that there is a stand-off on the Žepa issue for the moment. The Serbs want a complete capitulation of the Bosnian forces in Žepa, and are willing to give very little in return. They will not negotiate any deal with the Bosnian commander in the [Žepa] pocket, and do not want UNPROFOR or anyone else to act as intermediaries. The Bosnian leadership in Sarajevo does not feel inclined to sanctify a Serb take-over with an agreement, and want their people to fight on. Caught in the middle are the people of Žepa, who seem desperate to make a deal – but not yet so desperate that they will defy Sarajevo. It is unlikely that there will be any evacuation of Žepa in the next day or two. Most likely, the Serbs will now intensify their military pressure on the pocket in an effort to force the local military commander to accept Serb terms. This might take several days, given that they seem reluctant to commit their infantry until the Bosnians are broken by bombardment.<sup>2538</sup>

698. The level of anxiety among Bosnian Muslims in Žepa was extremely high at the time; Palić threatened that should UN representatives fail to arrive by 8 a.m. on 21 July 1995,<sup>2539</sup> the ABiH would kill UKRCoy soldiers.<sup>2540</sup> The frustration was also visible on the VRS side. In a report to the VRS and personally to **Miletić**, Tolimir suggested that destroying the Bosnian Muslims with chemical weapons or aerosol grenades and bombs would force them to surrender quickly.<sup>2541</sup> Tolimir further noted that “[w]e believe that we could force Muslims to surrender sooner if we would destroy groups of Muslims refugees fleeing from the direction of Stublić, Radava and Brloška Planja.”<sup>2542</sup>

699. On 22 July 1995, UNPROFOR proposed to the warring sides that they agree to a total demilitarisation of the Žepa enclave.<sup>2543</sup> At a meeting held at Sarajevo Airport, on the same day, the Bosnian Muslims wanted to discuss the modalities of an evacuation of the wounded and others from

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the meeting ended, the Serbs confirmed that there could be no evacuation from Žepa, even for wounded, until the all-for-all prisoner agreement was signed, and until the Bosnian military representatives in the Žepa pocket had accepted the capitulation agreement signed by General Mladić and Žepa civilian leadership two days ago.”

<sup>2538</sup> Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 4, p. 3.

<sup>2539</sup> Ex. 6D00087, “UKRBat Situation Report, 20 July 1995”.

<sup>2540</sup> *Ibid.* See also Ex. P6D00165 (confidential), p. 140. An UNPROFOR report dated 23 July 1995 also indicates that on 21 July the ABiH in Žepa threatened to kill UKRCoy soldiers in the main base if UNPROFOR did not arrange a meeting between the local Bosnian Muslim commander and the Bosnian Serbs. It further notes that although intervention with Prime Minister Silajdžić calmed down the situation, the relationship between UKRCoy soldiers and the Bosnian Muslim locals remained very tense and “could deteriorate at any time.” Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 2. Torlak testified that he was unaware of ABiH attack against UKRCoy and Avdo Palić’s threat. Hamdija Torlak, T. 9806 (2 Apr 2007). However, another UNPROFOR report notes that responding to UNPROFOR’s demand, the BiH Prime Minister Silajdžić said: “[T]here was a disinformation campaign going on, that there were no threats against the Ukrainians in Žepa”. Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 4, p. 2.

<sup>2541</sup> Ex. P02794, “Rogatica Brigade Report type-signed Zdravko Tolimir, 21 July 1995”.

<sup>2542</sup> Ex. P02794, “Rogatica Brigade Report type-signed Zdravko Tolimir, 21 July 1995”. Savčić testified that at that time the ABiH Žepa Brigade was between the Bosnian Muslim population and the VRS forces and thus the VRS was unable to reach the fleeing Bosnian Muslim civilians. Milomir Savčić, T. 15371–15373 (13 Sept 2007).

<sup>2543</sup> Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 3 (noting that “[t]his arrangement would save the [Bosnian Muslims] a humanitarian disaster, as occurred in Srebrenica. It would also leave them with a piece of territory in eastern Bosnia, perhaps as a basis for future territorial claims.”). See also Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 5, p. 2. According to an UNPROFOR report, this demilitarisation proposal was first made on 19 July. See Ex. P02874, “Sarajevo Sector Memo on Draft Demilitarisation Agreement, 19 July 1995”. UNPROFOR reported on 21 July 1995 that there was a meeting between UNPROFOR Civil Affairs officers and Tolimir, who indicated some interest in a radical demilitarisation proposal. Ex. 5D00413, “Sarajevo Sector Memo on Žepa negotiations, 21 July 1995”, p. 2. This proposal was eventually withdrawn. Edward Joseph, T. 14271 (24 Aug 2007) (testifying that there was a military situation that had quickly overtaken the possibility of a demilitarisation agreement”).

Žepa while the Bosnian Serbs “seemed to see the operation as being contingent on Bosnian acceptance of the capitulation agreement [reached] by the Bosnian civilian authorities in Žepa on 19 July.”<sup>2544</sup>

700. On 23 July 1995, another meeting was held between the Bosnian Muslim delegation headed by Mašović and the Bosnian Serb delegation headed by Dragan Bulajić at Sarajevo Airport.<sup>2545</sup> The Bosnian Serb delegation was informed of the position of the BiH political leadership in Sarajevo: there would be neither surrender nor total evacuation of the Žepa enclave; there should be an arrangement to allow for the limited evacuation of those who wish to withdraw; and there should be an all-for-all prisoner exchange to induce the Bosnian Serbs to accept the proposed evacuation.<sup>2546</sup> The Bosnian Serbs responded that a total evacuation could be avoided in exchange for demilitarisation and acceptance of “Serb rule”.<sup>2547</sup>

701. On the same day, fighting between the VRS and the ABiH intensified in the area of UKRCoy Checkpoint 1 at Brezova Ravan.<sup>2548</sup> The VRS established new lines that were close to the centre of Žepa; the ABiH could no longer defend the centre of Žepa.<sup>2549</sup> The ABiH ceased its organised defence.<sup>2550</sup> Through UNPROFOR, Mladić requested that the Bosnian Muslims of Žepa renew negotiations.<sup>2551</sup>

<sup>2544</sup> Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 5, p. 3.

<sup>2545</sup> Ex. 5D00416, “Sarajevo Sector Memo on Žepa negotiations, 23 July 1995”, p. 2. Dragan Buljajić was a representative of the RS Exchange Commission, which was a civilian authority. Ex. 6D00102, “Transcript of conversation between Amor Mašović and ‘Žepa’, 20 July 1995”, p. 1; Edward Joseph, T. 14270 (24 Aug 2007). Joseph testified that while negotiations were led in Sarajevo, very little was known about the fate of the men from Srebrenica. Edward Joseph, T. 14172–14173 (23 Aug 2007).

<sup>2546</sup> Ex. 5D00416, “UNPROFOR Sarajevo Sector Memo on Žepa negotiations, 23 July 1995”, p. 2. At 7:30 p.m. of the same day, Smith met with the BiH Minister Muratović, who said that they “would never allow the civilian population of Žepa to be transported out of the enclave in buses and trucks as [had] happened in Srebrenica, as segregation and more atrocities would follow.” Rupert Smith, T. 17540–17541 (6 Nov 2007); Ex. P02945, “UNPROFOR Report on Meetings between Smith and Sacirbey and Muratović, 23 July 1995”, p. 2. Muratović further stated: “[T]he Bosnian Government was ready for an all-for-all POW exchange in a package for the demilitarisation of Žepa, using the [UNPROFOR] Civil Affairs proposal as a base document. The declared interests of the Bosnian Government were firstly the evacuation of vulnerable people (the wounded and sick, the elderly, the women and children), and secondly, to stop the fighting in Žepa until such time as a peace accord is signed. Their condition is that the [VRS] allow all those who wish to leave the enclave to do so by helicopter and that the remainder are permitted to live within the demilitarised zone. [...] Muratović declared that he was ready to meet either Koljević or Krajišnik to discuss the demilitarisation of Žepa. He asked Gen Smith to contact the Bosnian Serbs to arrange this meeting and stated that he could be accompanied by a[n] ABiH representative if required. Gen Smith replied that he would arrange a meeting with Mladić to broker this proposal.” Ex. P02945, “UNPROFOR Report on Meetings between Smith and Sacirbey and Muratović, 23 July 1995”, pp. 2–3.

<sup>2547</sup> Ex. 5D00416, “UNPROFOR Sarajevo Sector Memo on Žepa negotiations, 23 July 1995”, p. 2.

<sup>2548</sup> Ex. 6D00134, “UNPROFOR Report, 23 July 1995”, p. 1.

<sup>2549</sup> Hamdija Torlak, T. 9732 (30 Mar 2007).

<sup>2550</sup> Milomir Savčić, T. 15280 (12 Sept 2007).

<sup>2551</sup> Hamdija Torlak, T. 9732 (30 Mar 2007). On the same day Colonel Baxter, Military Assistant to Smith, called **Gvero** to set up a meeting with Mladić to discuss Žepa. **Gvero** replied that he would convey the message to Mladić. Ex. P01320d, “Intercept, 23 July 1995 at 21:20 hours”.

## 6. The Third Round of Negotiations (24 July 1995)

702. On 24 July, the third meeting was held between the Bosnian Muslims of Žepa and the VRS at UKRCoy Checkpoint 2 in Bokšanica.<sup>2552</sup> Only Torlak represented the Bosnian Muslims, with Mladić and Tolimir representing the VRS.<sup>2553</sup> Mladić was angry, insisting that Torlak sign an agreement and that there was no alternative solution.<sup>2554</sup> Torlak testified that it was the goal of the Bosnian Muslims at the time to start evacuating the civilian population because it was impossible to defend Žepa.<sup>2555</sup>

703. Mladić showed Torlak a document indicating the terms of the transportation of the Bosnian Muslim population out of Žepa<sup>2556</sup> and the surrender of Bosnian Muslim men (“24 July 1995 Agreement”),<sup>2557</sup> which stipulated the following:

Para 1 There shall be an immediate cease-fire between the parties to the conflict.

Para 2 Avdo Palić shall immediately issue an order to his troops to withdraw from the defence lines and to move, together with the civilian population, into the centres of populated areas-villages; they shall not attempt any illegal crossings through the territory of “Republic of Srpska”.

Para 3 The civilian population and all the military-able population shall concentrate around UNPROFOR’s bases in Žepa. This will represent a signal for the [VRS] that the units under the command of Avdo Palić have accepted the Agreement and that they will not abuse it.

Para 4 All members of UNPROFOR in Žepa shall be immediately released and deblocked. All their weapons and equipment shall be returned to them so that they may mediate in the implementation of the agreement.

Para 5 Avdo Palić shall immediately proceed with the disarmament of his units. All weapons from [the] Žepa enclave shall be handed over to the representatives of the [VRS] in UNPROFOR’s base in Žepa.

Para 6 Avdo Palić shall mark mined areas both on the map and on the ground. De-mining of the above areas shall be done in the presence of a joint commission and UNPROFOR.

Para 7 The civilians from Žepa shall enjoy freedom of choice of place of living and residence in accordance with the Geneva conventions of 12 August 1949 and the additional protocols from 1977.

<sup>2552</sup> Hamdija Torlak, T. 9732–9733 (30 Mar 2007).

<sup>2553</sup> *Ibid.*, T. 9732–9733 (30 Mar 2007). See Esma Palić, T. 6918 (6 Feb 2007).

<sup>2554</sup> Hamdija Torlak, T. 9733 (30 Mar 2007). Smith testified that he understood that Torlak had found himself “between a rock and a hard place, and [...] the solution to this was to sign the document that was put in front of him.” Rupert Smith, T. 17549–17550 (6 Nov 2007).

<sup>2555</sup> Hamdija Torlak, T. 9733 (30 Mar 2007).

<sup>2556</sup> The Bosnian Muslim population included the wounded, the sick, women, children and men under 18 or over 55 years of age. Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 3; Hamdija Torlak, T. 9814 (2 Apr 2007), T. 9861 (3 Apr 2007). Furthermore, according to the agreement, injured men could leave Žepa freely. Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 3; Hamdija Torlak, T. 9814 (2 Apr 2007).

<sup>2557</sup> Hamdija Torlak, T. 9733 (30 Mar 2007), T. 9861 (3 Apr 2007). Torlak testified that the “military-aged” men included members of the ABiH Žepa Brigade as well as other men who were not members of the brigade. *Ibid.*, T. 9865 (3 Apr 2007).

Para 8 All military-able population of Žepa shall be registered and accommodated in the collective centre under the control of the [VRS] and the ICRC, and remain there until the all [*sic*] captured [VRS] members and the Serbs from prisons in the territories controlled by the army under the control of Rasim Delić are released.

Para 9 The ICRC shall transport all military-able individuals from the collective centres to the territory controlled by the army under the command of Rasim Delić simultaneously with the release and transport to the “RS” territory of all captured [VRS] members and the Serbs from prisons in the territories controlled by the army under the control of Rasim Delić.

Para 10 UNPROFOR, ICRC and other international humanitarian organisations, in cooperation with the [VRS], shall enable transport of the civilian population from Žepa to the territory controlled by the army of Rasim Delić, or to third countries of their choice, and in accordance with the Geneva conventions from 12 August 1949.

Para 11 The Agreement shall come into effect immediately after signing.<sup>2558</sup>

704. Torlak told Mladić that with regard to the surrender of the Bosnian Muslim able-bodied men, he was not authorised to sign anything on behalf of the ABiH.<sup>2559</sup> Mladić said that the “evacuation” would be organised and carried out in the centre of Žepa by Tolimir and Palić.<sup>2560</sup> There was no discussion about freedom of choice of place of living and residence.<sup>2561</sup> At 6:30 p.m., Torlak, Mladić and Kušić from the VRS and Dudnik from UKRCoy signed the 24 July 1995 Agreement.<sup>2562</sup> Its implementation depended on whether the ABiH soldiers would lay down their weapons and accept prisoner status, and whether the BiH political leadership in Sarajevo would accept the conditions for the prisoner exchange.<sup>2563</sup>

705. Following the 24 July 1995 Agreement, Tolimir issued a report to the Main Staff, which was personally addressed to “Miletić or Gvero”, noting that they had received the text of the agreement.<sup>2564</sup> Tolimir also reported that there was a risk that should UNPROFOR send a general

<sup>2558</sup> Exs. 5D01440, 6D00030, “Agreement on Disarmament of the Military-able Population in the enclave of Žepa, 24 July 1995”; Ex. P02800, “Rogatica Brigade Report, 24 July 1995”. See also Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 2; Exs P02872, 5D00417, “UNPROFOR Sarajevo Sector Memo regarding Žepa Negotiations, 25 July 1995”, pp. 1–2.

<sup>2559</sup> Hamdija Torlak, T. 9733 (30 Mar 2007), T. 9811, 9823 (2 Apr 2007).

<sup>2560</sup> *Ibid.*, T. 9736 (30 Mar 2007). Torlak was supposed to go to UKRCoy Checkpoint 2 and remain there for the entire period of time in order to guarantee for Tolimir’s security because VRS soldiers had not entered the centre of Žepa. *Ibid.*, T. 9736–9737, 9764–9765 (30 Mar 2007).

<sup>2561</sup> Hamdija Torlak, T. 9736 (30 Mar 2007) (testifying that “this was not discussed at all as things progressed. No one, in fact, even mentioned this possibility. But I do have to say that [...] the atmosphere there was quite specific among the people in Žepa. There was this fear. [...] [T]his paragraph was there. It was put on the paper, but at that time and at that place it didn’t really mean anything.”).

<sup>2562</sup> Hamdija Torlak, T. 9733 (30 Mar 2007), T. 9823 (2 Apr 2007); Ex. 6D00030, “Agreement on Disarmament in the Žepa Enclave, 24 July 1995”, p. 2. See also Ex. P02800, “Rogatica Brigade Report, 24 July 1995”.

<sup>2563</sup> Hamdija Torlak, T. 9814–9815 (2 Apr 2007); Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 1. Torlak confirmed that he told Smith that he had no details about the handing over of weapons and it should have been checked with Avdo Palić and that if the Bosnian Muslims in the Žepa enclave were more confident that the BiH government would agree to the prisoner exchange, the mood of fear would alter. Torlak testified that around 26 July 1995, it became clear that the BiH Government was not going to fulfil its part concerning the Bosnian Muslim men. Hamdija Torlak, T. 9814–9815 (2 Apr 2007).

<sup>2564</sup> Ex. P00191, “Document re Agreement on Disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”, pp. 1–2. See also Ex. P6D00183, “Statement of Rupert Smith, 13 July 2006”, p. 26.

instead of a colonel to Žepa, there might be a repeat of the spring of 1993: the VRS had agreed to allow UN presence in Srebrenica in order to facilitate the removal of the Bosnian Muslim civilians, which resulted in the creation of a permanent safe area.<sup>2565</sup>

706. Torlak conveyed the 24 July 1995 Agreement to the Žepa War Presidency and the BiH political leadership in Sarajevo.<sup>2566</sup> The Bosnian Muslim population were also informed that “those who wanted to could appear on the following day, on the 25th of July, in the centre of Žepa in order to be registered before entering buses and before being moved to territory outside of Žepa, to Kladanj or Olovo, to the places that had been agreed upon.”<sup>2567</sup> Due to shelling, some of the Bosnian Muslims of Žepa had already left for the mountains or to an area located some kilometres away from the centre while the rest of the population remained in their homes.<sup>2568</sup> By that time rumours were circulating about the “terrible events” which had occurred in Srebrenica, adding general fears among the population.<sup>2569</sup> The overall atmosphere in Žepa was close to panic.<sup>2570</sup>

707. Meanwhile, Krstić assessed the situation in Žepa as follows:

[T]he largest part of the unarmed population will start organised evacuation from Žepa to Kladanj, as has been regulated and detailed at negotiations [...]. Part of the armed formations will probably agree to disarm and organised evacuation and part of the soldiers (500-700) will break through the enclave in an organised fashion, probably toward Kladanj, and other directions are not ruled out either. Smaller parts of the armed formations will stay in the former enclave and put up armed resistance.”<sup>2571</sup>

In light of this, Krstić issued an order to the Drina Corps brigades to search and “mop up” the terrain in Žepa.<sup>2572</sup>

<sup>2565</sup> Ex. P00191, “Document re Agreement on Disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”, pp. 1–2. *See also* Ex. P6D00183, “Statement of Rupert Smith, 13 July 2006”, p. 26.

<sup>2566</sup> Hamdija Torlak, T. 9737 (30 Mar 2007). Also Kulovac was informed of the 24 July 1995 Agreement and on the next day, he organised the transportation for the wounded that had on 13 or 14 July 1995, moved out of the centre of Žepa. *Ibid.*, T. 9738 (30 Mar 2007).

<sup>2567</sup> Hamdija Torlak, T. 9737 (30 Mar 2007).

<sup>2568</sup> *Ibid.*, T. 9733, 9744–9745 (30 Mar 2007); Esmā Palić, T. 6916–6918, 6953–6955 (6 Feb 2007) (testifying that approximately 2,500 Bosnian Muslim civilians from Žepa—mostly women, children and elderly people—had started moving towards the mountains). PW-155 testified that throughout the intense shelling attacks on Žepa, he participated in the defence at the Stublić checkpoint on a voluntary basis. He was monitoring the Drina Canyon, very close to the Serb lines—20 to 50 metres away—“to see whether Chetniks would go through the canyon and enter the village and slaughter all the inhabitants.” The Serbs were taunting the Bosnian Muslims with words such as: “We’ll come to your village; we’ll rape all your women; we will kill you, you will have to look at us as we do all that, you Balijas.” PW-155, T. 6831–6853 (5 Feb 2007). Lieutenant-Colonel Svetozar Kosorić from the Department of Intelligence and Security of the Drina Corps Command reported on 24 July 1995 that for four days the ABiH fired heavy anti-aircraft machine-guns against the VRS and used seized UNPROFOR equipment and weaponry and that the ABiH moved the Bosnian Muslim population out of the combat area of the VRS forces. Mirko Trivić, T. 11905–11906 (22 May 2007); Ex. 6D00082, “Document regarding Intelligence information on the Enemy in the Žepa and Goražde Enclaves from the Command of Drina Corps, Department for Intelligence and Security to the Main Staff of VRS signed by Svetozar Kosorić, 24 July 1995”, pp. 1–2.

<sup>2569</sup> Hamdija Torlak, T. 9733–9734 (30 Mar 2007). *See also* *ibid.*, T. 9812–9814, 9821–9822 (2 Apr 2007).

<sup>2570</sup> *Ibid.* T. 9734 (30 Mar 2007).

<sup>2571</sup> Ex. P02789, “Drina Corps Order type-signed Radislav Krstić, 24 July 1995”, p. 1.

<sup>2572</sup> *Ibid.*, pp. 1–2.

708. Following the signing of the 24 July 1995 Agreement, major fighting ceased.<sup>2573</sup> The next morning, UNPROFOR contacted the BiH Minister Muratović, asking whether the BiH Government had accepted the 24 July 1995 Agreement as valid.<sup>2574</sup> Muratović denied that Torlak had the authority to negotiate on behalf of the BiH Government and contended that the government would accept “a total evacuation” provided UNPROFOR performed it.<sup>2575</sup>

709. At 12:30 p.m. on 25 July 1995, Smith met with Mladić, Gvero and Tolimir at the Jela Restaurant in Han Pijesak.<sup>2576</sup> Smith, who saw that his role was “to try and ameliorate the consequences of the collapse” of the enclave,<sup>2577</sup> asked Mladić whether the signatories of the 24 July 1995 Agreement had spoken for the entire population with the authority of the BiH Government.<sup>2578</sup> Mladić responded that he was not prepared to deal with the BiH Government and that he was confident that the signatories would do their utmost “to deliver” the Bosnian Muslim population.<sup>2579</sup>

## 7. Transportation of Bosnian Muslim Civilians out of Žepa

710. On 25 July, a team comprising UNPROFOR officers was sent to Žepa to monitor the transportation.<sup>2580</sup> The group arrived at UKRCoy Checkpoint 2 in Bokšanića where Mladić and

<sup>2573</sup> Hamdija Torlak, T. 9767 (30 Mar 2007). *See also* Ex. P03021, “VRS Main Staff Document signed by Radivoje Miletić, 25 July 1995”, p. 3 (“[o]perations around Žepa have ceased for the moment as an agreement was signed on the surrender of the Muslims.”).

<sup>2574</sup> Exs. P02872, 5D00417, “Sarajevo Sector Memo regarding Žepa negotiations, 25 July 1995”, p. 2.

<sup>2575</sup> *Ibid.* Minister Muratović also noted on 25 July 1995 that “the agreement was probably ‘another Serb trick, like last week, when they told General Smith at his last meeting that Žepa had surrendered.’” On the afternoon of 25 July 1995, a meeting was held at the higher level at Sarajevo airport on the evacuation of Žepa, in which both sides made a tentative agreement on the evacuation of Žepa and on the exchange of prisoners of war “throughout the country.” *See* Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 8, p. 2.

<sup>2576</sup> Rupert Smith, T. 17713 (8 Nov 2007); Ex. P02747, “UN Report of meeting between Smith and Mladić, 25 July 1995”, p. 1; Emma Sayer, T. 21117, 21119 (6 Feb 2008). Smith’s interpreter Sayer was also present at the meeting. *Ibid.*, T. 21081, 21117 (6 Feb 2008). *See also* Ex. 6D00108, “UN Document re situation in Žepa by J.R.J. Baxter”, p. 2. *See also infra*, para. 1785.

<sup>2577</sup> Rupert Smith, T. 17556 (6 Nov 2007).

<sup>2578</sup> Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J. Baxter, 26 July 1995”, p. 2.

<sup>2579</sup> Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J. Baxter, 26 July 1995”, p. 2 (further noting that Mladić “expressed some irritation with the tactics of the [BiH] Government and in particular Minister Muratović who he claimed was attempting to misrepresent his position and his good intentions towards the people of Žepa.”).

<sup>2580</sup> Thomas Dibb, T. 16272, 16276, 16327, 16340–16341, 16354 (15 Oct 2007); Edward Joseph, T. 14173–14174, 14181–14182 (23 Aug 2007). Dibb testified that he believed that the aim of the mission was to make sure things went differently from how they had gone in Srebrenica, but he was not sure whether this was his supposition afterwards or whether he was briefed at the time. Thomas Dibb, T. 16275–16276 (15 Oct 2007). *See also* Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J. Baxter, 26 July 1995”, p. 1, which reads in part: “UNPROFOR are carrying out the following actions: a. UNPROFOR has developed a joint civil/military liaison party, reinforced the [UKRCoy] with soldiers from Sector Sarajevo and arranged for ICRC and media presence in the pocket in order to observe and by our presence deter any excesses by the Bosnian Serbs. b. Recognise a ‘fait accompli’ by Mladić and to register and provide escorts for those refugees who wish to leave the pocket. c. UNPROFOR will continue to act as a go between for the factions to try and facilitate the POW exchange required by the [24 July 1995] Agreement”.

Tolimir as well as ICRC staff were present.<sup>2581</sup> Having met at the Jela Restaurant on that day, Mladić and Smith travelled separately to Žepa and saw each other again at Checkpoint 2 at around 4 p.m.<sup>2582</sup> They met with the ICRC and the UNPROFOR Civil Affairs officers, the UNPROFOR liaison team and UKRCoy to discuss the situation on the ground and to oversee the transportation of the wounded.<sup>2583</sup> After receiving permission from Mladić, the ICRC staff and the UNPROFOR group descended towards the centre of Žepa.<sup>2584</sup> In the centre of Žepa, Palić and Tolimir were discussing some technical details of the transportation.<sup>2585</sup> Some VRS soldiers were also present.<sup>2586</sup>

711. Approximately 50 to 80 Bosnian Muslim civilians gathered outside of the UKRCoy base in Žepa; no Bosnian Muslim able-bodied men were amongst them.<sup>2587</sup> Around noon on 25 July, the first buses arrived in Žepa.<sup>2588</sup> Only a few civilians had decided to leave Žepa that day.<sup>2589</sup> The first

<sup>2581</sup> Thomas Dobb, T. 16277 (15 Oct 2007). *See also* Ex. P03074, “Drina Corps Regular Combat Report signed by Radislav Krstić, 25 July 1995”, p. 2 (reporting that UNPROFOR vehicles and soldiers, UNPROFOR civilian sector officers, ICRC personnel, General Smith went to Bokšanića). On 25 July, Krstić informed the relevant brigades that the Main Staff authorised movement of UNPROFOR representatives and convoys on the Sarajevo-Podromanija-Rogatica-Žepa route. Ex. 5D01117, “Drina Corps Report to the Romanija Motorised Brigade and the 1st Rogatica Brigade signed by Radislav Krstić, 25 July 1995”; Ex. 5D01118, “Drina Corps Notification re Authorized Movement of an UNPROFOR Team sent to Romanija Brigade and Rogatica Brigade, signed by Radislav Krstić, 25 July 1995”.

<sup>2582</sup> Rupert Smith, T. 17544–17545 (6 Nov 2007); Ex. P02747, “UN Report of Meeting between Smith and Mladić, 25 July 1995”, p. 1; Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J Baxter, 26 July 1995”, p. 2.

<sup>2583</sup> Rupert Smith, T. 17544–17546 (6 Nov 2007). *See also ibid.*, T. 17713 (8 Nov 2007); Ex. P02747, “UN Report of Meeting between Smith and Mladić, 25 July 1995”, p. 1; Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J Baxter, 26 July 1995”, p. 2.

<sup>2584</sup> Thomas Dobb, T. 16278–16279 (15 Oct 2007). *See also* Hamdija Torlak, T. 9738, 9765, 9767–9768 (30 Mar 2007).

<sup>2585</sup> Hamdija Torlak, T. 9738, 9764 (30 Mar 2007). Torlak identified Avdo Palić (wearing a military shirt) in Ex. P02491 (confidential). *Ibid.*, T. 9757 (30 Mar 2007).

<sup>2586</sup> Esmā Palić, T. 6919 (6 Feb 2007). Dobb testified that on his way down to Žepa town from UKRCoy Checkpoint 2 on 25 July 1995, he saw many VRS soldiers on the road and a tank with empty ammunition next to it facing into the valley and “lots of old money drifting about”; there was a barrier on the road, which appeared to be the limit that the VRS soldiers were allowed into the village because once he passed the barrier, there were no VRS soldiers in the village itself; Dobb did not know who prohibited the VRS soldiers to enter the town. Thomas Dobb, T. 16279–16280 (15 Oct 2007).

<sup>2587</sup> Thomas Dobb, T. 16281–16282 (15 Oct 2007). PW-155 testified that when the defence lines of the ABiH around Žepa broke, he heard that an “evacuation” by UNPROFOR or the ICRC, together with UNHCR, would take place. He and his family went to the village of Šitkov Do, north of Žepa, where around 1,000 women, children, and elderly had already gathered. PW-155, T. 6832–6833 (5 Feb 2007). PW-155 denied that in his statement given to the Prosecution he had said that “there was a planned evacuation for the elderly, children, and certain age of women.” What he meant was that “[t]he UNHCR and the Red Cross [...] would do the evacuation, but this is not something that they did of their own free will. I don’t think that the plan was theirs, the plan for this evacuation. It was a plan concocted by the Chetniks to do this forcible evacuation, because they actually dictated the terms to everybody, to UNPROFOR, to UNHCR in the field.” *Ibid.*, T. 6858–6860 (5 Feb 2007). *See also ibid.*, T. 6889 (5 Feb 2007) (testifying that he assumed that the transportation would take place with the assistance of the international organisations, adding that “but I wasn’t sure, since everything was under the control of the Chetniks; the UNHCR, the Red Cross, the UNPROFOR, everything.”).

<sup>2588</sup> Hamdija Torlak, T. 9738 (30 Mar 2007), T. 9866 (3 Apr 2007); Thomas Dobb, T. 16288–16289, 16291 (15 Oct 2007). The Trial Chamber notes that there is evidence to the contrary. Meho Džebo gave evidence that the evacuation of the population started on 24 July and continued until 27 July 1995. Meho Džebo, Ex. P02486, “92 ter statement” (23 Mar 2007), p. 3; Meho Džebo, T. 9679 (29 Mar 2007). Esmā Palić also stated that the bus that she boarded left Žepa in the evening of 24 July. Esmā Palić, T. 6920–6923, 6964 (6 Feb 2007). Having considered the totality of evidence, and in particular Torlak’s direct involvement in the negotiations with the VRS, the Trial Chamber is, however, satisfied that the transportation started on 25 July 1995.

<sup>2589</sup> Hamdija Torlak, T. 9745 (30 Mar 2007).

convoy carrying the wounded and accompanied by Dr. Kulovac went to Sarajevo<sup>2590</sup> and the second convoy took the civilians to Kladanj.<sup>2591</sup> About 20 vehicles with civilians left Žepa that day.<sup>2592</sup> Palić was with Tolimir in a vehicle, escorting the last convoy; Palić's wife and his daughters were on the convoy.<sup>2593</sup>

712. All the vehicles necessary for the transportation—civilian buses and trucks—had been procured by the VRS.<sup>2594</sup> The names of the people boarding the vehicles were recorded in a list, which was given to the ICRC staff.<sup>2595</sup> The ICRC refused to assist in recording those who were being transported because they would be “seen as participating in ethnic cleansing”.<sup>2596</sup> UNHCR also refused to participate in the transportation for the same reason.<sup>2597</sup> UNPROFOR soldiers were assisting in the transportation, whereas VRS soldiers neither participated nor assisted in the process on that day.<sup>2598</sup> UNPROFOR soldiers also boarded the vehicles, following the Bosnian Muslims' demand for guarantees of their safety.<sup>2599</sup>

<sup>2590</sup> Hamdija Torlak, T. 9745 (30 Mar 2007), T. 9812 (2 Apr 2007); Thomas Dibb, T. 16283 (15 Oct 2007); Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J Baxter, 26 July 1995”, p. 4. *See also* Esma Palić, T. 6921, 6964 (6 Feb 2007); Ex. 6D00029, “UNPROFOR Sarajevo Sector Report, 26 July 1995”, p. 1. Tolimir gave permission to move the wounded out in UKRCoy APCs accompanied by Kulovac, a medical doctor and a member of the Žepa War Presidency. In the absence of Dr. Kulovac, the “hodža” served as a point of contact with the civilian population and assisted with the preparation of people who were leaving. Thomas Dibb, T. 16287–16288 (15 Oct 2007). The Trial Chamber believes that the “hodža” was Mehmed Hajrić. *See supra*, para. 680.

<sup>2591</sup> Hamdija Torlak, T. 9745 (30 Mar 2007). *See also* Esma Palić, T. 6921, 6964 (6 Feb 2007); Ex. 6D00029, “Sarajevo Sector Report, 26 July 1995”, p. 2. The Bosnian Muslim civilians were transported out of Žepa in buses and open lorries to Checkpoint 2 at Bokšanića; then those who were in the open lorries were put onto buses, and all of them were transferred in buses in the direction of Kladanj. Hamdija Torlak, T. 9740–9741, 9747, 9764 (30 Mar 2007).

<sup>2592</sup> Thomas Dibb, T. 16284 (15 Oct 2007).

<sup>2593</sup> Hamdija Torlak, T. 9739, 9768 (30 Mar 2007); Esma Palić, T. 6921–6922 (6 Feb 2007). Esma Palić testified that “Avdo [Palić] didn't believe that the evacuation was safe, [and so] Tolimir told him to get with him into his car, to sit on the back seat, and for Avdo to keep his pistol; and that if he found anything suspicious, he could fire directly into his head and that they would be at the head of the column of civilians.” Esma Palić cautioned Avdo Palić not to trust Tolimir, but he said that it was necessary to save the civilians. Esma Palić, T. 6919–6920 (6 Feb 2007). At 4 a.m. on the next day, Avdo Palić's family and the others in the convoy separated from Avdo Palić who returned to Žepa and they continued on foot until they reached Kladanj. Esma Palić, T. 6921–6923, 6945 (6 Feb 2007); Hamdija Torlak, T. 9739 (30 Mar 2007).

<sup>2594</sup> Hamdija Torlak, T. 9740 (30 Mar 2007); Thomas Dibb, T. 16286 (15 Oct 2007) (testifying that he thought that the drivers were civilians).

<sup>2595</sup> Hamdija Torlak, T. 9738–9739 (30 Mar 2007).

<sup>2596</sup> Thomas Dibb, T. 16282–16283, 16303–16304 (15 Oct 2007).

<sup>2597</sup> Joseph testified that before going to Žepa, he and Bezruchenko first visited UNHCR in Pale in order to try to ascertain why UNHCR would not participate in the transportation of the population out of Žepa and to obtain guidance as to how to proceed. UNHCR explained that they did not want to be accused of assisting in the ethnic cleansing of Žepa. UNHCR advised Joseph and Bezruchenko that, in order to establish whether the population was forcibly displaced, UNPROFOR should determine whether the Bosnian Muslim civilians in Žepa were leaving of their own volition. Edward Joseph, T. 14174–14176 (23 Aug 2007).

<sup>2598</sup> Hamdija Torlak, T. 9740 (30 Mar 2007).

<sup>2599</sup> *Ibid.*, T. 9860 (3 Apr 2007), T. 9808–9809 (2 Apr 2007). The UNPROFOR soldiers stayed there during the whole transportation period. *Ibid.*, T. 9765 (30 Mar 2007). *See also* Esma Palić, T. 6958–6959 (6 Feb 2007) (further testifying that she did not see the ICRC or the UNHCR vehicles).



713. According to Torlak, the transportation went smoothly and in accordance with the 24 July 1995 Agreement.<sup>2600</sup> Dibb testified that no one was forced to board buses and that the evacuation was well-organised, given the circumstances.<sup>2601</sup> There was no sign of active intimidation in Žepa during the process of transportation.<sup>2602</sup> There was no mistreatment of the Bosnian Muslims who boarded the vehicles but the process was emotional.<sup>2603</sup> Those who were to be transported out of Žepa feared what would happen to the men left behind.<sup>2604</sup>

714. Esma Palić, who was transported out of Žepa, testified that she believed that the Bosnian Muslim civilians had only two options: “to leave Žepa under very cruel and humiliating circumstances [...] [or] to remain and then either be killed or be subjected to suffering.”<sup>2605</sup> PW-155’s wife told him that when she was transported out of Žepa,<sup>2606</sup> the situation was “chaotic”.<sup>2607</sup> PW-155 stated that he and his family did not leave Žepa freely.<sup>2608</sup> Dibb testified that there was more fear of what would happen in Žepa once the fighting stopped than of the fighting itself.<sup>2609</sup> Torlak stated that:

Civilians left Žepa because they were afraid for their lives if they stayed behind. And that is the only reason for their departure. [...] The situation was such that you couldn’t have any influence over any individual when it came to making that choice, and I claim, with full responsibility, that there was no coercion in the sense of forcing everyone to leave Žepa. Because, from the beginning of the evacuation on the 25th, out of fear of boarding buses and crossing territory and Bosnian Serb control, to use those terms, people were afraid of doing that [...]. And the actual fact that on the 25th everything was carried out successfully, and there was information received that there was no mistreatment, that everything was successful, then there was a great deal of pressure on the part of the entire civilian population to leave Žepa as soon as possible. [...] [P]eople were informed about the agreement reached, and it was up to each and every one to decide what they would do. All I know is the emotions and fear people felt, if they were to stay behind, and I think the option of staying behind in people’s mind did not exist at all at that period of time in Žepa.<sup>2610</sup>

<sup>2600</sup> Hamdija Torlak, T. 9746 (30 Mar 2007). *See also* Thomas Dibb, T. 16313–16314 (15 Oct 2007).

<sup>2601</sup> Thomas Dibb, T. 16313–16314 (15 Oct 2007). Dibb contrasted the situation of the transportation in Žepa with Grozny in 1999 and Lebanon in 2006, and stated that generally people leave in the last safe moment, which in the cases of Grozny and South Lebanon was before the place was captured, but in the case of Žepa this was when the fighting had actually stopped and the VRS was poised to enter the village. *Ibid.*, T. 16285–16286 (15 Oct 2007).

<sup>2602</sup> Thomas Dibb, T. 16310–16312 (15 Oct 2007). The Bosnian Muslim civilians were not fired upon when waiting to be transported out of Žepa. *Ibid.*, T. 16309 (15 Oct 2007).

<sup>2603</sup> Hamdija Torlak, T. 9740, 9746, 9764–9765 (30 Mar 2007).

<sup>2604</sup> *Ibid.*, T. 9746 (30 Mar 2007). Torlak further testified that some of the Bosnian Muslim military-aged men who were armed came to bid farewell to their families. *Ibid.*, T. 9766–9767 (30 Mar 2007).

<sup>2605</sup> Esma Palić, T. 6923 (6 Feb 2007).

<sup>2606</sup> PW-155, T. 6844 (5 Feb 2007).

<sup>2607</sup> *Ibid.*, T. 6844 (5 Feb 2007).

<sup>2608</sup> *Ibid.*, T. 6845 (5 Feb 2007) (testifying that, “It was forcible departure. It was finishing up the ethnic cleansing. Žepa was a protected zone, and the Chetniks burned the surrounding villages and occupied the territory. There was no way that we could stay. I don’t think that any of those people, the women who were transported, said anything about people asking them if they wanted to stay or not. There was no question of that. There were a lot of people who were killed. This was forcible transfer of those who had survived from other parts of Bosnia and Herzegovina.”).

<sup>2609</sup> Thomas Dibb, T. 16311 (15 Oct 2007).

<sup>2610</sup> Hamdija Torlak, T. 9821–9822 (2 Apr 2007). *See also* *ibid.*, T. 9812–9813 (2 Apr 2007) (testifying that “people [who were] afraid for their lives chose the path they felt was safer, and that was to leave the area. [...] I’m quite sure that people, on the basis of their intuition, felt [...] that nothing bad would have happened to them, they would

715. On the morning of 26 July 1995,<sup>2611</sup> Torlak met Avdo Palić in Žepa town, who had returned from escorting the convoy to Kladanj the night before.<sup>2612</sup> Women, children and elderly men<sup>2613</sup> came into town in larger numbers the following day, probably being more confident due to the successful transportation the day before.<sup>2614</sup> Tolimir came into the town centre and oversaw the boarding of the buses. Torlak travelled with the first convoy to the Bokšanica checkpoint in order to guarantee Tolimir's safety.<sup>2615</sup> Most of the transportation took place on 26 July.<sup>2616</sup>

716. Torlak described the atmosphere as "relaxed" during the transportation throughout the day of 26 July.<sup>2617</sup> According to Joseph, it was clear that the issue of choice was already "well passed" and the women were leaving under duress.<sup>2618</sup> UNPROFOR officers helped the Bosnian Muslim women board buses and kept lists of their names.<sup>2619</sup> When asked by UNPROFOR officers, approximately 15 to 19 women said that they were leaving of their own choice,<sup>2620</sup> but one woman said: "No, I'm not leaving of my own free will. I want to stay, [...] but who will protect me?"<sup>2621</sup> The women were terrified that they would be killed if they stayed in Žepa.<sup>2622</sup> A VRS vehicle carrying a "Serb" flag would periodically drive through the town, which instilled fear in the Bosnian Muslim population.<sup>2623</sup>

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have stayed. But people react according to their feelings and intuition"), T. 9863 (3 Apr 2007) (testifying that, "At the time the evacuation started this issue [whether to leave or to stay] was no longer an issue. Whether it was sincere or not, it is a fact that at that point in time there was no possibility of anyone staying to live on in Žepa. That was the real situation, and this was the consequence of all the prior events, the resistance, et cetera. So the moment the evacuation started on the 25th of July, this was no longer a realistic option, nor did anyone give it any more thought").

<sup>2611</sup> On 26 July, Karadžić authorised UNHCR to pass through to Žepa "for the purpose of evacuating civilian population", noting that, "This is the best interest of [RS] because the evacuation will then be carried out under the auspices of UNHCR as the only responsible international institution. Ex. 5D00478, "VRS Main Staff Order, signed by Radovan Karadžić, 26 July 1995".

<sup>2612</sup> Hamdija Torlak, T. 9744 (30 Mar 2007).

<sup>2613</sup> Dibb testified that he did not remember seeing any men from the teens to the 50s. Thomas Dibb, T. 16281 (15 Oct 2007).

<sup>2614</sup> Thomas Dibb, T. 16284–16285, 16287 (15 Oct 2007). *See also* Hamdija Torlak, T. 9744 (30 Mar 2007); Edward Joseph, T. 14183 (23 Aug 2007). Torlak testified that the civilians decided to leave not because the BiH leadership in Sarajevo forced them to do so, but because they had seen that the transportation was carried out smoothly on 25 July 1995. Hamdija Torlak, T. 9822 (2 Apr 2007).

<sup>2615</sup> Hamdija Torlak, T. 9744 (30 Mar 2007); Ex. P04537, "Bokšanica Footage – Video at the UN checkpoint at Bokšanica on 26 July 1995".

<sup>2616</sup> Hamdija Torlak, T. 9745 (30 Mar 2007).

<sup>2617</sup> *Ibid.*, T. 9747 (30 Mar 2007).

<sup>2618</sup> Edward Joseph, T. 14290 (24 Aug 2007).

<sup>2619</sup> *Ibid.*, T. 14186 (23 Aug 2007).

<sup>2620</sup> *Ibid.*, T. 14184 (23 Aug 2007).

<sup>2621</sup> *Ibid.*, T. 14184 (23 Aug 2007) (testifying that the woman started crying and then all the women around her did so too, after which Joseph and Bezruchenko ceased their inquiry). *See also* *ibid.*, T. 14336 (24 Aug 2007).

<sup>2622</sup> *Ibid.*, 14184 (23 Aug 2007), T. 14291–14295, 14318, 14336 (24 Aug 2007).

<sup>2623</sup> *Ibid.*, T. 14184–14185 (23 Aug 2007).

717. UKRCoy and VRS soldiers<sup>2624</sup> drove the vehicles transporting the Bosnian Muslims,<sup>2625</sup> some of which were escorted by French UNPROFOR.<sup>2626</sup> Mladić, **Gvero**, **Pandurević**, Krstić, Kušić and Dudnik from UKRCoy were present at Checkpoint 2 at Bokšanica while the buses were stopped there.<sup>2627</sup> Mladić<sup>2628</sup> entered each single bus that arrived at Checkpoint 2 at Bokšanica, repeatedly boasting in front of the Bosnian Muslims that he saved their lives and allowed them to leave the enclave.<sup>2629</sup> After the departure of the buses, Mladić, **Gvero** and Krstić met with Torlak.<sup>2630</sup>

718. Seriously wounded Bosnian Muslim men were transported by French UNPROFOR and the ICRC.<sup>2631</sup> The ICRC registered the wounded, and gave them cards and told them that they were POWs.<sup>2632</sup> However, Palić ordered them to rip up the cards and told them that they still could not be transported.<sup>2633</sup> When UNPROFOR APCs tried to leave with more wounded, the Bosnian Muslim

<sup>2624</sup> A VRS Main Staff report signed by Standing-in-for the Chief of Staff **Miletić** informed Karadžić and VRS Main Staff Corps of the situation in the area of responsibility of the Drina Corps, noting that “[u]nits engaged in Žepa are securing the evacuation of the Muslim population”. Ex. P03022, “VRS Main Staff Situation Report to the RS President signed by Radivoje Miletić, 26 July 1995”, p. 4.

<sup>2625</sup> Joseph testified that they were not just buses, but any type of vehicle that could transport people. Edward Joseph, T. 14188 (23 Aug 2007).

<sup>2626</sup> Edward Joseph, T. 14188 (23 Aug 2007). An UNPROFOR French military contingent arrived in Žepa later that day. *Ibid.*, T. 14185–14186 (23 Aug 2007). Fortin testified that at one point, a truck with 50 people consisting of both young and old was stopped by UNPROFOR because there was no UNPROFOR soldier on board. After some tense negotiation with the VRS soldiers, it was decided that a UKRCoy soldier would also board the truck. Louis Fortin, T. 18278–18279 (27 Nov 2007). Fortin was assigned to go to Žepa to ensure that each bus had a UN soldier on board. This was to ensure that the transported people were not pulled off the buses by the Serbs before reaching Kladanj, because UNPROFOR had information “that many thousands [of] Bosnian males [from Srebrenica] had disappeared and [had] been killed.” *Ibid.*, T. 18243–18244 (26 Nov 2007), T. 18277–18278 (27 Nov 2007). On cross-examination, Fortin conceded that he could not recall how he got that information about Srebrenica, or when he started getting it. *Ibid.*, T. 18330 (27 Nov 2007).

<sup>2627</sup> Ex. P04537, “Bokšanica video footage from the UN checkpoint at Bokšanica on 26 July 1995”.

<sup>2628</sup> Dibb testified that Mladić was the senior officer on site and was in control of what was happening in Žepa at that time. Thomas Dibb, T. 16278–16279 (15 Oct 2007).

<sup>2629</sup> Hamdija Torlak, T. 9747–9748 (30 Mar 2007). *See also* Ex. P04537, “Bokšanica video footage from the UN checkpoint at Bokšanica on 26 July 1995”, p. 11 (Mladić said, “I saved you and your children and your people did not save ours in 1992.”), pp. 13–14 (Mladić said, “I am saving you and your children. And our children were killed in 1992 in the Žepa canyon. [...] You who are of military age don’t go to the front again! No more forgiveness. Now I am giving you your life as a gift. [...] I am General Miladić. There are able-bodied among you who shot at me before. I forgive you all and I am giving you life as a present. Don’t come before me at the front. Next time there won’t be any forgiveness. [...] I have mercy for you and you did not have mercy for our children in 1992 in the Žepa canyon. [...]”). *See also ibid.*, pp. 15–16.

<sup>2630</sup> Hamdija Torlak, T. 9747–9748 (30 Mar 2007); Ex. P04537, “Bokšanica video footage from the UN checkpoint at Bokšanica on 26 July 1995”.

<sup>2631</sup> Edward Joseph, T. 14186–14188, 14234 (23 Aug 2007). ICRC teams went to Checkpoint 2 at Bokšanica also on 26 July 1995. Ex. P03075, “Drina Corps Regular Combat Report signed by Radislav Krstić, 26 July 1995”.

<sup>2632</sup> PW-111, T. 7019, 7066 (private session) (7 Feb 2007).

<sup>2633</sup> Bokšanica video footage from the UN checkpoint at Bokšanica on 26 July 1995”, T. 7019 (7 Feb 2007). PW-111 also testified that Avdo Palić was negotiating about the transportation of the wounded. On the same day, Avdo Palić and Tolimir were at the UKRCoy base in Žepa. Tolimir asked Avdo Palić to order his soldiers to hand over their weapons so that they would be transferred to Tuzla by helicopter. But Avdo Palić disagreed with this. *Ibid.*, T. 7018 (7 Feb 2007). Before PW-111 was transported out of Žepa, Palić said to him that he did not want to leave until the last civilians and the last wounded had left Žepa and that he was ready to be arrested and killed. *Ibid.*, T. 7020–7021 (7 Feb 2007).

civilians blocked them fearing that the UN itself was leaving.<sup>2634</sup> Mladić was requested to send down another group of vehicles to show that this was not the last transportation.<sup>2635</sup>

719. The transportations continued. Most of the Bosnian Muslim civilians had been transported out of Žepa by 27 July.<sup>2636</sup> Around 4,000 or 5,000 Bosnian Muslim civilians and wounded were transported out of Žepa.<sup>2637</sup>

720. On 27 July 1995, twelve wounded and sick Bosnian Muslim men were transported on the last bus that left Žepa.<sup>2638</sup> Two VRS military policemen were on this bus,<sup>2639</sup> escorted by French UNPROFOR and UKRCoy.<sup>2640</sup> The bus was first stopped at Checkpoint 2 at Bokšanica, where Mladić entered the bus, asking some of the passengers for names.<sup>2641</sup> The bus eventually departed late that evening, arriving in Tišća early in the morning of 28 July where the men were asked to board a bus with the elderly.<sup>2642</sup> They were then taken to the Rasadnik prison camp on the outskirts of Rogatica.<sup>2643</sup> At the camp,<sup>2644</sup> the Bosnian Muslim men were told that their further transportation

<sup>2634</sup> Thomas Dibb, T. 16285, 16287 (15 Oct 2007). *See also* Edward Joseph, T. 14187 (23 Aug 2007).

<sup>2635</sup> Thomas Dibb, T. 16287 (15 Oct 2007).

<sup>2636</sup> Exs. P02873, 5D00419, “UNPROFOR Sarajevo Sector Report, 27 July 1995”, p. 1; Ex. 6D00089, “UNPF Situation Report, 28 July 1995”, p. 3 (reporting that, “It seems there are no more people in Žepa to be evacuated. The BiH troops (approximately 1500) remain.”); Ex. 5D00468, “UNPF Memorandum, 26–27 July 1995” (reporting that most of the civilian population was evacuated on 27 July). *See also* Esmā Palić, T. 6964–6965 (6 Feb 2007) (testifying that the transportation ended on 27 July). Joseph testified that at the time of his departure on 27 July there were no more Bosnian Muslims in the Žepa enclave apart from the men of Žepa who were in the hills. Edward Joseph, T. 14209–14210 (23 Aug 2007). On 27 July 1995, Vlado Marković from the Rogatica SJB (Public Security Station) informed the Sarajevo CJB (Public Security Centre) that “from 26 July 1995 at 0700 hours to 27 July 1995 at 0700 hours five convoys evacuating civilians and the wounded from the Žepa enclave passed safely through our territory. There were a total of forty buses, eight trucks and seven UN trucks in these convoys. Today the evacuation of inhabitants of the Žepa enclave will continue”. Ex. 5D01381, “Rogatica Public Security Station Report to Sarajevo Public Security Centre signed by Vlado Marković, 27 July 1995”.

<sup>2637</sup> Ex. 6D00089, “UN Situation Report on land operations, 28 July 1995”, p. 3; Thomas Dibb, T. 16288–16289, 16291 (15 Oct 2007) (testifying that 4,000 Bosnian Muslim civilians were transported during 26 and 27 July 1995 and that 400 Bosnian Muslim civilians were transported on 28 July). *See also* Ex. 5D00468, “UNPF Memorandum, 26–27 July 1995” (reporting that on 27 July “about 5000 people are now evacuated (Number TBC)”).

<sup>2638</sup> Meho Džebo, Ex. P02486, 23 March 2007, p. 3. PW-111 testified that prior to his transportation, he and other wounded were first examined and registered by a French doctor and a VRS doctor wearing a camouflage uniform at the UNPROFOR compound in Žepa. There were VRS soldiers in Žepa, evacuating many women, children and elderly, who were constantly arriving from the surrounding villages. The Bosnian Muslim civilians were evacuated by buses and trucks to Kladanj. After being examined by both doctors, PW-111 boarded a bus with other wounded to be transported. But, the VRS doctor came onto the bus and told PW-111 to leave the bus and that he would be transported by helicopter. PW-111 assumed that he was taken off from the bus because he was wearing camouflage pants that he found in the woods outside of the Kravica Warehouse. Thereafter PW-111 waited in Žepa for two more nights before he was transported. PW-111, T. 7016–7018, 7020, 7022 (7 Feb 2007).

<sup>2639</sup> Meho Džebo, Ex. P02486, “92 *ter* statement” (23 March 2007), p. 3, stating that one of the military policemen was “Djordjo Samardžić from Rogatica.” *See also* PW-111, T. 7024 (7 Feb 2007).

<sup>2640</sup> PW-111, T. 7024 (7 February 2007), 7068 (7 Feb 2007).

<sup>2641</sup> Meho Džebo, Ex. P02486, “92 *ter* statement” (23 March 2007), p. 3. *See also* PW-111, T. 7022 (7 Feb 2007). Kušić, the commander of the Rogatica Brigade, also came onto the bus, asking their names and other personal details. He also asked the older people if they had sons and where they were. *Ibid.* *See also* PW-111, T. 7022–7023 (7 Feb 2007).

<sup>2642</sup> Meho Džebo, Ex. P02486, “92 *ter* statement” (23 March 2007), pp. 3–4.

<sup>2643</sup> *Ibid.*, p. 4. *See also* PW-111, T. 7024 (7 Feb 2007).

<sup>2644</sup> At the prison camp Džebo saw, among others, Hamdija Torlak, Hodža Mehmed Hajrić and Amir Imamović. Meho Džebo, Ex. P02486, “92 *ter* statement” (23 Mar 2007), p. 5.

was conditional upon the release of some 48 VRS prisoners from Tuzla.<sup>2645</sup> They were registered by the ICRC and only exchanged in January 1996.<sup>2646</sup>

721. As the last bus with Bosnian Muslim civilians left Žepa on 27 July,<sup>2647</sup> VRS infantry quickly moved into Žepa town and the surrounding hills.<sup>2648</sup> Two VRS soldiers took Commander Palić from the UKRCoy base, saying that Mladić wanted to speak to him.<sup>2649</sup> The following morning, UNPROFOR Civil Affairs officer Joseph radioed Mladić about Palić and he understood Mladić to say that Palić “got away and was killed”.<sup>2650</sup> At a meeting between Tolimir and UNPROFOR that day, Tolimir was asked whether Mladić’s remark about Palić’s death was true.<sup>2651</sup> He responded that the information was propaganda to affect the morale of the enemy.<sup>2652</sup> Vojanović testified that he interrogated Palić twice over the course of a few days in late July or early August 1995 at the Borika Hotel in Rogatica.<sup>2653</sup> Palić has been missing since.<sup>2654</sup>

722. On 28 July 1995, Tolimir had a meeting with UNPROFOR.<sup>2655</sup> Regarding the wounded, sick and elderly who were detained in Rasadnik prison camp on 27 July, Tolimir told UNPROFOR that they were able-bodied men who had lied about their age in order to escape from Žepa.<sup>2656</sup>

<sup>2645</sup> Meho Džebo, Ex. P02486, “92 *ter* statement” (23 Mar 2007), p. 4.

<sup>2646</sup> *Ibid.*, pp. 4–5; PW-111, T. 7025 (7 Feb 2007).

<sup>2647</sup> On 27 July 1995, Krstić reported to the commands of the Romanija Motorised Brigade and the Rogatica Brigade that the VRS Main Staff authorised the movement of an UNPROFOR convoy to the Sarajevo-Žepa route. Ex. 5D01120, “Drina Corps Report to the Romanija Motorised Brigade and the Rogatica Brigade signed by Radislav Krstić, 27 July 1995”. Kosovac testified that there was continuity in the implementation of the UN Security Council decisions relating to UNPROFOR, UNHCR, and ICRC. Slobodan Kosovac, T. 30177 (15 Jan 2009). *See also* Ex. 5D00468, “UNPF Memorandum, 26–27 July 1995”, p. 2 (reporting that convoy entered Žepa).

<sup>2648</sup> Edward Joseph, T. 14197 (23 Aug 2007).

<sup>2649</sup> *Ibid.*, T. 14197–14198 (23 Aug 2007).

<sup>2650</sup> *Ibid.*, T. 14207 (23 Aug 2007) (testifying that he was however not certain whether Mladić used the Serb word for “killed” or “escaped” and that he inquired with Mladić’s interpreter, who confirmed that Mladić said “killed”). Joseph also stated that to kill, “poginuti”, and to escape, “pobjeci” were similar. *Ibid.* *See also* Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 12, p. 2.

<sup>2651</sup> Ex. P02969, “Notes of Meeting between Gobilliard and Tolimir, 28 July 1995”, p. 5. A report from Tolimir dated 28 July indicates that he had spoken with Avdo Palić about locations of mines laid by the ABiH Žepa Brigade. Ex. P02793, “Rogatica Brigade Report, type-signed Zdravko Tolimir, 28 July 1995”.

<sup>2652</sup> Ex. P02969, “Notes of Meeting between Gobilliard and Tolimir, 28 July 1995”, p. 5.

<sup>2653</sup> Milan Vojinović, T. 23728, 23730–23731 (21 July 2008). *See also* Ex. P03523 “RS MUP State Security Service report type-signed Dragan Kijac, 28 July 1995” (which contains information on the interview conducted by Vojinović with Palić). During the interviews, Palić said that he had received orders from Sarajevo to break through RS territory in order to link up with other brigades of the ABiH. Milan Vojinović, T. 23730–23731, 23742–23743 (21 July 2008). *See also* Ex. P03523 “RS MUP State Security Service report type-signed Dragan Kijac, 28 July 1995” (which discussed the number of military aged men in the Žepa enclave, how many were armed and the planned breakthrough but nothing about a war crimes investigation).

<sup>2654</sup> Vojinović testified that he received informal information that Palić would be exchanged for a high-ranking VRS officer held by the ABiH, but did not know what happened to Palić after the interviews. Milan Vojinović, T. 23729, 23732, 23746 (21 July 2008). Esma Palić testified that Avdo Palić was last seen “in various prisons”. Esma Palić, T. 6924, 6961 (6 Feb 2007).

<sup>2655</sup> Louis Fortin, T. 18289 (27 Nov 2007); Ex. P02969, “Notes of Meeting between Gobilliard and Tolimir, 28 July 1995”, p. 1.

<sup>2656</sup> Louis Fortin, T. 18289–18290 (27 Nov 2007); Ex. P02969, “Notes of Meeting between Gobilliard and Tolimir, 28 July 1995”, p. 2. Tolimir also said that they would be taken to Rogatica, registered by the ICRC, and exchanged as POWs. *Ibid.* On the morning on 28 July, Tolimir agreed that another group of wounded Bosnian Muslim men could

723. During the period of transportation, some VRS soldiers participated in looting<sup>2657</sup> and burning of houses in Žepa.<sup>2658</sup> The mosque in Žepa was also destroyed.<sup>2659</sup> Conversely, it was reported that the Bosnian Muslims also apparently burnt houses in the surrounding hills.<sup>2660</sup>

724. While Žepa was not shelled during the transportation,<sup>2661</sup> there is evidence that fighting continued in the Žepa area after the signing of the 24 July 1995 Agreement and after the transportation of the Bosnian Muslim civilians and wounded.<sup>2662</sup>

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leave from Žepa, but he did not allow one man to leave together with the Bosnian Muslim civilians because he was military-aged. Thomas Dibb, T. 16291–16292, 16297 (15 Oct 2007).

<sup>2657</sup> Thomas Dibb, T. 16292–16295 (15 Oct 2007) (testifying that he saw Kušić, Commander of the Rogatica Brigade participate in the looting on 25 July, noting that “a series of vehicles [were] going up and down the hill from [Checkpoint] 2 into the village of Žepa itself, with Mr. Kušić himself going up and down accompanying the vehicles that were coming back up loaded with cattle, furniture and whatever else.”); Louis Fortin, T. 18285–18286 (27 Nov 2007) (testifying that on 27 July, he saw “trucks go by with fridges, with cows in the back” and he guessed that VRS soldiers were “going around the houses and taking whatever was worth taking.”); Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 16, p. 1 (reporting that as of 2 August 1995, the village of Žepa “has been looted by Serb soldiers (who were seen carting off refrigerators, domestic animals etc), and most of the houses have been burnt.”). During cross-examination, Gvero showed Dibb Mladić’s order dated 30 July 1995, in which Mladić prohibited taking material goods out of the war zones without special permission from the logistics organ of the corps commands, and the slaughtering or taking cattle out of the war zones. The order further states that criminal proceedings before the appropriate military court shall be instituted against persons who do not carry out their duties pursuant to this order. Ex. 6D00166, “Order on the obligations of commands, units and institutions of the VRS in conditions of a proclaimed state of war in the RS to the Drina Corps signed by Mladić, 30 July 1995”. Dibb reiterated that looting had occurred. *Ibid.*, T. 16343–16346 (15 Oct 2007).

<sup>2658</sup> Thomas Dibb, T. 16292 (testifying that the burning continued throughout the period of the evacuation in the Žepa area), T. 16347–16348 (15 Oct 2007) (testifying that VRS soldiers told Dibb that they set fire to houses in Žepa because the fighting was over). Dibb testified that on 25 July, one soldier asserted that the sound of fire crackling and wood popping was due to mines in the houses, which Dibb described as complete nonsense. Dibb could see no tactical reason for burning the houses. According to Dibb, it was absolutely inconceivable that the houses were burnt by the retreating Bosnian Muslims. *Ibid.*, T. 16348–16350 (15 Oct 2007). On 28 July, Dibb did not see anyone starting a fire, but he said that it was “crystal clear” that VRS soldiers were doing this, and that it was quite certain that all Bosnian Muslim civilians had already left at that time. *Ibid.*, T. 16292–16293 (15 Oct 2007). Esma Palić denied that the Bosnian Muslims set ablaze their houses before leaving Žepa. Esma Palić, T. 6944 (6 Feb 2007). PW-155 stated: “All the villages [in the Žepa enclave] were burnt, and those people who were left behind in the enclave after the fall, they were all killed. A lot of people were killed. So it was a plan on the part of the Chetniks to kill and to remove all the non-Serb population from the territory of Eastern Bosnia.” PW-155, T. 6860 (5 Feb 2007). PW-155 further stated that upon leaving the Žepa enclave, the Bosnian Muslims did not cause any destruction to their properties with a view to prevent plunder by Bosnian Serbs and that his parents’ house was destroyed by the “Chetniks”. *Ibid.*, T. 6868–6869 (5 Feb 2007). Fortin, when asked to describe the looting he saw, testified that he saw houses burning and heard the occasional shot in the background. Louis Fortin, T. 18286 (27 Nov 2007) (regarding 27 July 1995).

<sup>2659</sup> Hamdija Torlak, T. 9867 (3 Apr 2007); Thomas Dibb, T. 16297–16298 (15 Oct 2007). Dibb raised the issue with Indić, who was Dibb’s contact person for the VRS and who replied flippantly that it was destroyed because it looked like a missile in aerial photography, which Dibb took to mean that Indić questioned whether any justification was needed. *Ibid.*, T. 16298–16299 (15 Oct 2007).

<sup>2660</sup> Ex. 6D00029, “UNPROFOR Sarajevo Sector Report, 26 July 1995”, p. 1 (“Bosnians—other than men of military age—were coming down from their hamlets in their hills, into the Serb-controlled villages, and were waiting to be moved by Serb buses to the confrontation line near Kladanj. Many houses in the hills were burning, apparently torched by departing Bosnians”).

<sup>2661</sup> Thomas Dibb, T. 16309 (15 Oct 2007). According to an interim combat report signed by Krstić and dated 25 July 1995, there was “no enemy activity today, except by small individual groups. [...] 2. Our forces did not conduct combat operations today. They abided by the order on ceasefire to enable organised evacuation of the enemy’s wounded and the inhabitants of Žepa in the spirit of the agreement reached between representatives of the Muslim Army, the Army of RS and UNPROFOR. 3. Decision for further operations: Create conditions for the evacuation of civilians and enemy soldiers who surrender their weapons. After that, conduct searches and mopping up

## 8. The Fate of Bosnian Muslim Able-Bodied Men in Žepa

725. On the evening of 25 July 1995, there was a meeting between Mladić, Torlak and Smith.<sup>2663</sup> Torlak expressed his concern to Smith about the implementation of the 24 July 1995 Agreement to move the Bosnian Muslim men out of the Žepa enclave as part of an all-for-all prisoner exchange.<sup>2664</sup> At this time, UNPROFOR reported that “the [Bosnian Muslims] will negotiate seriously and quickly on an all-for-all prisoner exchange, or Žepa’s men of military age will be killed or captured.”<sup>2665</sup> However, Torlak stated that he did not know whether the BiH Government would agree to the all-for-all prisoner exchange.<sup>2666</sup> Mladić said that he could not be held

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operations in the former enclave of Žepa from remnants and armed enemy soldiers.” Ex. 5D01116, “Drina Corps Interim Combat Report signed by Radislav Krstić, 25 July 1995”. See also Ex. P03074, “Drina Corps Regular Combat Report signed by Radislav Krstić, 25 July 1995”, p. 2 (reporting that the Drina Corps forces who had been conducting offensive operations in the direction of Žepa were halted at the positions reached “because of the surrender and transport of Muslim civilians from that area to the territory under Muslim control.”). Marinko Jevđević testified that while he was in the Žepa area until 25 or 26 July 1995, he did not receive further orders for combat. Marinko Jevđević, T. 23862–23863 (23 July 2008).

<sup>2662</sup> Mirko Trivić, T. 11908–11910 (22 May 2007), T. 11968 (23 May 2007) (testifying that Trivić’s unit was given a mission to break through to Žepске Kolibe and he was wounded on 29 July 1995 near the communications centre at Zlovrh); Milenko Jevđević, T. 29556–9557 (11 Dec 2008) (testifying that after the transportation the VRS was again in a position to continue with combat operations and that there was a fierce resistance in Zlovrh and Žepске Kolibe and Trivić was wounded in the fighting there); Ex. 1D00019, “ABiH General Staff Report to the ABiH Commander, 23 February 1996”, p. 6 (noting that on 30 July 1995, the VRS penetrated the ABiH Žepa Brigade defence lines on Mount Žepa from the direction of Bukovik and took control of the Zlovrh elevation); Ex. P03075, “Drina Corps Regular Combat Report signed by Radislav Krstić, 26 July 1995” (reporting that the Drina Corps units engaged in the combat operations in Žepa “are disarming enemy forces and securing the safe evacuation of Muslim civilians” and ordering the units engage in the task to continue its combat task).

<sup>2663</sup> Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 3. The Trial Chamber notes that while this report’s date is 26 July, as **Gvero** explained, it reflects the events that occurred on 25 July. See Rupert Smith, T. 17548 (6 Nov 2007). On the same evening, the Main Staff Sector for Intelligence and Security sent a report to the Rogatica Brigade and Tolimir personally, which reported that the RS Exchange Commission attended a meeting with the Bosnian Muslim side at Sarajevo Airport; that the Bosnian Muslim Government accepted the “proposed (signed) agreement in its entirety on condition that both civilians and able-bodied men are evacuated together from the enclave of Žepa”; and that “it is important that civilians, disarmed soldiers and able-bodied men are evacuated together from Žepa and they demand guarantees that they are not going to be killed”. The report further noted that **Miletić** and Lieutenant Colonel Jovica Karanović from the Sector for Intelligence and Security had a conversation with Bulajić from the RS Exchange Commission and Bulajić was told that “we are not going to vary from agreement between Kušić and Muslim side, although Muslim delegation told Bulajić that they did not know who Torlak was. Bulajić said that during the meeting he did not vary from already signed agreement but that the Muslims asked for guarantees that the captured soldiers are not going to be killed. We explained to Bulajić once more time that we are not going to vary from the signed agreement and that disarmament and registration would be carried out under UNPROFOR and ICRC supervision, as it was specified in the agreement”. Ex. P00190, “VRS Main Staff Intelligence and Security Report, type-signed Jovica Karanović, 25 July 1995”. See also Richard Butler, T. 19942 (17 Jan 2008).

<sup>2664</sup> Hamdija Torlak, T. 9813–9814 (2 Apr 2007); Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 3.

<sup>2665</sup> Ex. 6D00029, “Sarajevo Sector Report, 26 July 1995”, p. 1; Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 9, p. 3.

<sup>2666</sup> Hamdija Torlak, T. 9814–9815 (2 Apr 2007); Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 3. Sayer testified that asked by Smith whether anybody wished to remain in Žepa, Torlak stated that nobody wanted to stay in the enclave because they were afraid. Emma Sayer, T. 21084 (6 Feb 2008).

responsible if the Bosnian Muslim men tried to cross the Drina River and break out of the enclave.<sup>2667</sup>

726. Later that evening, Smith met with the BiH President Izetbegović, Minister Muratović and Amor Mašović, the President of the State Commission for the Exchange of Prisoners of War for the Bosnian Muslims.<sup>2668</sup> Izetbegović said that the BiH Government was ready to exchange 500 VRS POWs for 2,000 Bosnian Muslim able-bodied men from Žepa, but he feared that Mladić would not adhere to this part of the agreement.<sup>2669</sup> Muratović protested that UNPROFOR had helped the transportation of civilians without the permission of the BiH Government and that they should be responsible for compiling lists of the refugees on the buses, escorting them safely to Kladanj and comparing the figures and names on arrival in Kladanj.<sup>2670</sup>

727. On 26 July 1995,<sup>2671</sup> Torlak met Smith at UKRCoy Checkpoint 2 at Bokšanica to discuss different options concerning the Bosnian Muslim able-bodied men.<sup>2672</sup> Torlak testified that after the meeting with Smith, he realised that although he had hoped that the BiH political leadership in

<sup>2667</sup> Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 3. On the same day, Mladić issued an order concerning prevention of leakage of confidential military information in the area of combat operations. He ordered: “1. By means of organised and complete control prevent the entry of all uninvited individuals to the area of combat operations in the wider area of Žepa. [...] 3. Ban and prevent the giving of information, the making of announcements and statements to the media regarding the course, situation and results of combat operation in this area and the overall activities in this area, particularly on prisoners of war, evacuated civilians, escapees and similar.” Ex. P00182, “VRS Main Order signed by Ratko Mladić, 25 July 1995”, p. 1.

<sup>2668</sup> Rupert Smith, T. 17550–17551 (6 Nov 2007); Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J Baxter, 26 July 1995”, pp. 3–4. The report states: “[General] Smith emphasised that his two most critical requirements had been to get UN agencies and personnel on the ground to monitor the situation, which he had achieved, and to establish what agreement could be reached concerning the POW exchange.” *Ibid.*, p. 4.

<sup>2669</sup> Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 4.

<sup>2670</sup> *Ibid.*

<sup>2671</sup> On the same day, a separate meeting was held at the higher level at Sarajevo Airport, in which both warring sides “announced that they had not reached [an] agreement, but that they were very close, and hoped to sign an agreement in the morning. [...] The Bosnians will not agree, however, that the men of Žepa should ever fall into Serb hands. They accept that they could be registered by the ICRC as prisoners, but that, in implementation of the all-for-all exchange, they would leave the pocket before they ever entered Serb custody.” Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 10, p. 2.

<sup>2672</sup> Hamdija Torlak, T. 9747 (30 Mar 2007). Torlak marked the location of the meeting with Smith on a map. Ex. PIC00082 “Map of Žepa and surrounding area (Brezova Ravan and Bokšanica), marked by Hamdija Torlak”; Hamdija Torlak, T. 9742 (30 Mar 2007). Dibb testified that on one or two occasions when he went to Checkpoint 2, Smith and Avdo Palić and the Bosnian Serbs were discussing the issue of prisoner exchanges of the purported 2,000 ABiH soldiers in the hills with 500 VRS soldiers being held by Bosnian Muslims, that it appeared that Avdo Palić would have been happy with a local prisoner exchange, while Sarajevo was more interested in a large prisoner exchange, and that it was clear in his mind that Minister Muratović was the “stumbling block.” Dibb was in Žepa from 25 July to 2 August 1995. Thomas Dibb, T. 16305, 16354 (15 Oct 2007), T. 16371–16373 (16 Oct 2007).



Sarajevo would agree to the prisoner exchange,<sup>2673</sup> an agreement would never be reached.<sup>2674</sup> At that time, the Bosnian Muslim able-bodied men were still in the mountains around Žepa town.<sup>2675</sup>

728. On 27 July 1995, another meeting was held between Mladić and three Bosnian Muslim representatives of Žepa, namely, Torlak, “Hodža” Mehmed Hajrić<sup>2676</sup> and Amir Imamović.<sup>2677</sup> The Bosnian Muslim representatives were now negotiating a “surrender agreement” with Mladić without consultation with the BiH political leadership in Sarajevo.<sup>2678</sup> There were “veiled threats” to the Bosnian Muslim representatives during the meeting.<sup>2679</sup> Smith arrived at the meeting and took the Bosnian Muslim representatives aside to tell them not to sign because UNPROFOR could not offer some of the guarantees contained within the proposed arrangement.<sup>2680</sup> The key terms were:

1. All men aged 18-55 years will surrender their weapons to the [VRS].
2. ICRC will register them[;] then they will be guarded by [VRS] troops in the presence of UNPROFOR until the exchange agreement is signed.
3. After the POW [Prisoners of War] exchange agreement is signed and the POWs exchanged, the detained men in Žepa will be evacuated, under UNPROFOR[’s] escort to the territory of their choice.<sup>2681</sup>

729. The agreement was nonetheless signed.<sup>2682</sup> Smith warned Mladić that the BiH political leadership was unlikely to accept this agreement as they had had no direct involvement in it and that

<sup>2673</sup> Hamdija Torlak, T. 9816–9817 (2 Apr 2007).

<sup>2674</sup> *Ibid.*, T. 9817–9818 (2 Apr 2007). *See also* Ex. 6D00098, “ABiH Document, 26 July 1995”.

<sup>2675</sup> Ex. 6D00029, “Sarajevo Sector Report, 26 July 1995”, p. 1 (noting that “[t]he Bosnian men of military age were still in the hills, and were apparently awaiting assurances that they would be able to escape to join their families.”). *See also* Hamdija Torlak, T. 9766–9767 (30 Mar 2007).

<sup>2676</sup> Torlak identified Hodža Mehmed Hajrić (wearing a blue shirt) in Ex. P02491 (confidential); Hamdija Torlak, T. 9757–9758 (30 Mar 2007). Joseph identified Torlak and Hajrić on Ex. P02489 (confidential) and Ex P02491 (confidential); Edward Joseph, T. 14210, 14212 (23 Aug 2007). Joseph testified that at some point, Hajrić and two other Bosnian Muslim representatives were taken by the VRS soldiers for “a meeting” and that after that, Hajrić went missing. *Ibid.*, T. 14206, 14208–14209, 14212–14213 (23 Aug 2007).

<sup>2677</sup> Louis Fortin, T. 18282–18283 (27 Nov 2007); Ex. P02946, “Memo on the Situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1.

<sup>2678</sup> Edward Joseph, T. 14204–14205 (23 Aug 2007); Exs P02873, 5D00419, “Sarajevo Sector Report, 27 July 1995”, p. 2. Joseph questioned whether the Bosnian Muslim civilian leaders, instead of military leaders, could effect a surrender and drew this to the attention of Smith. Edward Joseph, T. 14205–14206 (23 Aug 2007).

<sup>2679</sup> Louis Fortin, T. 18282–18283 (27 Nov 2007).

<sup>2680</sup> Rupert Smith, T. 17553–17554 (6 Nov 2007); Louis Fortin, T. 18285 (27 Nov 2007). *See also* Ex. P02946, “Memo on the situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1. Smith told both Mladić and the three Bosnian Muslim representatives of Žepa that UNPROFOR could not be written into the agreement in any way as a participant or as a guarantor. Ex. P02946, “Memo on the situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1. In this regard, Smith testified that he was not “about to accept responsibility for delivering on any of these agreements either. I had no power to do so, or we wouldn’t have got into the position we were in Žepa if I had the power. So to sign on to deliver something else when neither party was in any way likely to, you know, in any agreement with each other wasn’t something I was prepared to do.” Rupert Smith, T. 17556 (6 Nov 2007).

<sup>2681</sup> Ex. P02946, “Memo on the Situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1. *See also* Ex. 6D00089, “UNPF Situation Report, 28 July 1995”, p. 3.

<sup>2682</sup> Ex. P02946, “Memo on the Situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1. *See also* Ex. 5D00468, “UNPF Memorandum, 26–27 July 1995”, p. 2.

it was the BiH political leadership who ultimately held the VRS POWs.<sup>2683</sup> Mladić replied that Minister Muratović had repeatedly refused offers to meet with him and asked Smith to inform the BiH political leadership that the agreement had been signed, and that those who refused to surrender their weapons by 6 p.m. of 27 July would be “liquidated”.<sup>2684</sup> Smith talked with the three Bosnian Muslim representatives of Žepa, who “expressed their disappointment that the [BiH] Government had had 13 or 14 days in which to conclude the POW exchange negotiations and yet had failed to do so.”<sup>2685</sup> At that time, the VRS had maintained their position that the men of Žepa must surrender their weapons and then an all-for-all POW exchange would take place whereas the BiH Government’s position remained that “an all-for-all POW exchange should occur but that the men of Žepa should be immediately evacuated after surrendering their weapons without ever actually falling into Serb hands.”<sup>2686</sup> The agreement was not implemented.<sup>2687</sup> At this point approximately 1,500 ABiH soldiers remained in the woods around Žepa town.<sup>2688</sup>

730. Torlak, Hajrić, and Imamović—the Bosnian Muslim representatives of Žepa—were in the last convoy that left on 27 July 1995.<sup>2689</sup> Mladić refused to let the convoy pass through Checkpoint 2 at Bokšanica until “the [ABiH] troops surrender”, demanding that one of the Bosnian Muslim representatives go to the mountains near Žepa where the Bosnian Muslim men of “military age” were gathered and tell them to surrender.<sup>2690</sup> Hajrić was assigned to this task.<sup>2691</sup> Later that evening, Torlak and Imamović were taken to a room with UNPROFOR soldiers at the UNPROFOR compound in Žepa.<sup>2692</sup> In the presence of four or five UNPROFOR soldiers and the UKRCoy Commander Dudnik, VRS soldiers handcuffed Torlak and Imamović and told them that they were POWs.<sup>2693</sup> The next morning, Torlak and Imamović were taken back to Bokšanica where Torlak saw Mladić and was questioned by security officers.<sup>2694</sup> Soon after, Torlak and Imamović were put back into a VRS vehicle and were taken again to the hotel in Borike where they spent the next few days.<sup>2695</sup> Dibb witnessed that Hajrić was not allowed to leave and that he was taken away at

<sup>2683</sup> Ex. P02946, “Memo on the Situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1.

<sup>2684</sup> Rupert Smith, T. 17555 (6 Nov 2007) (testifying that “we are coming to the culmination of a series of [...] this negotiation when the parties who can actually deliver on it aren’t actually being party to the consultation.”); Emma Sayer, T. 21085 (6 Feb 2008); Ex. P02946, “Memo on the Situation in Žepa by J.R.J. Baxter, 28 July 1995”, p. 1.

<sup>2685</sup> Ex. P02946, “Memo on the Situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1.

<sup>2686</sup> Ex. P02946, “Memo on the Situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1.

<sup>2687</sup> Hamdija Torlak, T. 9819–9819 (2 Apr 2007).

<sup>2688</sup> Ex. 6D00089, “UN situation report on land operations, 28 July 1995”, p. 3. Torlak confirmed this information and added that probably not all of the ABiH soldiers were armed. *See also* Hamdija Torlak, T. 9818–9819 (2 Apr 2007).

<sup>2689</sup> Hamdija Torlak, T. 9748–9749 (30 Mar 2007).

<sup>2690</sup> *Ibid.*, (testifying that Mladić demanded that the “troops” surrender).

<sup>2691</sup> *Ibid.*, T. 9749 (30 Mar 2007).

<sup>2692</sup> *Ibid.*, T. 9748–9752 (30 Mar 2007).

<sup>2693</sup> *Ibid.*, T. 9749–9750 (30 Mar 2007).

<sup>2694</sup> *Ibid.*, T. 9750–9751 (30 Mar 2007).

<sup>2695</sup> *Ibid.*, T. 9749–9750, 9751–9752 (30 Mar 2007).

Checkpoint 2 at Bokšanica.<sup>2696</sup> Around 30 July, Torlak and Imamović, who were under “VRS military police guard”, and Hajrić, were put in the same cell at a prison in Rogatica.<sup>2697</sup> In mid-August 1995, Imamović and Hajrić were taken out of the cell.<sup>2698</sup> Torlak later learnt that Hajrić and Imamović had been killed and that their bodies were later found in Vragolovi.<sup>2699</sup>

731. On 29 July 1995,<sup>2700</sup> Minister Muratović informed UNPROFOR of his intention to resume negotiations over the remaining Bosnian Muslim able-bodied men of Žepa.<sup>2701</sup> The VRS first agreed to meet with the Bosnian Muslim side at Sarajevo Airport but later called off the meeting.<sup>2702</sup> The VRS told UNPROFOR that the Bosnian Muslims should accept the 24 July 1995 Agreement concerning the Bosnian Muslim men in Žepa; only then would the VRS be willing to consider discussing the fate of the men of Žepa.<sup>2703</sup> That day, **Miletić** reported to the Main Staff’s subordinate units and Karadžić that the Bosnian Muslim men of Žepa were trying to break through to Donje Štitarevo in order to reach Serbia.<sup>2704</sup> Tolimir passed on instructions to ensure that combat

<sup>2696</sup> Thomas Dibb, T. 16291–16292, 16297 (15 Oct 2007).

<sup>2697</sup> Hamdija Torlak, T. 9748–9752 (30 Mar 2007).

<sup>2698</sup> *Ibid.*, T. 9748–9752 (30 Mar 2007). Milan Vojinović, who worked in the State Security Service of the RS MUP during the war, testified that in late July 1995 he conducted an interview at Rogatica with Hamdija Torlak to get information about the armed formations that fled Žepa and threatened the security of civilians in the surrounding village. Milan Vojinović, T. 23727–23728 (21 July 2008).

<sup>2699</sup> Hamdija Torlak, T. 9751–9752 (30 Mar 2007) (testifying that he was released in 1996). *See also* Ex. P04494 (confidential); Ex. P03479 (confidential).

<sup>2700</sup> UNPROFOR reported that there was intensive shelling in Žepa on 29 July 1995. Ex. 6D00136, “UNMO Sector Situation Report, 30 July 1995”, p. 3 (“Team reported hearing intensive shelling on 29 JUL (23 explosions, 8 HMG bursts and 4-6 outgoing mortar rounds) but could not confirm firing points and impact areas.”).

<sup>2701</sup> Ex. P02498, “UNPROFOR memorandum regarding negotiations on Žepa, 29 July 1995”, p. 1.

<sup>2702</sup> Ex. P02498, “UNPROFOR memorandum regarding negotiations on Žepa, 29 July 1995”, p. 1.

<sup>2703</sup> *Ibid.* Torlak testified that the Bosnian Serb’s position was not in accordance with the 24 July 1995 Agreement that required that the Bosnian Muslim men be handed over to UNPROFOR and immediately registered by the ICRC. Hamdija Torlak, T. 9870, 9873 (3 Apr 2007). Later that day, UNPROFOR reported that the VRS was planning to capture Bosnian Muslim soldiers and that “the Serbs seemed to be using UNPROFOR to entice the Bosnians to give up their weapons, and were perhaps using UNPROFOR to give the Bosnians a false sense of security.” Ex. P02498, “UNPROFOR memorandum regarding negotiations on Žepa, from David Harland, 29 July 1995”, p. 2.

<sup>2704</sup> Ex. P03023, “VRS Main Staff Document, signed by Radivoje Miletić, 29 July 1995”, p. 4 (noting that “this formation was encircled, rooted and destroyed”). *See also* Ex. P03024, “VRS Main Staff Document, signed by Radivoje Miletić, 31 July 1995”, p. 4 (“[W]e received information that the enemy were building rafts in the Crni Potok sector and escaping to the right Drina bank.”). On the same day, Captain Dragomir Pećanac sent a report to, among others, Tolimir and Krstić, which reiterated the information **Miletić** had sent that same day. Ex. P02792, “Prodrinje Brigade Report to the VRS Main Staff regarding a meeting with UNPROFOR concerning evacuation of civilians from Žepa, type-signed Dragomir Pećanac, 29 July 1995”, p. 5 (“I have unconfirmed information that the elements of the Muslim military forces from the former enclave of Žepa are trying to break through on the right bank of the Drina River, in the area of the village of Jagoštica and the village of Zemljice probably with intention to surrender to the forces of the Serbian MUP”). *See also* Richard Butler, T. 19945 (17 Jan 2008). Torlak testified that he heard that part of the Bosnian Muslim soldiers in Žepa managed to leave with their weapons and to reach Olovo and Kladanj through territory held by Bosnian Serbs. Others reached Serbia, in which they were treated as POWs and were later released or exchanged and allowed to go to third countries. Hamdija Torlak, T. 9824–9825 (2 Apr 2007).

operations against the ABiH Žepa Brigade would continue “until the Muslims make the exchange and carry out the agreement from the 24 July related to their disarmament and surrender.”<sup>2705</sup>

732. An ABiH General Staff report noted that on or about 30 July 1995, after the VRS had penetrated the defence lines, all the units of the ABiH Žepa Brigade gathered in the Vukolin Stan Sector.<sup>2706</sup> Ramo Čardaković, Chief of Staff of the ABiH Žepa Brigade, suggested that the troops set off in the direction of Poljanice where they would cross the Drina River into Serbia and surrender to the authorities there.<sup>2707</sup> The report went on to note that “about 700 or 800 soldiers agreed to this suggestion and, led by Čardaković and the brigade assistant commander for security, Salih Hasanović, set off in this direction.”<sup>2708</sup> The report further noted that these soldiers surrendered to the Serbian authorities and members of the JNA.<sup>2709</sup> It also stated that:

[A]ccording to statements from some of the Brigade Command officer corps who managed to break through to free territory with a group of about 150 soldiers on 2 August 1995, Brigade Chief of Staff Ramo Čardaković did not give the axes of withdrawal to this part of the Brigade Command even though he had received instructions regarding this from the 2nd Corps Command. Following this decision by the Brigade Chief of Staff, a chaotic situation ensued in the unit. It broke down into small groups which each decided for itself the direction it would attempt to break through to the nearest free territory. A large group of 200 soldiers, led by Hurem Šahić, decided to break through to Kladanj (the group managed to reach Kladanj on 2 August 1995), and a second group of about 50 soldiers, originally from Višegrad and led by Samir Cocalić, set off towards Goražde or Priboj in Serbia. A third group of between 250 and 300 soldiers from Srebrenica, who had come to Žepa after the fall of Srebrenica, set off towards Srebrenica with the intention of using the same route as the 28<sup>th</sup> Division to withdraw to Tuzla. A fourth group, the equivalent of a company, led by Šefko Zejnilović, set off in the direction of Sušica in the Crni Potok sector, where they intended to stay for a while since they had hidden large stocks of food there. A small group of seven soldiers managed to break through to free territory in the 2nd Corps 243rd Muslim Infantry Brigade zone of responsibility on 2 August 1995, and a second group of 14 soldiers managed to reach Goražde on 3 August 1995. According to soldiers from this group, they did not have any major problems on the road to Goražde and did not encounter the Chetniks.<sup>2710</sup>

<sup>2705</sup> Ex. P00186, “VRS Main Staff Intelligence and Security Report type-signed Zdravko Tolimir, 29 July 1995”, p. 2 (further noting that, “[t]ake all necessary measures to prevent them from leaving the encirclement. Do not register persons you capture before cessation of fire and do not report them to international organizations. We are going to keep them for exchange in case the Muslim do not carry out the agreement or they manage to break through from the encirclement.”). Obradović testified that this paragraph amounted to an order by Tolimir. Ljubomir Obradović, T. 28292–28293 (17 Nov 2008). Kosovac testified that the term “break through from the encirclement” was not a military term and that what Tolimir meant by saying “breaking through the circle” was an instruction or a request sent to the commander in order to resolve the problem within the encirclement with his own unit. Kosovac also stated that the paragraph did not concern the civilian population but exclusively military personnel. Slobodan Kosovac, T. 30183–30184 (15 Jan 2009).

<sup>2706</sup> Ex. 1D00019, “ABiH General Staff Report to the ABiH Commander, 23 February 1996”, p. 6.

<sup>2707</sup> *Ibid.*

<sup>2708</sup> Ex. 1D00019, “ABiH General Staff Report to the ABiH Commander, 23 February 1996”, p. 6.

<sup>2709</sup> *Ibid.*

<sup>2710</sup> *Ibid.*, pp. 6–7. See also Ex. 4D00010, “ABiH General Staff Interim Report, 4 August 1995”, pp. 1–2 (reporting that “a meeting was held on 29 July 1995 between the Command and company commanders of the [ABiH Žepa Brigade], where it was decided that officers and soldiers should split into smaller groups and launch a breakthrough towards Goražde, Sarajevo, Kladanj and Tuzla.”).

733. On 31 July 1995, a meeting between Smith, **Gvero** and Mladić was held in the Balkana Hotel in Mrkonjić Grad near Banja Luka.<sup>2711</sup> By this time, the entire VRS command, including Mladić, **Gvero**, Milovanović and Tolimir, had moved from the Srebrenica and Žepa area to Banja Luka.<sup>2712</sup> At the meeting, Mladić claimed that the Bosnian Muslim men in the hills around the Žepa town were attempting to break out in three directions—towards Kladanj, Serbia over the Drina River, and Goražde”.<sup>2713</sup> Smith testified that he became aware, around that time, that the Bosnian Muslim able-bodied men broke out over the Drina River, instead of the other two directions and that Carl Bildt, the European Union’s Special Envoy to the former Yugoslavia, was making arrangements for their suitable reception when they crossed the river.<sup>2714</sup>

734. UNPROFOR reported that as of 31 July 1995 negotiations concerning the Bosnian Muslim able-bodied men in Žepa appeared to have stopped at all levels, which “seems to imply that the Serbs have abandoned the idea of a negotiated evacuation, and intend to ‘mop up’ at their own pace.”<sup>2715</sup> A report dated 1 August from the Organ for Security and Intelligence of the Bratunac Brigade to the Intelligence Administration and Security Administration of the Main Staff, **Miletić** and others, stated that “another 100 balija” were expected in Bajina Bašta, and that “the largest group of balija” (around 1,000 men) were attempting to cross over to the right bank of the Drina in the area of Crni Potok.<sup>2716</sup>

735. An intercepted conversation dated 1 August 1995 between “Jevtić from Serbia”, Stevo and later **Beara**<sup>2717</sup> shows a discussion about the escape of Bosnian Muslim men across the Drina River.<sup>2718</sup> Two intercepted conversations dated 2 August 1995 show that Krstić gave instructions to **Popović** to go to Serbia to handle the issue of the Bosnian Muslim men from Žepa.<sup>2719</sup> In the

<sup>2711</sup> Rupert Smith, T. 17558 (6 Nov 2007); Emma Sayer, T. 21090, 21136 (6 Feb 2008); Ex. P02947, “UNPROFOR Report re Meeting between Smith and Mladić, 31 July 1995”, p. 1.

<sup>2712</sup> Ex. P02948, “Sarajevo Sector Memo, 31 July 1995”, p. 3.

<sup>2713</sup> *Ibid.* See also Ex. P02947, “UNPROFOR Report re Meeting between Smith and Mladić, 31 July 1995”, p. 2.

<sup>2714</sup> Rupert Smith, T. 17560 (6 Nov 2007).

<sup>2715</sup> Ex. P02948, “Sarajevo Sector Memo, 31 July 1995”, p. 2.

<sup>2716</sup> Ex. P03036, “Document to VRS Main Staff, Miletić, Krstić, and Drina Corps concerning movement of enemy groups in the Žepa enclave, type-signed Zoran Carkić, 1 August 1995”, p. 2. Butler testified that the 1,000 men were military-aged men and “may very well even” be members of the Žepa Brigade. Richard Butler, T. 19948 (17 Jan 2008). Kosovac testified that Carkić referred to the ABiH members throughout this document. He further stated that the Administration for Operations and Training had no bearing on intelligence activities or prisoners. Slobodan Kosovac, T. 30184–30187 (15 Jan 2009). In light of the vicinity of Mt. Brloška to Žepa and the events and reports of that day, the Trial Chamber is convinced that the conversation concerns the fleeing of Bosnian Muslims from the Žepa area and that Panorama is **Miletić**.

<sup>2717</sup> Ex. P01378a, (confidential).

<sup>2718</sup> *Ibid.* In another intercepted conversation, **Beara** was discussing the activities of the Serbian MUP. Ex. P01380a (confidential). About 20 minutes after this conversation, **Beara** had a conversation with Stevo, who told **Beara** about drafting a request for the Serb authorities. **Beara** tells him that the Serb authorities have told him he has come to Serbia for nothing because the order regarding the Muslims has come “‘From the highest’, and you know who their highest is”. Ex. P01381a (confidential). See also *infra*, para. 1291.

<sup>2719</sup> Ex. P01392d, “Intercept, 2 August 1995, 12:40 hours”; Ex. P01395g, “Intercept, 2 August 1995, 13:00 hours”. See also *infra*, para. 1292.

second conversation at 1 p.m., **Popović** said to Krstić that **Beara** just called **Popović** and told him that **Beara** had reported to **Miletić** that there are 500 to 600 Bosnian Muslims in Serbia, but that the Serb authorities would not allow anyone to speak to them.<sup>2720</sup> UNPROFOR reported on 2 August that Žepa was empty save for a few VRS soldiers,<sup>2721</sup> and that some of the Bosnian Muslim able-bodied men had crossed the Drina River.<sup>2722</sup>

736. On 2 August 1995, the ABiH State Security Service in the Goražde Sector reported that certain groups of ABiH soldiers from Žepa had crossed the border into Serbia and an order was issued to the border police to maintain maximum mobility as “armed groups were allegedly expected to arrive from Žepa”.<sup>2723</sup> An ABiH General Staff report on 4 August 1995 stated that “there were about 1260 soldiers and 250 able-bodied civilians in Žepa, as well as 650 soldiers from Srebrenica. Up to date, 163 soldiers have arrived in the free territory of Kladanj, whereas 14 soldiers have arrived in the area of responsibility of the 81st Army Division [in] Goražde. Around 1000 soldiers are still in the mountains around Žepa and are waiting for favourable conditions for retreating.”<sup>2724</sup> Some Bosnian Muslim men, who were trying to reach ABiH-controlled territory, were killed by the VRS.<sup>2725</sup>

<sup>2720</sup> Ex. P01395g, “Intercept, 2 August 1995, 13:00 hours”.

<sup>2721</sup> Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 16, p. 1. *See also ibid.*, tab 17, p. 3 (noting that “the remaining population of Žepa will have to fend for themselves. Most will presumably try to flee. And most of those are likely to be killed or captured”).

<sup>2722</sup> UNPROFOR reported that according to unconfirmed information from the VRS, Bosnian Muslims, UNHCR and ICRC, “groups of Bosnians have been attempting to flee the [...] Bosnian enclave. There were reports yesterday of a group of up to 600 attempting to make its way towards Bosnian-controlled territory in central Bosnia. There was a report of a group being intercepted near Luka as they attempted to leave the pocket. There was a report of a group of perhaps 250 people making their way across the Drina to Serbia.” Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 16, p. 1. Another UNPROFOR report dated 3 August 1995 noted that it received information from the FRY authorities through UNHCR that “a group of about 500 Bosnian men from the Žepa area, many of them in uniform, had crossed the Drina into Serbia. [...] FRY considered this to be a military matter, but that UNHCR would be allowed into the area to register the men refugees.” Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 18, p. 1.

<sup>2723</sup> Ex. 5D01373, “ABiH State Security Service Sector Report, signed by Midhat Šehović, 2 August 1995”, p. 2. Kosovac testified that “some of our groups of fighters” stated in this report implied that this referred “exclusively to soldiers” of the ABiH. When asked if the soldiers posed a danger for the VRS and for the civilian population in the RS territory, Kosovac testified: “this refers primarily to broken-up groups of fighters, are a threat to every army and the entire population because their behaviour, as a rule, is uncontrolled, undirected, and they are armed and have military equipment. [...] In all such situations, first all the organs on the ground are warned, all the commands of the army units. Then the MUP and all the MUP units are warned, and the local authorities are warned who can take action, such as, for example, disseminating information. All the forces on the ground attempt to register such groups and to capture them and disarm them and then hand them over to the competent authorities. Such groups are treated with great caution because one never knows what they will do.” Slobodan Kosovac, T. 30187–30189 (15 Jan 2009). *See also* Mirko Trivić, T. 11868–11869 (21 May 2007), T. 11997 (23 May 2007) (testifying that part of the ABiH Žepa Brigade withdrew in an organised manner by swimming across the Drina River and other parts went in the direction of Kladanj).

<sup>2724</sup> Ex. 4D00010, “ABiH General Staff Interim Report, 4 August 1995”, pp. 1–2 (the report also refers to a meeting held on 29 July between the ABiH Žepa Brigade Command and company commanders, in which it was decided that “officers and soldiers should split into smaller groups and launch a breakthrough towards Goražde, Sarajevo, Kladanj and Tuzla.”).

<sup>2725</sup> Ex. P00209, “Rogatica Brigade Daily Combat Report type-signed Rajko Kušić, 8 August 1995”, p. 1 (reporting that, “On 7 August 1995 in the afternoon, in the canyon of the Prača River, five remaining Balijas who were after

737. In mid-August 1995, POWs at a prison in Foča—former ABiH Žepa Brigade soldiers—were interviewed in connection with investigations on war crimes committed in the RS territory.<sup>2726</sup> According to the interviews, after the fall of the Žepa enclave 800 to 1,000 ABiH Žepa Brigade soldiers decided to surrender to the JNA by crossing the Drina River into Serbia, and 400 to 500 soldiers decided to break through the RS territory to link up with the ABiH.<sup>2727</sup>

738. PW-155 swam across the Drina River with a large group of the Bosnian Muslim men and was captured in Serbia around 2 August 1995.<sup>2728</sup>

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the fall of Žepa travelling along the following route: Luka—crossed the Drina River by boat—Kamenički Potok—Babina Gora—Gradina—Kapetanovići—crossed the Drina River on the logs,—Crni Vrh—Kopito—above Mededa—Ustiprača—went down to the railroad tracks at Dub and tried to reach Renovica walking on the railroad tracks, were liquidated. The group was separate and it travelled for 10 days. On the same day, in the vicinity of Luke, an unarmed Ustasha, born in Srebrenica, 24 years old, was liquidated. Before he died he said he fell behind the others and he was looking for food.”).

<sup>2726</sup> Milan Vojinović, T. 23684–23685 (21 July 2008).

<sup>2727</sup> *Ibid.*, T. 23687–23688 (21 July 2008). *See also* Ex. 2D00524 “Information on Muslim Armed Forces of at the Mitrovo Polje and Branesko Polje collection centres, 8 March 1996” (noting that “[i]n the period from 31 July–25 October 1995, violating the FRY state border, larger and smaller groups of the [Muslim Armed Forces] were entering from the Žepa area, numbering a total of 799 persons. They crossed the state border in the sector of the village of Jagoštica, municipality of Bajina Bašta, and from the direction of Crni Potok, in former BiH territory, crossing the Drina river by boat, makeshift rafts, etc.”). Vojinović testified that some of the individuals identified as having been involved in crimes against humanity and war crimes were not detained there and the investigating team concluded that they had either broken through to ABiH-controlled territory or crossed into Serbia and surrendered to the JNA. The VRS Security Administration subsequently filed with the Military Prosecutor’s Office in Bijeljina criminal reports against 149 individuals involving crimes against humanity and war crimes. Milan Vojinović, T. 23696–23699, 23725–23726 (21 July 2008). *See also* Ex. 2D00528, “VRS Main Staff Intelligence and Security Sector Criminal report, 23 August 1995” (which include a criminal report against Avdo Palić). According to Vojinović, the group that crossed the Drina River into Serbia after the fall of the enclave was composed entirely of soldiers. Milan Vojinović, T. 23703, 23706–23708, 23711, 23748–23749 (21 July 2008).

<sup>2728</sup> PW-155, T. 6836–6838 (5 Feb 2007). PW-155 marked the location where he crossed the Drina River. Ex. PIC00061, “Map marked by PW-155”; PW-155, T. 6841 (5 Feb 2007). The Trial Chamber notes **Gvero**’s submission that PW-155’s testimony cannot be relied upon to establish beyond reasonable doubt a civilian component among the men allegedly deported. Gvero Final Brief, paras. 122–123. In light of the legal findings on forcible transfer and deportation, however, the Trial Chamber considers it unnecessary to determine the status of PW-155. *See infra*, paras. 906–913; *but see* Judge Kwon’s Dissenting Opinion, *infra*, fn. 6416.

## IV. LEGAL FINDINGS

### A. Article 3: General Requirements

#### 1. Applicable Law

739. Article 3 of the Statute addresses all serious violations of the laws or customs of war. It also serves as a residual clause which covers all serious violations of humanitarian law not covered by Articles 2, 4, or 5 of the Statute.<sup>2729</sup> There are two preliminary requirements for the application of Article 3: there must be a state of armed conflict, and the alleged crime must be closely related to that armed conflict (“the nexus requirement”).<sup>2730</sup> In addition, as discussed in more detail below, four conditions set out in the *Tadić* Jurisdiction Decision (“the four *Tadić* conditions”) must also be satisfied before a crime will fall within the Tribunal’s jurisdiction under Article 3.<sup>2731</sup>

740. With regard to the preliminary requirement that there be a state of armed conflict, the Appeal Chamber has held that:

[A]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.<sup>2732</sup>

When an accused is charged with a violation of the laws or customs of war under Article 3 of the Statute, it is immaterial whether the armed conflict was international in nature or not.<sup>2733</sup>

741. With regard to the nexus requirement, the Appeals Chamber has held that:

The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.<sup>2734</sup>

This requirement is fulfilled if the alleged crime was committed in furtherance of, or at least under the guise of, the situation created by the armed conflict.<sup>2735</sup>

<sup>2729</sup> *Tadić* Jurisdiction Decision, para. 91. See also *Kunarac et al.* Appeal Judgement, para. 68; *Čelebići* Appeal Judgement, para. 125.

<sup>2730</sup> *Tadić* Jurisdiction Decision, paras. 67–70. See also *Stakić* Appeal Judgement, para. 342; *Kunarac et al.* Appeal Judgement, para 55.

<sup>2731</sup> *Tadić* Jurisdiction Decision, para. 94. See also, e.g., *Kunarac et al.* Appeal Judgement, para. 66.

<sup>2732</sup> *Tadić* Jurisdiction Decision, para. 70. See also *Kordić and Čerkez* Appeal Judgement, para. 341.

<sup>2733</sup> *Tadić* Jurisdiction Decision, para. 137. See also *Galić* Appeal Judgement, para. 120.

<sup>2734</sup> *Kunarac et al.* Appeal Judgement, para. 58. In determining whether an act is sufficiently related to an armed conflict, the Trial Chamber may take into account, *inter alia*, whether the perpetrator was a combatant, whether the victim was a non-combatant, whether the victim was a member of the opposing party, whether the act may be said to have served the ultimate goal of a military campaign, and whether the crime is committed as part of or in the context of the perpetrator’s official duties. *Kunarac et al.* Appeal Judgement, para. 59.

<sup>2735</sup> *Kunarac et al.* Appeal Judgement, paras. 58–59.



742. In addition to the requirements discussed above, the four *Tadić* conditions must also be satisfied before a crime will fall under the scope of Article 3 of the Statute. The Appeals Chamber in *Tadić* held that:

- (i) the violation must constitute an infringement of a rule of international humanitarian law;
- (ii) the rule must be customary in nature or, if it belongs to treaty law, the treaty must be unquestionably binding on the parties at the time of the alleged offence and not in conflict with or derogating from peremptory norms of international law;
- (iii) the violation must be serious, that is to say that it must constitute a breach of a rule protecting important values and the breach must involve grave consequences for the victim;
- (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.<sup>2736</sup>

743. The charges of murder under Article 3 in the present case are based upon Common Article 3 of the 1949 Geneva Conventions (“Common Article 3”). Where a crime punishable under Article 3 is based upon Common Article 3, the victims of the alleged violation of the laws and customs of war must have taken no active part in the hostilities at the time the crime was committed.<sup>2737</sup> Such victims include members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.<sup>2738</sup> In addition, the Trial Chamber must be satisfied that “the perpetrator of a Common Article 3 crime knew or should have been aware that the victim was taking no active part in the hostilities when the crime was committed”.<sup>2739</sup>

<sup>2736</sup> See *Tadić* Jurisdiction Decision, paras. 94 and 143. See also *Kunarac et al.* Appeal Judgement, para. 66; *Aleksovski* Appeal Judgement, para. 20.

<sup>2737</sup> *Čelebići* Appeal Judgement, para. 420.

<sup>2738</sup> Common Article 3 provides, in the relevant part:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely [...].

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular *murder* of all kinds, mutilation, cruel treatment and torture;

[...]” (emphasis added)

See also *Čelebići* Appeal Judgement, para. 420.

<sup>2739</sup> *Boškoski and Tarčulovski* Appeal Judgement, para. 66.

## 2. Findings

744. The Trial Chamber has heard evidence that an armed conflict existed in Eastern Bosnia between the Republic of Bosnia and Herzegovina and its forces on the one hand, and the Republika Srpska and its forces on the other.<sup>2740</sup> Based on the evidence set out above regarding the factual background to this case,<sup>2741</sup> the Trial Chamber finds that there was an armed conflict in Eastern Bosnia during the period relevant for the Indictment.

745. The alleged victims of murder in this case were Bosnian Muslims captured by Bosnian Serb Forces in the course, or aftermath, of combat activity.<sup>2742</sup> Based on the evidence set out above regarding the alleged capture, detention and killing of Bosnian Muslim men,<sup>2743</sup> the Trial Chamber finds that the underlying crimes with which the Indictment is concerned were closely related to the armed conflict.

746. According to the consistent case law of the Tribunal, violations of Common Article 3 of the 1949 Geneva Conventions fall within the scope of Article 3 of the Statute. The Appeals Chamber has held that Common Article 3 forms part of customary international law, and that where those violations are serious, the four *Tadić* conditions will at once be satisfied.<sup>2744</sup> Given that the Trial Chamber has found murder on a massive scale,<sup>2745</sup> the Trial Chamber finds that the four *Tadić* conditions have been satisfied.

747. The alleged victims of murder were persons taking no active part in hostilities at the time the relevant crimes were committed.<sup>2746</sup> Based on the evidence set out above regarding the capture, detention and killing of Bosnian Muslim men,<sup>2747</sup> the Trial Chamber finds that this additional requirement under Common Article 3 is fulfilled.

748. The Trial Chamber therefore finds that the general requirements of Article 3 have been met.

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<sup>2740</sup> See *supra*, Chapter III, Sections A, C and D. See also Prosecution Adjudicated Facts Decision, Annex, Facts 8, 17, 19, 21, 46, 50, 65–68, 93, 97, 100–101, 103, 106–107, 109; Popović Adjudicated Facts Decision, Annex, Facts 20–22, 36, 40, 44, 47. Pandurević has acknowledged that a state of war existed in Bosnia and Herzegovina at all times material to the Indictment. Pandurević Pre-Trial Brief, para. 14.

<sup>2741</sup> See *supra*, Chapter III, Sections A, C and D.

<sup>2742</sup> See *supra*, Chapter III, Sections E, F, G, and H.

<sup>2743</sup> See *supra*, Chapter III, Sections E, F, G, and H.

<sup>2744</sup> *Kunarac et al.* Appeal Judgement, para. 68. See also *Čelebići* Appeal Judgement, paras. 133–136.

<sup>2745</sup> See *infra*, paras. 793–796.

<sup>2746</sup> See *supra*, Chapter III, Sections E, F, G, and H.

<sup>2747</sup> See *supra*, Chapter III, Sections E, F, G, and H.

## B. Article 5: General Requirements

### 1. Applicable Law

749. Article 5 of the Statute addresses various specified crimes “when committed in armed conflict, whether international or internal in character, and directed against any civilian population”.

750. The requirement that the crimes be “committed in armed conflict” is a jurisdictional prerequisite,<sup>2748</sup> which requires proof that there was an armed conflict and that, objectively, the acts of the accused are linked geographically as well as temporally with the armed conflict.<sup>2749</sup>

751. The general elements required for the application of Article 5 are that: (1) there must be an attack; (2) the attack must be directed against a civilian population; (3) the attack must be widespread or systematic; (4) the acts of the perpetrator must be part of the attack; and (5) the perpetrator must know that his or her acts constitute part of a widespread or systematic attack directed against a civilian population.<sup>2750</sup>

#### (a) There Must Be an Attack

752. The Appeals Chamber has explained that in the context of a crime against humanity, an ‘attack’ is not limited to the use of armed force, but also encompasses any mistreatment of the civilian population.<sup>2751</sup> The concepts “attack on a civilian population” and “armed conflict” are separate.<sup>2752</sup> The attack could precede, outlast, or continue during the armed conflict, but it need not be a part of it.<sup>2753</sup> When determining whether there has been an attack upon a particular civilian population, any similar attack by an opponent in the conflict will be irrelevant.<sup>2754</sup>

#### (b) The Attack Must Be Directed Against a Civilian Population

753. An attack may be considered to have been directed against a civilian population if the civilian population was the “primary rather than an incidental target of the attack”.<sup>2755</sup> The *Kunarac* Appeals Chamber affirmed that “the use of the word ‘population’ does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected

<sup>2748</sup> *Tadić* Appeal Judgement, para. 249; *Kunarac et al.* Appeal Judgement, para. 83.

<sup>2749</sup> *Kunarac et al.* Appeal Judgement, para. 83. Cf. *Tadić* Appeal Judgement, paras. 249, 251.

<sup>2750</sup> *Kunarac et al.* Appeal Judgement, para. 85.

<sup>2751</sup> *Ibid.*, para. 86.

<sup>2752</sup> *Tadić* Appeal Judgement, para. 251.

<sup>2753</sup> *Kunarac et al.* Appeal Judgement, para. 86.

<sup>2754</sup> *Ibid.*, para. 87, approving *Kunarac et al.* Trial Judgement, para. 580.

<sup>2755</sup> *Kunarac et al.* Appeal Judgement paras. 91–92. See *Kunarac et al.* Trial Judgement, para. 421.

to [the] attack”.<sup>2756</sup> It is sufficient if the Trial Chamber is satisfied that enough individuals were targeted in the course of an attack or that they were targeted in a manner that indicates that the attack was against the civilian population, “rather than against a limited and randomly selected number of individuals”.<sup>2757</sup>

754. In order to qualify as a civilian population for the purposes of Article 5, the target population must be of a *predominantly* civilian nature.<sup>2758</sup> The jurisprudence has established that the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.<sup>2759</sup>

755. Article 50(1) of Additional Protocol I provides: “A civilian is any person who does not belong to one of the categories of persons referred to in Article 4A(1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol.”<sup>2760</sup> On the basis of this, the Appeals Chamber has held that members of the armed forces, and members of the militias or volunteer corps forming part

<sup>2756</sup> *Kunarac et al.* Appeal Judgement, para. 90.

<sup>2757</sup> *Kordić and Čerkez* Appeal Judgement, para. 95; *Blaškić* Appeal Judgement, para. 105; *Kunarac et al.* Appeal Judgement, para. 90.

<sup>2758</sup> *Limaj et al.* Trial Judgement, para. 186; *Galić* Trial Judgement, para. 143; *Naletilić and Martinović* Trial Judgement, para. 235; *Kordić and Čerkez* Trial Judgement, para. 180; *Kunarac* Trial Judgement, para. 425; *Tadić* Trial Judgement, para. 638.

<sup>2759</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 31; *Kordić and Čerkez* Appeal Judgement, para. 50. *See also* *Limaj et al.* Trial Judgement, para. 186; *Naletilić and Martinović* Trial Judgement, para. 235; *Kordić and Čerkez* Trial Judgement, para. 180; *Kunarac et al.* Trial Judgement, para. 425; *Jelisić* Trial Judgement, para. 54; *Tadić* Trial Judgement, para. 638. *See Blaškić* Trial Judgement, para. 214; *Kupreškić et al.* Trial Judgement, para. 549. The Appeals Chamber has noted that the presence of resistance groups, or former combatants, who have laid down their arms, does not alter the civilian character of the population. *Blaškić* Appeal Judgement, para. 113.

<sup>2760</sup> Article 4(A) of Geneva Convention III provides that prisoners of war, in the sense of the Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power. [...]

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

Article 43 of Additional Protocol I provides:

(1) The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict.

(2) Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.

(3) Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

of such armed forces, cannot claim civilian status.<sup>2761</sup> The specific situation of the victim at the time of the crimes may not be determinative of civilian or non-civilian status and a member of an armed organisation is not accorded civilian status by the fact that he or she is not armed or in combat at the time of the commission of the crimes.<sup>2762</sup> The term “civilian” should not be defined expansively so as to include persons *hors de combat*.<sup>2763</sup> Yet, while the term “civilian” should be given a restrictive definition, a person *hors de combat* may still be a victim of an act amounting to a crime against humanity, provided that all the other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against a civilian population.<sup>2764</sup> It is in fact now established in the jurisprudence of the Appeals Chamber that it is neither a requirement nor an element of crimes against humanity that the victims of the underlying crimes should be civilians.<sup>2765</sup>

(c) The Attack Must Be Widespread or Systematic

756. The jurisprudence establishes that the attack must be either widespread or systematic.<sup>2766</sup> The term “widespread” refers to the large-scale nature of the attack and the number of victims, while the term “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence.<sup>2767</sup> A systematic attack is commonly expressed as a pattern of crimes involving the “non-accidental repetition of similar criminal conduct on a regular basis”.<sup>2768</sup> Proof of the existence of a plan or policy behind the attack may serve an evidentiary purpose in proving that it was directed against a civilian population or that it was widespread or systematic, but a plan or policy is not a legal element of Article 5.<sup>2769</sup> A single act or a limited number of acts can qualify as a crime against humanity provided that they may not be said to be isolated or random and all other conditions are met.<sup>2770</sup>

(d) The Acts of the Perpetrator Must Be Part of the Attack

757. The acts of the accused must be part of the attack on the civilian population, though they need not be committed in the midst of that attack.<sup>2771</sup> This requirement is sometimes expressed in

<sup>2761</sup> *Kordić and Čerkez* Appeal Judgement, para. 50; *Blaškić* Appeal Judgement, para 113.

<sup>2762</sup> *Blaškić* Appeal Judgement, para 114.

<sup>2763</sup> *Martić* Appeal Judgement, para. 302; *Galić* Appeal Judgement, para. 144.

<sup>2764</sup> *Martić* Appeal Judgement, para. 313.

<sup>2765</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 32. See also *Martić* Appeal Judgement, para. 307.

<sup>2766</sup> *Kunarac et al.* Appeal Judgement, para. 93.

<sup>2767</sup> *Kordić and Čerkez* Appeal Judgement, para. 94; *Blaškić* Appeal Judgement, para. 101; *Kunarac et al.* Appeal Judgement, para. 94.

<sup>2768</sup> *Blaškić* Appeal Judgement, para. 101; *Kunarac et al.* Appeal Judgement, para. 94.

<sup>2769</sup> *Blaškić* Appeal Judgement, para. 120; *Kunarac et al.* Appeal Judgement, paras. 98, 101.

<sup>2770</sup> *Kordić and Čerkez* Appeal Judgement, para. 94; *Blaškić* Appeal Judgement, para. 101; *Kunarac et al.* Appeal Judgement, para. 96.

<sup>2771</sup> *Kunarac et al.* Appeal Judgement, para. 100.

terms of a nexus between the acts of the accused and the attack.<sup>2772</sup> A crime which is committed before or after the main attack on the civilian population or away from it could still, if sufficiently connected, be part of that attack.<sup>2773</sup> If, however, the act is so far removed from the attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack, it will not amount to a crime under Article 5.<sup>2774</sup>

(e) Mens Rea and State of Knowledge

758. To be guilty of a crime under Article 5, the accused must have the requisite intent, to commit the underlying offence(s) with which he or she is charged, and he or she must know that there is an attack on the civilian population and that his or her acts comprise part of that attack.<sup>2775</sup> The accused need not have knowledge of the details of the attack.<sup>2776</sup> The motives of the accused for taking part in the attack are not relevant.<sup>2777</sup> The accused need not share the purpose or the goal behind the attack, and may commit a crime against humanity for purely personal reasons.<sup>2778</sup>

## 2. Findings

(a) Armed Conflict

759. The Trial Chamber recalls its finding there was an armed conflict in Eastern Bosnia during the period relevant for the Indictment.<sup>2779</sup> The Trial Chamber further finds that the alleged acts were committed in this armed conflict.

(b) A Widespread or Systematic Attack Directed Against a Civilian Population, of which the Acts of the Perpetrators Must Be a Part

760. The Trial Chamber finds that it has been established beyond reasonable doubt that there was a widespread and systematic attack directed against the Bosnian Muslim civilian populations of Srebrenica and Žepa, commencing with the issuance of Directive 7. This attack had various components,<sup>2780</sup> including the strangulation of the enclaves through the restriction of humanitarian supplies, the gradual weakening and disabling of UNPROFOR, and a planned military assault on

<sup>2772</sup> *Kunarac et al.* Appeal Judgement, paras. 99, 101.

<sup>2773</sup> *Ibid.*, para. 100.

<sup>2774</sup> *Ibid.*

<sup>2775</sup> *Kordić and Čerekez* Appeal Judgement, para. 99; *Blaškić* Appeal Judgement, para. 124. Cf. *Kunarac et al.* Appeal Judgement, para. 102; *Tadić* Appeal Judgement, para. 248.

<sup>2776</sup> *Kunarac et al.* Appeal Judgement, para. 102.

<sup>2777</sup> *Kunarac et al.* Appeal Judgement, para. 103.

<sup>2778</sup> *Kunarac et al.* Appeal Judgement, para. 103. Cf. *Tadić* Appeal Judgement, paras. 248, 252.

<sup>2779</sup> See *supra*, para. 744.

<sup>2780</sup> An “attack” in the context of a crime against humanity can have various components. *Blagojević and Jokić* Trial Judgement, paras. 550-552; *Krstić* Trial Judgement, para. 482; *Kunarac et al.* Trial Judgement, paras. 570–578.

the enclaves, and culminated in the removal of thousands of people from Srebrenica and Žepa. This attack was widespread because of its large scale and number of victims; and it was systematic because of the organised nature of the actions taken against the victims and the improbability of their random occurrence.<sup>2781</sup>

761. The attack in its various components was directed against United Nations protected enclaves, the *raison d'être* for which was the establishment of a safe area for civilian residents.<sup>2782</sup> There can thus be no doubt that the populations of these enclaves were predominantly and in fact overwhelmingly civilian and the Trial Chamber so finds.<sup>2783</sup> While the Trial Chamber has found members of the ABiH were present in the enclaves prior to and during the attack,<sup>2784</sup> this does not in any way affect the fundamental civilian status of the enclaves.

(i) Commencement of the Attack – Plan to Forcibly Remove the Bosnian Muslim Populations from the Enclaves

762. Directive 7 marked the commencement of the attack against the civilian population. In furtherance of the VRS objective to win the war and create a Serbian state, Directive 7 tasked the Drina Corps with creating “an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”.<sup>2785</sup> The Trial Chamber observes that, while the Directive contains legitimate military goals, it clearly denotes at the same time an illegal plan for an attack directed against a civilian population taking the form of measures aimed at forcing the populations of Srebrenica and Žepa to leave the enclaves.

763. The Trial Chamber recalls that Main Staff Directive 7/1 does not repeat the language of Directive 7 on the creation of an unbearable situation for the population of Srebrenica and Žepa. The Trial Chamber has heard evidence that the part of Directive 7 giving the task to the Drina Corps to “create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa” was “illogical” and “not a military task”.<sup>2786</sup> By issuing Directive 7/1, the Commander of the VRS assigned the Drina Corps a different task that could be

<sup>2781</sup> *Kordić and Čerkez* Appeal Judgement, para. 94; *Blaškić* Appeal Judgement, para. 101; *Kunarac et al.* Appeal Judgement, para. 94.

<sup>2782</sup> *See supra*, paras. 92–95.

<sup>2783</sup> *See supra*, paras. 213, 667, 670.

<sup>2784</sup> *See supra*, paras. 204, 209, 246, 666, 670.

<sup>2785</sup> Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 10. Cf. Ex. P00203, “Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995”, p. 6. *See also supra*, para. 199

<sup>2786</sup> Slobodan Kosovac, T. 30473-30474 (21 Jan 2009). *See also ibid.*, T. 30100-30101 (14 Jan 2009); Ex. 5D00759, “Report on Functioning of the VRS, by S. Kosovac, 2008”, para. 139.

carried out in a military manner<sup>2787</sup> and it is argued that the tasks given to the Drina Corps in Directive 7 were as a result corrected and made null and void.<sup>2788</sup>

764. The Trial Chamber has considered this evidence but does not accept the suggested interpretation for the following reasons. With regard to the tasks for the Drina Corps, Directive 7 is consistent with the policy set out in earlier documents, including Main Staff Directive 4 which also includes a reference to the removal of the Bosnian Muslim population from the Srebrenica and Žepa enclaves.<sup>2789</sup> The Trial Chamber finds that Directive 7 elaborates on this task and gave instructions as to how this task was to be accomplished, *i.e.* by creating “an unbearable situation of total insecurity with no hope of further survival or life for inhabitants of Srebrenica and Žepa”.<sup>2790</sup> The Trial Chamber also notes that Directive 7/1 does not include any passage stating that it replaced Directive 7, rather it directly refers to Directive 7. This includes stating that Directive 7 provides the basis for the tasks of the VRS.<sup>2791</sup> Furthermore, the language of Directive 7 relating to the tasks of the Drina Corps was adopted by the Drina Corps itself through the 20 March Drina Corps order for defence and active combat operations, Operative No. 7, signed by Živanović.<sup>2792</sup>

765. Based on this evidence, the Trial Chamber is satisfied that Directive 7 continued to be authoritative and applicable in terms of setting out the VRS objectives and strategies, including the plan for forcing out the populations of Srebrenica and Žepa. Viewed in this context, Directive 7/1 was simply a further step in the attack against the civilian populations of Srebrenica and Žepa. Also the 20 March Drina Corps order, which repeated the incriminatory language of Directive 7,<sup>2793</sup> in and of itself was a further step in terms of the implementation of the attack and constituted another component.

(ii) Restrictions on Humanitarian Aid to the Enclaves and Re-Supply of UNPROFOR

766. As found above, the plan to force the populations of Srebrenica and Žepa to leave the enclaves was set out in Directive 7. The Directive spelled out that this be done through, *inter alia*, “the planned and unobtrusively restrictive issuing of permits” so as to “reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim

<sup>2787</sup> Slobodan Kosovac, T. 30473-30474 (21 Jan 2009).

<sup>2788</sup> *Ibid.*, T. 30483 (21 Jan 2009). *See also* Manojlo Milovanović, T. 12277 (30 May 2007) (who testified that Directive 7/1 did not “adopt the tasks of the Drina Corps in the way they were defined by the Supreme Command” and that Mladić “changed the decision of the Supreme Commander”); Mirko Trivic, T.11929 (22 May 2007) (testifying that all directives, including Directive 7, were not binding documents but merely guidelines and food for thought about certain parts of the battlefields, suggesting problems to be solved).

<sup>2789</sup> *See supra*, para. 91.

<sup>2790</sup> Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 10.

<sup>2791</sup> Ex. 5D00361, “VRS Main Staff Directive 7/1, signed by Mladić, 31 March 1995”.

<sup>2792</sup> *See supra*, para. 201.

<sup>2793</sup> *Ibid.*



population, making them dependent on our good will while at the same time avoiding condemnation by the international community and international public opinion”.<sup>2794</sup> The Trial Chamber finds this constituted a clear policy on the part of the VRS to restrict aid to the enclaves with the ultimate aim to force the Bosnian Muslims to leave. The Trial Chamber is also satisfied that this included restricting re-supply of UNPROFOR, with the aim of preventing UNPROFOR from performing its tasks, which was centrally to protect these enclaves.

767. The Trial Chamber is satisfied that following the issuance of Directive 7, the humanitarian situation in the enclaves deteriorated. The evidence is not conclusive with regard to when the situation in the enclaves worsened. For example, according to DutchBat, fewer and fewer convoys were approved and the situation deteriorated from March whereas UNHCR data show that between March and May the aid delivery was rather consistent.<sup>2795</sup> However, in light of all the evidence before it, the Trial Chamber is convinced that at least from June the aid supply decreased significantly, resulting in a very dire humanitarian situation in the Srebrenica and Žepa enclaves. The Trial Chamber is satisfied that this happened as a result of restrictions of aid convoys by the VRS in accordance with the plan set out in Directive 7.<sup>2796</sup> The Trial Chamber is equally satisfied that the VRS restricted the re-supply of UNPROFOR in accordance with the policy set out in Directive 7. The Trial Chamber is further satisfied that these restrictions on humanitarian aid formed a component of the attack against the civilian population.

(iii) Military Action Leading to the Fall of the Enclaves

768. The Trial Chamber notes that before *Krivaja-95*, sometimes the civilian populations of Srebrenica and Žepa were randomly targeted and incurred casualties.<sup>2797</sup> Notably, on 25 May 1995, in response to the NATO bombing of the VRS positions in Pale, the Bratunac Brigade shelled the Srebrenica enclave upon orders from the Drina Corps.<sup>2798</sup> Furthermore, while not targeted directly at the population of the Srebrenica enclave, the Trial Chamber notes that DutchBat, the UN force tasked to protect the civilian population of Srebrenica, was attacked on 3 June 1995, when the VRS took over by force the DutchBat OP Echo at Zeleni Jadar, following orders from Živanović.<sup>2799</sup>

<sup>2794</sup> Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 14.

<sup>2795</sup> See *supra*, Chapter III, Section C.5.

<sup>2796</sup> See *supra*, para. 199. The Trial Chamber notes the time lapse between the issuing of Directive 7 and the increase of convoy restrictions. It finds that this corroborates the imposition of the convoy restrictions in accordance with the policy set out in Directive 7 which stated that the reduction of aid to the population and supply to UNPROFOR be done through the planned and “unobtrusively” restrictive issuing of permits to avoid international condemnation. Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 14. The Trial Chamber therefore concludes that the restriction of aid to the enclaves by the VRS formed part of the attack against the civilian population.

<sup>2797</sup> See *supra*, paras. 210, 666.

<sup>2798</sup> See *supra*, para. 207.

<sup>2799</sup> See *supra*, para. 208.

Meanwhile, from June 1995, the VRS intensified its sporadic shelling of the Žepa enclave, causing civilian casualties and the destruction of some villages in the enclave.<sup>2800</sup>

(iv) Military Attack on the Enclaves

769. On 2 July, Živanović issued the *Krivaja-95* orders, which marked the commencement of the military attack on the enclaves.<sup>2801</sup> The objective was “a surprise attack, to separate and reduce in size the Srebrenica and Žepa enclaves, to improve the tactical position of the forces in the depth of the area, and to create conditions for the elimination of the enclaves”.<sup>2802</sup> Both orders specifically refer to Directive 7 and Directive 7/1 when defining the Drina Corps tasks.<sup>2803</sup> The combat order notes that one objective of the attack was “to create conditions for the elimination of the enclaves”.<sup>2804</sup> On 9 July Karadžić issued an order extending the operations to include the capture of Srebrenica town.<sup>2805</sup> The VRS took Srebrenica town on 11 July.<sup>2806</sup>

770. In the course of this military operation, the VRS attacked and disabled the UNPROFOR forces tasked to protect the civilian population and indiscriminately fired upon and shelled the enclave, including in the final stages, Srebrenica town.<sup>2807</sup> By example, on the morning of 10 July, two heavy shells, probably 155mm artillery shells, hit the direct surroundings of the hospital in Srebrenica town, where 2,000 civilians had gathered for refuge, and six of them were killed.<sup>2808</sup> On 11 July, the DutchBat Bravo Company Compound in Srebrenica town and the DutchBat Compound in Potočari were shelled when large numbers of Bosnian Muslims were seeking protection there.<sup>2809</sup> The Trial Chamber also recalls its finding that the Bosnian Serb Forces shot at and shelled the Bosnian Muslims even as they fled from their homes along the road from Srebrenica to Potočari.<sup>2810</sup> There can be no doubt and the Trial Chamber finds that this military attack by the VRS was directed against a civilian population.

<sup>2800</sup> See *supra*, para. 666.

<sup>2801</sup> See *supra*, paras. 244–245.

<sup>2802</sup> Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 4.

<sup>2803</sup> Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995”, p. 1; Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, p. 3.

<sup>2804</sup> Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, p. 3.

<sup>2805</sup> See *supra*, para. 252.

<sup>2806</sup> See *supra*, para. 260.

<sup>2807</sup> See *supra*, paras. 249–251, 253, 255, 257.

<sup>2808</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 106; Joseph Kingori, T. 19223–19224 (13 Dec 2007); Ex. P00501, “UNMO Report, 10 July 95, 10:25”. Cf. Robert Franken, T. 2646–2647 (18 Oct 2006) (Asked by Counsel for Miletić whether it was possible that the ABiH soldiers and the headquarters of the ABiH 28th Division were the target of the VRS shelling of Srebrenica town on 10 July, Robert Franken responded: “Yes, it is possible, but I have to make one remark: Then they were very poor gunners because they hit the whole city instead of those two locations.”).

<sup>2809</sup> See *supra*, paras. 257, 266.

<sup>2810</sup> See *supra*, paras. 257, 265. But see Judge Kwon’s Separate Opinion, *supra*, fn. 849.

771. Emboldened by success in Srebrenica, the Bosnian Serb Forces proceeded steadily to Žepa.<sup>2811</sup> After the failure of the first round of negotiations, the VRS commenced similar military actions against the Žepa enclave.<sup>2812</sup> Two more rounds of negotiations followed, but also at the second juncture, the VRS carried out further military attacks against the enclave.<sup>2813</sup> Following the third round of negotiations, the 24 July Agreement was signed, after which major fighting ceased.<sup>2814</sup>

772. As in Srebrenica, the civilian population in the Žepa enclave was subjected to the VRS military attack. In early July, in a five day action by the VRS, civilians were wounded by mortar shelling and houses in the surrounding villages were destroyed.<sup>2815</sup> There was also sporadic artillery, mortar, and heavy machine gun fire directed at Žepa town and the surrounding villages.<sup>2816</sup> Shortly after the first round of negotiations, the VRS attacked the Žepa enclave again and this action included the shelling of inhabited areas.<sup>2817</sup> After the second round of negotiations failed, the VRS intensified its attack against Žepa, during which buildings and houses were also targeted.<sup>2818</sup> Again there can be no doubt and the Trial Chamber finds that this series of VRS military attacks on Zepa was directed against a civilian population.

773. The actions against Srebrenica and Žepa formed part of the same attack. The actions taken against both enclaves were factually, temporally, and geographically closely related. Directive 7 specifically addressed Srebrenica and Žepa, and a similar strategy was implemented against both enclaves after the issuance of Directive 7.<sup>2819</sup>

774. The Trial Chamber notes that it is uncontested that the Srebrenica and Žepa enclaves were never properly demilitarised.<sup>2820</sup> Furthermore, evidence was adduced that in Srebrenica, the ABiH used some “civilian” locations for housing command and other military purposes<sup>2821</sup> and that it carried out military strikes against surrounding villages from the enclave.<sup>2822</sup> In addition there is evidence before the Trial Chamber that the enclaves were of significant strategic importance to the

<sup>2811</sup> See *supra*, para. 672–674. See also Ex. P00114, “Order from the Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995”, p. 1 (“Benefiting from the outcome of the activities in the Srebrenica enclave, I have decided to immediately move onto the offensive and rout the enemy in the Žepa enclave...”); Mirko Trivić, T. 11841–11842, 11876–11877 (21 May 2007); Vinko Pandurević, T. 30883–30885 (30 Jan 2009).

<sup>2812</sup> See *supra*, Chapter III, Sections K.2–3.

<sup>2813</sup> See *supra*, Chapter III, Sections K.4–5.

<sup>2814</sup> See *supra*, Chapter III, Section K.6.

<sup>2815</sup> See *supra*, para. 671.

<sup>2816</sup> See *supra*, para. 672.

<sup>2817</sup> See *supra*, para. 680.

<sup>2818</sup> See *supra*, para. 696.

<sup>2819</sup> See *supra*, para. 199; Chapter III, Sections C.5, D, K.

<sup>2820</sup> Prosecution Final Brief, para. 98. See also Prosecution Adjudicated Fact Decision, Annex, Facts 49–50. See also *supra*, paras. 197, 204, 666.

<sup>2821</sup> See *supra*, para. 246.

<sup>2822</sup> See *supra*, para. 204.

VRS.<sup>2823</sup> Because of these circumstances, it is also accepted by the Prosecution that there was a “dual purpose” in the military attacks against the enclaves, with legitimate military aims being one of these purposes.<sup>2824</sup>

775. It is however not necessary for the Trial Chamber to speculate as to what military action on the part of the VRS may have been justified in relation to the enclaves in fulfilment of these legitimate military aims. Whatever those measures might have been, the full scale, indiscriminate and disproportionate attack levelled by the VRS against these United Nations protected civilian enclaves,<sup>2825</sup> was not amongst them. The Trial Chamber is satisfied that the circumstances of the military action, as outlined previously,<sup>2826</sup> were such that it alone constituted an illegal attack against a civilian population of a widespread and systematic nature. At the same time, the military assault on the enclaves also formed part of the broader attack initiated against the civilian populations of Srebrenica and Zepa by Directive 7.

(v) Departure of the Woman, Children, and the Elderly from the Enclaves

776. The departure of the women, children, and the elderly from Potočari on 12 and 13 July was rooted in their prior mistreatment by Bosnian Serb Forces, that is, the restriction of humanitarian supplies, the military action, the taking of the Srebrenica enclave, the dire humanitarian situation, and the acts of intimidation that had been taken against them.<sup>2827</sup> These factors leading to the departure of the women, children, and the elderly from Potočari were part of the widespread and systematic attack directed against the civilian population that began with the issuance of Directive 7. Further, the physical transportation of the women, children and the elderly from Srebrenica was the culmination and formed part of the widespread and systematic attack.

777. The population in Žepa was subjected to conditions comparable to those inflicted upon the population in Srebrenica, including restrictions on humanitarian aid and re-supply of UNPROFOR, the terrorising of the population, and the military actions and taking of the enclave.<sup>2828</sup> In addition, at the time of the third round of negotiations, rumours about the “terrible events” that had occurred in Srebrenica were circulating in Žepa.<sup>2829</sup> As found, these conditions cumulatively resulted in the

<sup>2823</sup> Ex. P03307, “Minutes and Tape recording of the 53rd session of the Republika Srpska National Assembly, 28 August 1995”, p. 69 (where Karadžić stated that certain areas, including Srebrenica, Zvornik, Vlasenica, and Rogatica, “had to become ours” “due to strategic importance”).

<sup>2824</sup> See Prosecution Final Brief, para. 279.

<sup>2825</sup> See *supra*, Chapter III, Sections D.1–3, K.1–6.

<sup>2826</sup> See *supra*, Chapter III, Sections D.1–3, K.1–6.

<sup>2827</sup> See *infra*, Chapter IV, Section G.2.(a)(i).

<sup>2828</sup> See *supra*, Chapter III, Sections C.5., K.

<sup>2829</sup> Hamdija Torlak, T. 9733–9734 (30 Mar 2007). See also *ibid.*, T. 9812–9814, 9821–9822 (2 Apr 2007).

departure of the women, children, and the elderly from Žepa from 25 to 27 July, which was part of the widespread and systematic attack.<sup>2830</sup>

778. The following discussion will address the nexus between this attack against the civilian population and subsequent actions taken against members of the Bosnian Muslim population of Srebrenica and Žepa.

(vi) The Separation of the Men and Boys and their Subsequent Execution

779. The Trial Chamber recalls that in Potočari, the men aged between around 15 and 65 years were separated, transported and detained under unbearable conditions, and later executed.<sup>2831</sup> Given that the members of the ABiH and the vast majority of the able-bodied men were not in Potočari but rather had left in the column heading towards Tuzla,<sup>2832</sup> the Trial Chamber is satisfied that these men were predominantly civilians and included boys and elderly males. Like the women, children and the elderly, these men had sought refuge in Potočari directly as a consequence of the military attack against the enclave. These men and boys were not selected based on their perceived involvement in the ABiH or any armed force<sup>2833</sup> nor was there any genuine effort to screen for or limit the separations to war criminals.<sup>2834</sup> The Trial Chamber finds therefore that the acts committed against these men and boys were intrinsically linked to and formed part of the widespread and systematic attack against the civilian population.

(vii) Departure of the Men from Srebrenica in the Column and Acts Carried out Against them

780. In the wake of the military attack on the enclave, the men from Srebrenica, like the rest of the population, fled their homes.<sup>2835</sup> By the evening of 11 July, most of the men had gathered in Šušnjari, where it became evident that they could no longer return to Srebrenica.<sup>2836</sup> Late that same evening, the column of Bosnian Muslim men was formed and started advancing towards Tuzla at around midnight.<sup>2837</sup>

<sup>2830</sup> See *infra*, Chapter IV, Section G.2.(b)(ii).

<sup>2831</sup> See *supra*, Chapter III, Sections E.6.(a)–(b), (d), E.7.(a)–(b), F.5., F.6(b)(v)d., G. See also *infra*, Chapter V, Section B.1.

<sup>2832</sup> See *supra*, Chapter III, Section D.4.

<sup>2833</sup> See *supra*, Chapter III, Section E.6.(a)–(b), (d). There is evidence that boys as well as men were separated at Potočari. Joseph Kingori, T. 19245, 19248 (13 Dec 2007); Leendert van Duijn, T. 2289, 2291 (27 Sept 2006), T. 2347 (28 Sept 2006); Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1025–1026 (10 July 2003), T. 3001–3002 (25 Oct 2006); Peter Boering T. 2010, 2012 (22 Sept 2006). Some of the men separated included disabled men and men with walking sticks. PW-169, T. 17313 (1 Nov 2007).

<sup>2834</sup> See *supra*, Chapter III, Section E.6.(a)–(b), (d).

<sup>2835</sup> See *supra*, para. 267.

<sup>2836</sup> See *supra*, paras. 267–268; see *infra*, paras. 926–930

<sup>2837</sup> See *supra*, para. 269.

781. As elaborated before, the column was mixed as to its composition and consisted of a civilian and a military component.<sup>2838</sup>

782. The same conditions that prompted the women, children, and the elderly to flee to Potočari, including the catastrophic humanitarian situation due to the restrictions of humanitarian aid and the military attack against the enclave, similarly compelled the formation of the column and the departure of the men.<sup>2839</sup> It therefore also formed an intrinsic part of the widespread and systematic attack against the civilian population. In the case of the military component of the column, albeit their flight with the column has not been found to constitute a part of the forcible transfer,<sup>2840</sup> the Trial Chamber finds it was undoubtedly the direct consequence of the military assault on the enclave by the VRS, which in and of itself constituted a widespread and systematic attack against a civilian population.

783. Almost immediately after discovering the existence of this departing column, the Bosnian Serb Forces began a vigorous pursuit of the column members with a view to their capture or enticed surrender, with an ultimate aim of murder.<sup>2841</sup> On the facts of this case, there is no evidence the Bosnian Serb Forces applied any selection procedure with regard to those who were captured or surrendered as to perceived involvement in the Bosnian Muslim Forces. By contrast with the facts in the *Mrkšić and Šljivančanin* case,<sup>2842</sup> all members of the column were targeted indiscriminately, with no effort being made to establish whether or not the victims were members of the armed forces (or had taken part in hostilities) or civilians.<sup>2843</sup> In this regard, there is also no evidence that the members of the Bosnian Serb Forces involved were operating under an assumption that they were taking custody of soldiers only. To the contrary, anyone who saw those men coming down from the hills or in the various locations where they were held could have been under no misapprehension to that effect.<sup>2844</sup> That there was a large component of civilians amongst those who were captured or surrendered was evident to all. In these circumstances, in particular taking into consideration the immediate temporal and close geographic link to the events in Srebrenica, the Trial Chamber is

<sup>2838</sup> See *supra*, paras. 270–271.

<sup>2839</sup> See *infra*, paras. 926–930. With regard to the civilian component of the column, the Trial Chamber has found, by majority, Judge Kwon dissenting, that it was a part of the forcible transfer of the population of Srebrenica. See *infra*, paras. 926–931. See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–14.

<sup>2840</sup> See *infra*, para. 927.

<sup>2841</sup> See *supra*, Chapter III, Section F. See also *infra*, para. 1055.

<sup>2842</sup> *Mrkšić and Šljivančanin* Appeal Judgement, paras. 35–44. (The *Mrkšić and Šljivančanin* Appeals Chamber concurred with the *Mrkšić and Šljivančanin* Trial Chamber that the victims of the crimes in Ovčara were selected on the basis of their perceived involvement in the Croatian armed forces, and as such were treated differently from the civilian population.)

<sup>2843</sup> The evidence that in a few instances, civilians were allowed to leave from Sandići does not take away the indiscriminate nature of the attack, especially in light of the massive numbers of victims involved. See *supra*, para. 385.

<sup>2844</sup> See Ex. P02011, "Video by Zoran Petrović, Studio B Version", at 12:43–14:48. See also *supra*, Chapter III, Section F.3.

satisfied that the acts carried out against these men from the column constituted part of the continuing widespread and systematic attack against the civilian population of the Srebrenica enclave.

(viii) Departure of Able-Bodied Men from Žepa

784. The able-bodied men of Žepa started fleeing the enclave into the surrounding woods while the forced busing of the Bosnian Muslim civilians proceeded.<sup>2845</sup> The men had faced the same living conditions and the same military attacks as the others in the enclave.<sup>2846</sup> Furthermore, during the different rounds of negotiations, the VRS consistently refused to permit any able bodied men—civilian or soldier—to be transferred out of the enclave together with the rest of the population.<sup>2847</sup> The Trial Chamber, by majority, Judge Kwon dissenting,<sup>2848</sup> is therefore satisfied that the flight of the men from Žepa, some across the Drina River, was the direct result and continuation of the attack against the civilian populations of Srebrenica and Žepa.

(ix) Conclusion

785. Based on all the above, the Trial Chamber finds that the crimes alleged in the Indictment meet the nexus requirement under Article 5 of the Statute.

(c) The Knowledge Requirement for a Crime under Article 5 of the Statute

786. The Trial Chamber will consider whether the individual Accused knew of the widespread and systematic attack and that their acts formed part of it, as necessary, in the section on Individual Criminal Responsibility.

<sup>2845</sup> See *supra*, paras. 732–738.

<sup>2846</sup> See *supra*, Chapter III, Sections C.5., K.1.–6. See also *infra*, para. 955.

<sup>2847</sup> See *supra*, Chapter III, Sections K.2., 4., 6. See also *infra*, para. 955.

<sup>2848</sup> See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–6, 15–20.

## C. Murder

### (a) Applicable Law

787. The elements of murder are the same under both Articles 3 and Article 5:<sup>2849</sup> the death of the victim, the causation of the death of the victim by the accused and the *mens rea* of the perpetrator.<sup>2850</sup>

788. Murder may occur where the death of the victim is caused by an omission as well as an act of the accused or of one or more persons for whom the accused is criminally responsible.<sup>2851</sup> Murder may be established where the accused's conduct contributes substantially to the death of the victim.<sup>2852</sup> The *mens rea* for murder may take the form of an intention to kill,<sup>2853</sup> or an intention to cause serious bodily harm which the accused should reasonably have known might lead to death.<sup>2854</sup>

789. To establish the death of the victim, the Prosecution need not prove that the body of the dead person has been recovered.<sup>2855</sup> It may instead establish a victim's death by circumstantial evidence, provided that the only reasonable inference that can be drawn is that the victim is dead.<sup>2856</sup>

### (b) Charges

790. Under counts 4 and 5 of the Indictment, the Prosecution charges all seven Accused with murder as a crime against humanity and a violation of the laws or customs of war, pursuant to Articles 3 and 5 (a) of the Statute.

791. The allegations against the Accused comprise large-scale and systematic killings that occurred in the Bratunac and Zvornik area between 13 and 16 July,<sup>2857</sup> near Nezuk and Snagovo between 19 and about 22 July 1995,<sup>2858</sup> and near Trnovo sometime in July or August.<sup>2859</sup> The charges include the killing of Bosnian Muslims who were held by the Zvornik Brigade at the

<sup>2849</sup> *Blagojević and Jokić* Trial Judgement, para. 556, citing *Krnojelac* Trial Judgement, para. 323; *Naletilić and Martinović* Trial Judgement, para. 248.

<sup>2850</sup> *Kvočka et al.* Appeal Judgement, para. 261; *Kordić and Čerkez* Appeal Judgement, para. 37.

<sup>2851</sup> *Kvočka et al.* Appeal Judgement, para. 260; *Galić* Appeal Judgement, para. 149. For example, murder may result from the wilful omission to provide medical care. *Kvočka et al.* Appeal Judgement, para. 270.

<sup>2852</sup> *Brđanin* Trial Judgement, para. 382; *Čelebići* Trial Judgement, para. 424.

<sup>2853</sup> *Kvočka et al.* Appeal Judgement, para. 261; *Kordić and Čerkez* Appeal Judgement, para. 37; *Čelebići* Appeal Judgement, para. 423.

<sup>2854</sup> *Kvočka et al.* Appeal Judgement, para. 261

<sup>2855</sup> *Ibid.*, para. 260.

<sup>2856</sup> *Kvočka et al.* Appeal Judgement, para. 260.

<sup>2857</sup> Indictment, paras. 30.1–30.12.

<sup>2858</sup> *Ibid.*, paras. 30.13, 30.15.1.

<sup>2859</sup> *Ibid.*, para. 30.16.



Standard Barracks and subsequently “disappeared”, namely, four survivors of the alleged Branjevo Military Farm execution and patients from the Milići Hospital.<sup>2860</sup> Killings which the Prosecution refers to as “opportunistic” killings are alleged to have occurred in Potočari, Bratunac town, in the Kravica Supermarket and the Petkovci School between 12 and 15 July 1995.<sup>2861</sup> Although Radivoje Miletić and Milan Gvero are not charged with responsibility for large-scale and systematic killings, the Prosecution alleges they were responsible for the aforementioned “opportunistic” killings.

792. Below, the Trial Chamber considers whether the murders were committed as charged. Whether the Accused incur criminal responsibility for these murder charges is set out in detail for each accused individually.

(c) Findings

793. The Trial Chamber has found that, from 12 July until late July 1995, several thousand Bosnian Muslim men were executed.<sup>2862</sup>

794. The Trial Chamber finds that the following killings were perpetrated by Bosnian Serb Forces.<sup>2863</sup> Further, the Trial Chamber finds that the victims of these killings were Bosnian Muslim men who had surrendered or been captured from the column of men retreating from the Srebrenica enclave or had been separated at Potočari.

1. On 12 and 13 July 1995, between 40 and 80 Bosnian Muslim prisoners were taken from a hangar behind the Vuk Karadžić elementary school in Bratunac and killed.<sup>2864</sup>
2. On 13 July 1995, nine Bosnian Muslim men were killed in a field near a stream at about 500 metres distance from the DutchBat compound in Potočari,<sup>2865</sup> and one Bosnian Muslim man was taken behind a building near the “White House” at Potočari and killed.<sup>2866</sup>
3. On 13 July 1995, 15 Bosnian Muslims were killed at Jadar River,<sup>2867</sup> 150 Bosnian Muslims were killed at Cerska Valley,<sup>2868</sup> 10 to 15 Bosnian Muslims were killed at Sandići Meadow<sup>2869</sup> and approximately 22 Bosnian Muslims, who had been detained at Luke School, were taken to a meadow at Rašića Gaj and shot.<sup>2870</sup> At some time on or after 13 July

<sup>2860</sup> Indictment, paras. 30.14-30.15.

<sup>2861</sup> *Ibid.*, paras. 31.1-31.4.

<sup>2862</sup> The Trial Chamber has found that at least 5,336 identified individuals were killed in the executions following the fall of Srebrenica, and this number could well be as high as 7,826. *See supra*, para. 664.

<sup>2863</sup> *See supra*, Chapter III.

<sup>2864</sup> *See supra* paras. 452-455.

<sup>2865</sup> *See supra* paras. 354-359.

<sup>2866</sup> *See supra* paras. 360-361. The Trial Chamber notes that the Prosecution dropped two murder charges regarding killings in Potočari as listed under paras. 31.1.b and 31.1.c of the Indictment. *See* Corrigendum to Prosecution Final Trial Brief, para. 8.

<sup>2867</sup> *See supra* paras. 408-409.

<sup>2868</sup> *See supra* paras. 410-414.

<sup>2869</sup> *See supra* paras. 421-423.

<sup>2870</sup> *See supra* paras. 351-353.

- 1995, five Bosnian Muslim men were killed after they had been interrogated at the Bratunac Brigade Headquarters.<sup>2871</sup>
4. On 13 July 1995, a Bosnian Muslim man who was mentally handicapped was taken off a bus parked in front of the Vuk Karadžić School and killed.<sup>2872</sup>
  5. Between 13 and 14 July 1995, at least 1,000 Bosnian Muslims were killed at the Kravica Warehouse.<sup>2873</sup>
  6. Between 13 and 14 July 1995, an unknown number of Bosnian Muslim prisoners detained on trucks near the Kravica Supermarket were killed.<sup>2874</sup>
  7. Between 13 and 15 July 1995, an unknown number of Bosnian Muslim men were killed inside and outside the Vuk Karadžić School in Bratunac.<sup>2875</sup>
  8. On 14 July 1995, between 800 and 2,500 Bosnian Muslims were killed at Orahovac.<sup>2876</sup>
  9. On 14 July 1995, several Bosnian Muslim men detained at the Petkovci School were killed.<sup>2877</sup>
  10. On 15 July 1995, Bosnian Muslim men detained at the Petkovci School were brought to the Petkovci Dam where over 800 Bosnian Muslims were killed.<sup>2878</sup>
  11. On 15 July 1995, over 1,000 Bosnian Muslims were killed at Kozluk.<sup>2879</sup>
  12. Between 14 and 15 July 1995, ten Bosnian Muslim men detained at the Kula School near Pilica were killed.<sup>2880</sup>
  13. On 16 July, between 1,000 and 2,000 Bosnian Muslims were killed at the Pilica Cultural Centre and the Branjevo Military Farm.<sup>2881</sup>
  14. On 19 July 1995, four Bosnian Muslims were killed at Baljkovica, near Nezuk.<sup>2882</sup>
  15. Sometime after 23 July 1995, four survivors of the Branjevo Military Farm executions were detained in the Standard Barracks, where they were in the custody of the Zvornik Brigade and the VRS. Subsequently, they were taken away and have never been seen again since. The Trial Chamber is satisfied, particularly in light of the circumstances surrounding their disappearance, that the only reasonable inference on the evidence is that they were killed.<sup>2883</sup> The Trial Chamber recalls in this respect that no proof is required that their bodies be recovered.<sup>2884</sup>

<sup>2871</sup> See *supra* paras. 450–451. **Judge Kwon’s Separate Opinion:** I am afraid that this statement would amount to a double-finding. As the Trial Chamber has already found, these five Bosnian Muslim men were taken to the Vuk Karadžić School in Bratunac, after their interrogation at the Bratunac Brigade Headquarters on 13 July. See *supra*, para. 391. In my view, the killings of these five men have been reflected in one of the mass-killings as found hereinafter, most likely in the killing at Kozluk on 15 July, given that their remains were found in the primary gravesite at Kozluk and secondary gravesites associated with it. See *supra*, paras. 450–451; *infra*, para 794-11.

<sup>2872</sup> See *supra* paras. 456–457.

<sup>2873</sup> See *supra* paras. 424–445.

<sup>2874</sup> See *supra* paras. 446–449. *But see* Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46. The Trial Chamber notes that the Prosecution dropped the murder charge regarding the execution of a man near the Kravica Supermarket as listed under para. 31.3 of the Indictment. See Corrigendum to Prosecution Final Trial Brief, para. 9.

<sup>2875</sup> See *supra* paras. 460–463.

<sup>2876</sup> See *supra* paras. 479–492.

<sup>2877</sup> See *supra* paras. 494–498.

<sup>2878</sup> See *supra* paras. 499–503.

<sup>2879</sup> See *supra* paras. 517–524.

<sup>2880</sup> See *supra* paras. 527–531.

<sup>2881</sup> See *supra* paras. 532–550.

<sup>2882</sup> See *supra* paras. 565–569.

<sup>2883</sup> See *supra* paras. 584–589.

<sup>2884</sup> See *supra* paras. 789.

16. On or shortly after 23 July 1995, ten injured Bosnian Muslims who had been taken from Milići Hospital and put in the custody of the Zvornik Brigade and the VRS at the Standard Barracks were taken away and “disappeared”, and have never been seen again since. Particularly in light of the circumstances of their disappearance, the Trial Chamber concludes that the only reasonable inference on the evidence is that they were killed.<sup>2885</sup>
17. On or about 22 July 1995, five Bosnian Muslim men were killed near Snagovo.<sup>2886</sup>
18. Sometime in July 1995, six Bosnian men and boys were killed near Trnovo town.<sup>2887</sup>

795. The Trial Chamber is satisfied that the killings were intentional. The Bosnian Muslim men, who had surrendered or been captured from the column of men retreating from the Srebrenica enclave or had been separated at Potočari, were detained. Subsequently, they were killed at the place of their detention, or taken to an execution site, where they were lined up and shot. Many of the executions occurred at point blank range. At many of the execution sites heavy equipment was used to dig a hole in the ground to dispose of the bodies before, during or after such executions. On at least one of the execution sites it took hours to kill all the prisoners.

796. The Trial Chamber has already found that all of the aforementioned killings formed part of a widespread and systematic attack against the civilian population.<sup>2888</sup> The victims of these killings did not take an active part in the hostilities at the time that they were killed and this was apparent to those involved.<sup>2889</sup> The Trial Chamber is satisfied that the aforementioned killings constitute murder both as a crime against humanity and a violation of the laws or customs of war.<sup>2890</sup> The responsibility of each Accused for these crimes is discussed in section V of this Judgement.

797. As stated above, the Trial Chamber was not presented with sufficient evidence to conclude beyond reasonable doubt that on 14 July 1995, two Bosnian Muslim men who were taken off a truck in Bratunac were killed in a nearby garage.<sup>2891</sup>

798. The Trial Chamber is also not satisfied that the evidence presented on killings occurring near Nova Kasaba corresponds to the incident described in the Indictment under

<sup>2885</sup> See *supra*, paras. 570–577. The Trial Chamber finds that the Milići patients were wounded as a result of the attack on Srebrenica. Ex. 6DP01880, “Note regarding transfer of wounded from Milići Hospital to Zvornik Hospital, signed by Radomir Davidović, 20 July 1995”. The report is entitled: “Medical support for operations Srebrenica ’95” and reads “Eighteen wounded enemy/soldiers/ have undergone surgery and have been transferred to the hospital in Zvornik on the orders of the Main Staff, *ibid*, p. 2; Ex. P03159a (confidential); See also P00693 “Chapter Eight Analytical Addendum to Srebrenica Military Narrative (revised)”. See *supra* para. 570–577.

<sup>2886</sup> See *supra* paras. 578–583.

<sup>2887</sup> See *supra* paras. 597–599. This killing was found to have been committed by members of the Scorpions Unit.

<sup>2888</sup> See *supra* paras. 760–761.

<sup>2889</sup> See *supra* paras. 747.

<sup>2890</sup> See Indictment, paras. 46–47.

<sup>2891</sup> See *supra* paras. 458–459. Indictment, para. 31.2.(b).

paragraph 30.3.1.<sup>2892</sup> Accordingly, it is not satisfied this incident is proven beyond reasonable doubt.

## **D. Extermination**

### **1. Applicable Law**

799. The crime of extermination shares core elements with the crime of murder.<sup>2893</sup>

800. The *actus reus* of extermination consists of “any act, omission or combination thereof which contributes directly or indirectly to the killing of a large number of individuals”,<sup>2894</sup> but a “vast scheme of collective murder” is not an element of the crime.<sup>2895</sup> It is well-established that while extermination requires killing to be on a massive scale, it does not imply a numerical minimum number of victims.<sup>2896</sup> The element of massive scale should be assessed on a case-by-case basis.<sup>2897</sup>

801. The *mens rea* required for extermination is that “the accused intended, by his acts or omissions, either killing on a large scale, or the subjection of a widespread number of people, or the systematic subjection of a number of people, to conditions of living that would lead to their deaths.”<sup>2898</sup> It does not require intent to kill a certain threshold number of victims,<sup>2899</sup> nor need the accused have “intended to destroy the *group* or part of the group to which the victims belong.”<sup>2900</sup>

### **2. Findings**

802. The Indictment charges the Accused with extermination, a crime against humanity, through the murder of thousands of Bosnian Muslim men and boys from the Srebrenica enclave.<sup>2901</sup>

803. The Trial Chamber has found that the Bosnian Serb Forces killed thousands of Bosnian Muslim able-bodied males in the areas of Srebrenica, Potočari, Bratunac and Zvornik.<sup>2902</sup> The killings were committed in the context of a widespread and systematic attack against the civilian

<sup>2892</sup> See *supra* paras. 415–420. Indictment, para. 30.3.1.

<sup>2893</sup> *Krajišnik* Trial Judgement, para. 716; *Blagojević and Jokić* Trial Judgement, para. 571.

<sup>2894</sup> *Seromba* Appeal Judgement, para. 189, citing *Brdanin* Trial Judgement, para. 389; *Vasiljević* Trial Judgement, para. 229.

<sup>2895</sup> *Stakić* Appeal Judgement, para. 258. Cf. *Krstić* Appeal Judgement, para. 225.

<sup>2896</sup> *Brdanin* Appeal Judgement, para. 471; *Stakić* Appeal Judgement, para. 260, citing *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 516.

<sup>2897</sup> *Blagojević and Jokić* Trial Judgement, para. 573; *Stakić* Trial Judgement, para. 640.

<sup>2898</sup> *Stakić* Appeal Judgement, para. 259, citing *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 522.

<sup>2899</sup> *Stakić* Appeal Judgement, para. 260.

<sup>2900</sup> *Stakić* Trial Judgement, para. 639; *Vasiljević* Trial Judgement, para. 227.

<sup>2901</sup> Indictment, p. 45.

<sup>2902</sup> See *supra*, Chapter III, Sections E–J.

population.<sup>2903</sup> These killings were either within the common purpose of the JCE to Murder or were a natural and foreseeable consequence of it.

804. The systematic manner in which the Bosnian Serb Forces carried out the killings is patently demonstrated by the organised pattern in which they occurred. After the military take-over of the Srebrenica enclave, the Bosnian Serb Forces rapidly started to capture Bosnian Muslim able-bodied males. Those in Potočari were separated and held in detention.<sup>2904</sup> Many of those in the column were captured and held in detention along the Bratunac-Milići road, where some were killed.<sup>2905</sup> Large numbers in both groups were eventually brought to Bratunac, from where they were transported to detention sites in the Zvornik area.<sup>2906</sup> From these locations, they were transported to other sites nearby where they were executed. Their graves were dug before, during and after the executions.<sup>2907</sup> Within a matter of a few days, thousands had been executed by the Bosnian Serb Forces.<sup>2908</sup>

805. In light of the temporal and geographical proximity of the killings, the similarities between them and the organized and coordinated manner in which the Bosnian Serb Forces conducted them, the Trial Chamber finds that they formed part of a single operation. It is clear from the evidence that the Bosnian Serb Forces intended to kill Bosnian Muslim able-bodied males from Srebrenica on a massive scale.

806. The Trial Chamber is, therefore, satisfied that the crime of extermination was committed against the Bosnian Muslim able-bodied males who had been separated at Potočari or had surrendered or been captured from the column of men retreating from the Srebrenica enclave.

## **E. Genocide**

### 1. Applicable Law

807. The crime of genocide is punishable under Article 4 of the Statute, which adopts the definition of genocide and list of punishable acts in Articles II and III of the Genocide Convention.<sup>2909</sup> These articles of the Genocide Convention are widely accepted as customary

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<sup>2903</sup> See *supra*, paras 760–761.

<sup>2904</sup> See *supra*, Chapter III, Section E.

<sup>2905</sup> See *supra*, Chapter III, Section F, 1-4.

<sup>2906</sup> See *supra*, Chapter III, Sections F–G.

<sup>2907</sup> See *supra*, Chapter III, Section G.

<sup>2908</sup> See *supra*, Chapter III, Section G–J.

<sup>2909</sup> Compare Article 4(2)–(3) of the Statute with the Genocide Convention, Articles II, III. See also *Jelisić Appeal Judgement*, para. 45.

international law.<sup>2910</sup> Genocide was therefore a punishable offence under customary international law at the time of the acts alleged in the Indictment.<sup>2911</sup>

808. Like the Genocide Convention, Article 4(2) of the Statute provides that the following underlying acts constitute genocide when committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.<sup>2912</sup>

Proof of the specific genocidal intent to destroy the targeted group in whole or in part is required in addition to proof of intent to commit the underlying act.<sup>2913</sup>

(a) The Targeted Group

809. Both the *actus reus* and the *mens rea* provisions of Article 4 refer to the targeting of a protected group. Genocide was “originally conceived as the destruction of a race, tribe, nation, or other group with a particular positive identity; not as the destruction of various people lacking a distinct identity.”<sup>2914</sup> The Genocide Convention’s definition of the group, reflected in Article 4, adopts the understanding that genocide is the destruction of distinct human groups with particular identities, such as “persons of a common national origin” or “any religious community united by a single spiritual ideal.”<sup>2915</sup> A group is defined by “particular positive characteristics—national,

<sup>2910</sup> ICJ Bosnia Judgment, paras. 142, 161 (tracing prior opinions of the International Court of Justice recognizing that “the principles underlying the [Genocide] Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation” and “that the norm prohibiting genocide was assuredly a peremptory norm of international law (*jus cogens*)”) (quoting *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ Advisory Opinion, p. 23 and citing *Armed Activities on the Territory of the Congo (New Application 2002)*, ICJ Judgement, para. 64).

<sup>2911</sup> See *Krstić* Trial Judgement, para. 541 (surveying the state of customary international law at the time of the 1995 Srebrenica killings); Genocide Convention, Articles I, III-V; ICJ Bosnia Judgment, paras. 142, 161. See also United Nations General Assembly Resolution 96(I), adopted 11 December 1946; *United States v. Altstoetter et al.* (1947), United States Military Tribunal III, Opinion and Judgment, in *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10*, vol. III (U.S. Government Printing Office 1951).

<sup>2912</sup> Article 4(2)(a)-(e) of the Statute.

<sup>2913</sup> *Krstić* Appeal Judgement, para. 20. See also ICJ Bosnia Judgment, para. 186.

<sup>2914</sup> *Stakić* Appeal Judgement, para. 21.

<sup>2915</sup> See *Stakić* Appeal Judgement, paras. 22, 24 (analyzing the drafting history of the Genocide Convention and quoting the interpretation of the Genocide Convention’s protections in the UN Economic and Social Council’s 1978 Genocide Study, paras. 59, 78).

ethnic, racial or religious—and not the lack of them.”<sup>2916</sup> A negatively defined group—for example all “non-Serbs” in a particular region—thus does not meet the definition.<sup>2917</sup>

(b) Underlying Acts

(i) Article 4(2)(a): Killing Members of the Group

810. The elements of killing, which are equivalent to the elements of murder, are detailed in Chapter IV, Section C(a).<sup>2918</sup>

(ii) Article 4(2)(b): Causing Serious Bodily or Mental Harm to Members of the Group

811. Article 4(2)(b) refers to an intentional act or omission that causes “serious bodily or mental harm” to members of the targeted group. The acts in Article 4(2)(b)—similarly to Article 4(2)(a)—require proof of a result.<sup>2919</sup> The harm must go “beyond temporary unhappiness, embarrassment or humiliation” and inflict “grave and long-term disadvantage to a person’s ability to lead a normal and constructive life.”<sup>2920</sup> The harm need not be “permanent and irremediable” to meet the standard of constituting serious harm.<sup>2921</sup> In the *Seromba* Appeals Judgement, it was held that “[t]o support a conviction for genocide, the bodily harm or the mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part”.<sup>2922</sup> The determination of what constitutes serious harm depends on the circumstances.<sup>2923</sup> The harm must be inflicted intentionally to meet the *mens rea* requisite for the underlying offence.<sup>2924</sup>

812. Examples of acts causing serious bodily or mental harm include “torture, inhumane or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or serious injury to members of the targeted national, ethnic, racial or religious group.”<sup>2925</sup>

<sup>2916</sup> ICJ Bosnia Judgment, para. 193. *Accord Stakić* Appeal Judgement, para. 21.

<sup>2917</sup> *Stakić* Appeal Judgement, paras. 19–20, 28.

<sup>2918</sup> *See supra*, paras. 787–789. *See also Krajišnik* Trial Judgement, para. 859(i); *Blagojević and Jokić* Trial Judgement, para. 642; *Jelisić* Trial Judgement, para. 63. *See also Seromba* Trial Judgement, para. 317; *Semanza* Trial Judgement, para. 319; *Musema* Trial Judgement, para. 155.

<sup>2919</sup> *Brdanin* Trial Judgement, para. 688; *Stakić* Trial Judgement, para. 514.

<sup>2920</sup> *Krstić* Trial Judgement, para. 513; *see also Blagojević and Jokić* Trial Judgement, para. 645.

<sup>2921</sup> *Krstić* Trial Judgement, para. 513; *see also Stakić* Trial Judgement, para. 516; *Muvunyi* Trial Judgement, para. 487; *Ntagerura et al.* Trial Judgement, para. 664; *Kamuhanda* Trial Judgement, para. 634; *Bagilishema* Trial Judgement, para. 59; *Kayishema and Ruzindana* Trial Judgement, para. 108; *Akayesu* Trial Judgement, para. 502.

<sup>2922</sup> *Seromba* Appeal Judgement, para. 46. *See also Krajišnik* Trial Judgement, para. 862.

<sup>2923</sup> *Blagojević and Jokić* Trial Judgement, para. 646; *Krstić* Trial Judgement, para. 513.

<sup>2924</sup> *Blagojević and Jokić* Trial Judgement, para. 645; *Brdanin* Trial Judgement, para. 690; *Muvunyi* Trial Judgement, para. 487; *Kayishema and Ruzindana* Trial Judgement, para. 112

<sup>2925</sup> *Brdanin* Trial Judgement, para. 690. *See also* ICJ Bosnia Judgment, para. 319 (finding that systematic “massive mistreatment, [including] beatings, rape and torture causing serious bodily and mental harm during the [Bosnian]

813. The Appeals Chamber has held that forcible transfer “does not constitute in and of itself a genocidal act”.<sup>2926</sup> However, in some circumstances forcible transfer can be an underlying act that causes serious bodily or mental harm, in particular if the forcible transfer operation was attended by such circumstances as to lead to the death of the whole or part of the displaced population.<sup>2927</sup>

(iii) Article 4(2)(c): Deliberately Inflicting on the Group Conditions of Life Calculated to Bring about its Physical Destruction in Whole or in Part

814. Article 4(2)(c) covers methods of destruction that “do not immediately kill the members of the group, but, which, ultimately, seek their physical destruction”.<sup>2928</sup> The methods of destruction covered by Article 4(2)(c) are those seeking a group’s physical or biological destruction.<sup>2929</sup> In contrast to the underlying acts in Article 4(2)(a) and (b), which require proof of a result, this provision does not require proof that a result was attained.<sup>2930</sup>

815. Examples of methods of destruction frequently mentioned in Trial Judgements include denying medical services and “the creation of circumstances that would lead to a slow death, such as lack of proper housing, clothing and hygiene or excessive work or physical exertion.”<sup>2931</sup> “[S]ystematic expulsion from homes” has also been cited as a potential means of inflicting conditions of life calculated to bring about destruction.<sup>2932</sup>

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conflict and, in particular, in the detention camps” fulfil the material element of Article II(b) of the Genocide Convention, which language is reproduced in Article 4(2)(b) of the Statute).

<sup>2926</sup> *Krstić* Appeal Judgement, para. 33; *see also Blagojević and Jokić* Appeal Judgement, para. 123. The International Court of Justice has held that neither the intent to render an area ethnically homogenous nor operations to implement the policy “can *as such* be designated as genocide: the intent that characterizes genocide is to ‘destroy, in whole or in part,’ a particular group, and deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group”. ICJ Bosnia Judgement, para. 190 (emphasis in original).

<sup>2927</sup> Draft Genocide Convention, U.N. Doc. E/447; *Blagojević and Jokić* Trial Judgement, paras. 650, 654. *See also Eichmann* Jerusalem District Court Judgement, para. 186.

<sup>2928</sup> *Akeyesu* Trial Judgement, para. 505; *see also Brdanin* Trial Judgement, para. 691; *Stakić* Trial Judgement, paras. 517–518; *Musema* Trial Judgement, para. 157; *Rutaganda* Trial Judgement, para. 52.

<sup>2929</sup> *Krstić* Trial Judgement, para. 580. *Accord* ICJ Bosnia Judgment, para. 344 (Interpreting Article II(c) of the Genocide Convention, which Article 4(2)(c) of the Statute tracks, the International Court of Justice ruled that “the destruction of historical, cultural and religious heritage cannot be considered to constitute the deliberate infliction of conditions of life calculated to bring about the physical destruction of the group”).

<sup>2930</sup> *Brdanin* Trial Judgement, paras. 691; *Stakić* Trial Judgement, para. 517. The distinction traces back to the District Court of Jerusalem’s *Eichmann* Judgement, which limited the charge of imposing living conditions upon Jews calculated to bring about their physical extermination to persecution of Jews who had survived the Holocaust and ruled that Jews who were not saved should not be included “as if, in their case, there were two separate actions: first, subjection to living conditions calculated to bring about their physical destruction, and later the physical destruction itself.” *Eichmann* Jerusalem District Court Judgement, para. 196. *See also Brdanin* Trial Judgement, para. 905).

<sup>2931</sup> *See, e.g., Brdanin* Trial Judgement, paras. 691, 906; *Stakić* Trial Judgement, para. 517; *Musema* Trial Judgement, para. 157; *Kayishema and Ruzindana* Trial Judgement, paras. 115–116.

<sup>2932</sup> *See, e.g., Brdanin* Trial Judgement, para. 691; *Stakić* Trial Judgement, para. 517; *Akeyesu* Trial Judgement, para. 506.



816. Absent direct evidence of whether “conditions of life” imposed on the targeted group were calculated to bring about its physical destruction, Trial Chambers have “focused on the objective probability of these conditions leading to the physical destruction of the group in part” and assessed factors like the nature of the conditions imposed, the length of time that members of the group were subjected to them and characteristics of the targeted group like vulnerability.<sup>2933</sup>

817. The *mens rea* standard for the underlying offence of “[d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” is explicitly specified by the adjective “deliberately”.<sup>2934</sup>

(iv) Article 4(2)(d): Imposing Measures Intended to Prevent Births within the Group

818. Trial Judgements have held that measures intended to prevent births include acts such as the forced separation of males and females.<sup>2935</sup> Further, measures intended to prevent births within the group may be physical, but can also be mental.<sup>2936</sup>

819. To amount to a genocidal act, the evidence must establish that the acts were carried out with intent to prevent births within the group and ultimately to destroy the group as such, in whole or in part.<sup>2937</sup>

(c) Genocidal Intent

820. What distinguishes genocide is genocidal intent – the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.<sup>2938</sup> Whether there was genocidal intent is assessed based on “all of the evidence, taken together”.<sup>2939</sup>

<sup>2933</sup> *Brdanin* Trial Judgement, para. 906; *Kayishema and Ruzindana* Trial Judgement, paras. 115, 548; *Akayesu* Trial Judgement, para. 505. The Krajišnik Trial Chamber held that “[l]iving conditions, which may be inadequate by any number of standards, may nevertheless be adequate for the survival of the group”. *Krajišnik* Trial Judgement, para. 863.

<sup>2934</sup> See ICJ Bosnia Judgment, para. 186 (“Mental elements are made explicit in paragraphs (c) and (d) of Article II by the words ‘deliberately’ and ‘intended’ [ . . . ]. The acts, in the words of the ILC [International Law Commission], are by their very nature conscious, intentional or volitional acts”).

<sup>2935</sup> *Rutaganda* Trial Judgement, para. 53; *Akayesu* Trial Judgement, para. 507.

<sup>2936</sup> *Rutaganda* Trial Judgement, para. 53; *Akayesu* Trial Judgement, para. 508.

<sup>2937</sup> Cf. ICJ Bosnia Judgement, paras. 355–356, 361. In response to the Applicant’s claims, including that “forced separation of male and female Muslims in Bosnia and Herzegovina, as systematically practiced when various municipalities were occupied by the Serb forces... in all probability entailed a decline in birth rate of the group, given the lack of physical contact over many months”, and that “rape and sexual violence against women led to physical trauma which interfered with victims’ reproductive functions and in some cases resulted in infertility”, the International Court of Justice found that no evidence was provided as to “enable it to conclude that Bosnian Serb forces committed acts which could be qualified as imposing measures to prevent births in the protected group within the meaning of Article II (d) of the Convention”. *Ibid.*

<sup>2938</sup> See, e.g., *Krstić* Appeal Judgement, para. 134.

(i) Intent to Destroy the Targeted Group as Such

821. The words “as such” underscore that something more than discriminatory intent is required for genocide; there must be intent to destroy, in whole or in part, the protected group<sup>2940</sup> “as a separate and distinct entity.”<sup>2941</sup> The ultimate victim of the crime of genocide is the group.<sup>2942</sup>

822. The term “destroy” in customary international law means physical or biological destruction and excludes attempts to annihilate cultural or sociological elements.<sup>2943</sup> However, attacks on cultural and religious property and symbols of the targeted group often occur alongside physical and biological destruction and “may legitimately be considered as evidence of an intent to physically destroy the group.”<sup>2944</sup>

823. “By its nature, intent is not usually susceptible to direct proof” because “[o]nly the accused himself has first-hand knowledge of his own mental state, and he is unlikely to testify to his own genocidal intent.”<sup>2945</sup> Absent direct evidence, the intent to destroy may be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, or the repetition of destructive and discriminatory acts.<sup>2946</sup> Further, proof of the mental state with respect to the commission of the underlying act can serve as evidence from which to draw the further inference that the accused possessed the specific intent to destroy.<sup>2947</sup>

<sup>2939</sup> *Stakić* Appeal Judgement, para. 55. The inquiry concerning genocidal intent should not be compartmentalized into separately considering whether there was specific intent to destroy through each of the genocidal acts specified at Article 4(1)(a), (b), and (c). *Ibid.*

<sup>2940</sup> *See, e.g., Niyitegeka* Appeal Judgement, para. 53; ICJ Bosnia Judgment, para. 187.

<sup>2941</sup> *See, e.g., Brđanin* Trial Judgement, para. 698; *Blagojević and Jokić* Trial Judgement, para. 665.

<sup>2942</sup> *See, e.g., Blagojević and Jokić* Trial Judgement, paras. 656, 665; *Stakić* Trial Judgement, para. 521, referring to *Sikirica et al.* Judgement on Motions to Acquit, para. 89; *Akayesu* Trial Judgement, paras. 485, 521. *See also Jelisić* Trial Judgement, para. 108.

<sup>2943</sup> *Krstić* Appeal Judgement, para. 25 & n. 39. *See also* ICJ Bosnia Judgment, para. 344.

<sup>2944</sup> *Krstić* Trial Judgement 580. *See also* ICJ Bosnia Judgment, para. 344.

<sup>2945</sup> *Gacumbitsi* Appeal Judgement, para. 40. *See also Kayishema and Ruzindana* Appeal Judgement, para. 159; *Rutaganda* Appeal Judgement, para. 525.

<sup>2946</sup> *Jelisić* Appeal Judgement, para. 47. *See also Blagojević and Jokić* Appeal Judgement, para. 123 (noting that genocidal intent may be inferred from “evidence of other culpable acts systematically directed against the same group” and therefore “the forcible transfer operation, the separations, and the mistreatment and murders in Bratunac town are relevant considerations in assessing whether the principal perpetrators had genocidal intent”); *Krstić* Appeal Judgement, paras. 33, 35 (affirming consideration of other culpable acts systematically directed against the same group, including forcible transfer, and ruling that the scale of the killing in the area of Srebrenica, “combined with the VRS Main Staff’s awareness of the detrimental consequences it would have for the Bosnian Muslim community of Srebrenica and with the other actions the Main Staff took to ensure that community’s physical demise”, permitted the inference that the killing of the Bosnian Muslim men of Srebrenica was done with genocidal intent); *Muhimana* Appeal Judgement, para. 31; *Semanza* Appeal Judgement, para. 262.

<sup>2947</sup> *Krstić* Appeal Judgement, para. 20.

824. Forcible transfer alone is an insufficient basis from which to infer the intent to destroy.<sup>2948</sup> The intent to displace a group from a given area is distinct from the intent to destroy, and forcible transfer may evince intent to displace rather than destroy.<sup>2949</sup> However, forcible transfer is nonetheless a relevant consideration when assessing genocidal intent.<sup>2950</sup> Opportunistic killings similarly provide a very limited basis for inferring genocidal intent.<sup>2951</sup>

825. The existence of a personal motive must be distinguished from intent and does not preclude a finding of genocidal intent.<sup>2952</sup> The reason why an accused sought to destroy the victim group “has no bearing on guilt”.<sup>2953</sup>

826. **Nikolić** submits that a state policy is a required element of the crime of genocide.<sup>2954</sup> **Nikolić** bases his submission on an article written by Professor William A. Schabas, attached as an Annex to his Final Brief.<sup>2955</sup> By refuting the theoretical possibility of an individual committing genocide “without the support of an overarching State policy” (theory of the “lone *génocidaire*”), Professor Schabas challenges the ICTY jurisprudence, which held that “the preparatory work of the Convention of 1948 brings out that premeditation was not selected as a legal ingredient of the crime of genocide” and “[i]t ensues from this omission that the drafters of the Convention did not deem the existence of an organisation or a system serving genocidal objective as a legal ingredient of the crime.”<sup>2956</sup> Professor Schabas claims this is an erroneous interpretation of the Convention, as the

<sup>2948</sup> *Blagojević and Jokić* Appeal Judgement, para. 123.

<sup>2949</sup> See *Krstić* Appeal Judgement, para. 133 (ruling that Krstić harboured no genocidal intent because his intent was limited to forcibly displace, whereas others “harboured the same intent to carry out forcible displacement, but viewed this displacement as a step in the accomplishment of their genocidal objective”); *Eichmann* Jerusalem District Court Judgement, para. 186 (“With regard to the expulsion of Jews, in the organization of which the accused was engaged [ . . . ]: We have found that these were organized by the Accused with complete disregard for the health and lives of the deported Jews. So, too, the deaths of many Jews have been proved to be a result of the expulsions from Nisko, Stettin and the Warthe district. There is no doubt that here, there was cruelty which bordered on deliberate brutality, and we have pondered very carefully whether or not the accused foresaw the murderous consequences of these deportations and desired them. But ultimately a doubt remains in our minds whether there was here that specific intention to exterminate, required for proof of a crime against the Jewish People, and we shall therefore deal with these inhuman acts as being crimes against humanity.”)

<sup>2950</sup> *Blagojević and Jokić* Appeal Judgement, para. 123. See also *Krstić* Appeal Judgement, para. 33.

<sup>2951</sup> *Blagojević and Jokić* Appeal Judgement, para. 123.

<sup>2952</sup> *Jelisić* Appeal Judgement, para. 49. See also *Niyitegeka* Appeal Judgement, para. 52–53; *Kayishema and Ruzindana* Appeal Judgement, para. 161. See generally *Tadić* Appeal Judgement, paras. 268–269 (noting the irrelevance of motive in criminal law).

<sup>2953</sup> *Stakić* Appeal Judgement, para. 45.

<sup>2954</sup> **Nikolić** Final Brief, para. 77.

<sup>2955</sup> **Nikolić** Final Brief, Annex E, “State Policy as an Element of the Crime of Genocide, by Professor William A. Schabas, 30 April 2008” (“Schabas Article”), pp. 10–17.

<sup>2956</sup> Schabas Article, p. 11, referring to *Jelisić* Trial Judgement, para. 100. See also **Nikolić** Final Brief, para. 77, 80–84. **Nikolić** further submits that the Appeals Chamber’s endorsement of the Trial Chamber’s finding “did not provide any more substantial analysis or insight into the question”. **Nikolić** Final Brief, para. 83; Schabas Article, p. 13, referring to *Jelisić* Appeal Judgement, para. 48. **Nikolić** also argues that the only ICTR Appeals Chamber decision supporting the Appeals Chamber’s endorsement in *Jelisić* is an indication of the “importance of a State policy in a judicial inquiry into genocide, rather than authority that it is not an ‘element’”. **Nikolić** Final Brief, para. 83, referring to Schabas Article, pp. 14–15.

drafters of the Convention never directly addressed the issue of State policy as an element of the crime of genocide because they believed the matter to be self-evident.<sup>2957</sup>

827. Furthermore, according to Professor Schabas, the language of the Elements of Crimes of the ICC Statute (“ICC Elements of Crimes”) – requiring for genocide that “the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction” – implicitly supports the State policy requirement, thus rejecting the lone *génocidaire* theory.<sup>2958</sup> Professor Schabas also contends the additional requirement of “manifest pattern” spelled out in the ICC Elements of Crimes “is strong evidence that it is implicit in customary international law”.<sup>2959</sup>

828. The Trial Chamber notes that, in support of his assertion that a State policy is a required element of the crime of genocide, **Nikolić** is offering arguments that have already been considered by the jurisprudence of the ICTY and the ICTR. This jurisprudence has made it clear that a plan or policy is not a statutory element of the crime of genocide.<sup>2960</sup> The Trial Chamber recalls the Appeals Chamber’s ruling in *Krstić* that “the offence of genocide, as defined in the Statute and in international customary law, does not require proof that the perpetrator of genocide participated in a widespread and systematic attack against the civilian population”.<sup>2961</sup> Furthermore, the Trial

<sup>2957</sup> Schabas Article, pp. 12–13; Nikolić Final Brief, paras. 80–82. Professor Schabas refers to a debate that took place in the Sixth Committee of the General Assembly, concerning whether reference to premeditation should figure in the definition of genocide; it was eventually agreed to exclude the concept. He mentions the positions taken by Belgium (saying that premeditation should not figure in the definition because the notion of intent was sufficient) and Haiti (saying that premeditation was implicit because preparatory acts would always be involved in the commission of genocide). Professor Schabas asserts that “[t]he final wording of the *Convention* represents a compromise aimed at generating consensus between States with somewhat different conceptions of the purposes of the convention.” *Ibid.*, p. 13.

<sup>2958</sup> Schabas Article, pp. 15–16, referring to Elements of Crimes of the Rome Statute of the International Criminal Court, entered into force 9 Sept 2002, UN Doc. ICC-ASP/1/3 (part II-B), Art. 6 (a), Element 3 (“ICC Elements of Crimes”); see also Nikolić Final Brief, para. 84. Professor Schabas contends that “manifest pattern of similar conduct” is intended as a “contextual circumstance”, which the accused is required by Article 30 of the ICC Statute to have knowledge of. Schabas Article, pp. 15–16. In support of his theory, Professor Schabas also refers to the 2005 Darfur Report and the 2007 ICJ Bosnia Judgment, stating that they involved “an inquiry into the existence of State policy, rather than a search for the lone individual with genocidal intent.” *Ibid.*, pp. 24–29, referring to Report of the International Commission of Inquiry on violations of international humanitarian law and human rights law in Darfur, 25 January 2005, UN Doc. S/2005/60; ICJ Bosnia Judgment; see also Nikolić Final Brief, paras. 88–90.

<sup>2959</sup> Schabas Article, p. 17. Professor Schabas criticised the *Krstić* Appeals Chamber’s ruling that the definition of genocide adopted in the Elements of Crimes “did not reflect customary international law as it existed at the time *Krstić* committed his crimes”. *Ibid.*, p. 16, referring to *Krstić* Appeal Judgement, para. 224. Professor Schabas argues that confusion exists between customary international law and a literal reading of Article 2 of the Genocide Convention. He also mentions the fact that the Preparatory Commission to the Genocide Conventions agreed that the text of the ICC Elements of Crimes should be taken as a useful guide to the interpretation of the Convention as well as an indication of the substance of customary international law. *Ibid.* Professor Schabas recognises, however, that neither the Genocide Convention or the ICC Elements of Crimes do provide support for a State policy element. *Ibid.*

<sup>2960</sup> See *Krstić* Appeal Judgement, para. 223; *Jelisić* Appeal Judgement, para. 48. See also *Kayishema and Ruzindana* Appeal Judgement, para. 138.

<sup>2961</sup> *Krstić* Appeal Judgement, para. 223.

Chamber dismisses as speculation Professor Schabas' view that the issue of State policy was not addressed by the drafters of the Convention because it was self-evident.

829. The Trial Chamber notes that Article 6 of the ICC Statute, which defines genocide, does not prescribe the requirement of “manifest pattern” introduced in the ICC Elements of Crimes.<sup>2962</sup> The Trial Chamber acknowledges that the language of the ICC Elements of Crimes, in requiring that acts of genocide must be committed in the context of a manifest pattern of similar conduct, implicitly excludes random or isolated acts of genocide.<sup>2963</sup> However, the Trial Chamber notes that the Appeals Chamber in *Krstić* held that “reliance on the definition of genocide given in the ICC’s Elements of Crimes is inapposite”.<sup>2964</sup> The Appeals Chamber further clarified that the ICC Elements of Crimes “are not binding rules, but only auxiliary means of interpretation” of the Statute.<sup>2965</sup> Finally, it has been clearly established by jurisprudence that the requirement that the prohibited conduct be part of a widespread or systematic attack “was not mandated by customary international law.”<sup>2966</sup>

830. In light of the foregoing, the Trial Chamber finds that a plan or policy is not a legal ingredient of the crime of genocide and thus rejects **Nikolić**’s submission.<sup>2967</sup> However, the Trial Chamber considers the existence of a plan or policy can be an important factor in inferring genocidal intent. When the acts and conduct of an accused are carried out in accordance with an existing plan or policy to commit genocide they become evidence relevant to the accused’s knowledge of the plan; such knowledge constitutes further evidence supporting an inference of intent.

(ii) Substantiality of Part of Targeted Group

831. If a group is targeted “in part”, the portion targeted must be a substantial part of the group because it “must be significant enough to have an impact on the group as a whole.”<sup>2968</sup>

<sup>2962</sup> ICC Statute, Article 6 (“For the purpose of this Statute, ‘genocide’ means any of the following acts, committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”). See also *Krstić* Appeal Judgement, para. 224, fn. 366.

<sup>2963</sup> ICC Elements of Crimes, Article 6.

<sup>2964</sup> *Krstić* Appeal Judgement, para. 224.

<sup>2965</sup> *Ibid.*, para. 224, fn. 366.

<sup>2966</sup> *Ibid.*, para. 224.

<sup>2967</sup> See *Krstić* Appeal Judgement, para. 225; *Jelisić* Appeal Judgement, para. 48. See also *Kayishema and Ruzindana* Appeal Judgement, para. 138.

<sup>2968</sup> *Krstić* Appeal Judgement, para. 8. Accord ICJ Bosnia Judgment, para. 198 (“In the first place, the intent must be to destroy at least a substantial part of the particular group. That is demanded by the very nature of the crime of genocide: since the object and purpose of the Convention as a whole is to prevent the intentional destruction of groups, the part targeted must be significant enough to have an impact on the group as a whole.”).

832. The numeric size of the part of the group targeted, evaluated in absolute terms and relative to the overall group size, “is the necessary and important starting point” in assessing whether the part targeted is substantial enough – but is “not in all cases the ending point of the inquiry.”<sup>2969</sup> Other considerations that are “neither exhaustive nor dispositive” include the prominence within the group of the targeted part, whether the targeted part of the group “is emblematic of the overall group, or is essential to its survival” and the area of the malefactors’ activity and control and limitations on the possible extent of their reach.<sup>2970</sup> Which factors are applicable, and their relative weight, will vary depending on the circumstances of the case.<sup>2971</sup>

833. The targeted group can include military personnel: “the intent requirement of genocide is not limited to instances where the perpetrator seeks only to destroy civilians.”<sup>2972</sup> A genocide conviction is possible, for example, “where the perpetrator killed detained military personnel belonging to a protected group because of their membership in that group” so long as the intent and substantiality requisites are met.<sup>2973</sup>

## 2. Charges

834. The Indictment alleges that **Pandurević, Beara, Popović, Nikolić and Borovčanin:**

[W]ith the intent to destroy a part of the Bosnian Muslim people as a national, ethnical, or religious group:

a. killed members of the group by summary execution, including both planned and opportunistic summary executions, as described in this Indictment; and,

b. caused serious bodily or mental harm to both female and male members of the Bosnian Muslim populations of Srebrenica and Žepa, including but not limited to the separation of able-bodied men from their families and the forced movement of the population from their homes to areas outside the RS.<sup>2974</sup>

835. The Indictment further alleges that:

The forcible transfer of women and children from Srebrenica and Žepa as described in this Indictment created conditions known to the Accused that would contribute to the destruction of the entire Muslim population of Eastern Bosnia, including but not limited to the failure of the population to live and reproduce normally.<sup>2975</sup>

836. The Indictment therefore alleges that genocide was committed through killings and the infliction of serious bodily or mental harm, as well as through the acts enumerated in Article 4(2)(c)

<sup>2969</sup> *Krstić* Appeal Judgement, para. 12.

<sup>2970</sup> *Ibid.*, para. 12; *see also* paras. 13–14.

<sup>2971</sup> *Ibid.*, para. 14.

<sup>2972</sup> *Ibid.*, para. 226.

<sup>2973</sup> *Ibid.*, para. 226.

<sup>2974</sup> Indictment, para. 26.

<sup>2975</sup> Indictment, para. 33.

and Article 4(2)(d) of the Statute. The Trial Chamber notes that the factual allegations underlying the charges in paragraph 33 of the Indictment are limited to the forcible transfer of the women and children from Srebrenica and Žepa.

### 3. Findings

837. Over the course of a few days, the Bosnian Serb Forces systematically executed several thousand Bosnian Muslim males, of whom 5,336 have been identified.<sup>2976</sup> These executions were the culmination of a prolonged period of terror for the population of Srebrenica and Žepa. As the war encroached on their towns and villages, the Muslim population of Eastern Bosnia retreated to the enclaves hoping for protection; after the enclaves fell, the population found themselves at the mercy of the Bosnian Serb Forces.

838. The Prosecution alleges that a decision was taken to destroy the Muslim population of Eastern Bosnia, which was implemented primarily by separating, forcibly transferring and ultimately killing members of this group.<sup>2977</sup> Although the Trial Chamber has considered all of the relevant evidence in its totality in order to determine whether genocide was committed, it will only repeat the most pertinent as part of this analysis below.

#### (a) The Group

839. As stated in the Indictment and further clarified in the Prosecution's closing arguments, the Prosecution alleges that the targeted group is the "Muslims of Eastern Bosnia", as "part" of the Bosnian Muslim people.<sup>2978</sup>

840. The Trial Chamber notes that Bosnian Muslims were recognized as a "nation" by the Yugoslav Constitution of 1963,<sup>2979</sup> and that other Chambers have considered that Bosnian Muslims are a protected group within the meaning of Article 4 of the Statute.<sup>2980</sup> The Trial Chamber agrees with this analysis and accepts the conclusion.

<sup>2976</sup> See *supra*, para. 664.

<sup>2977</sup> Indictment, paras. 26, 27, 33, 34; Prosecution Pre-Trial Brief, para. 20; Prosecution Final Brief, paras. 461, 500.

<sup>2978</sup> Indictment, paras. 26, 33; Prosecution Closing Arguments, T. 34276 (4 Sept 2009) (explaining that "the group is the Muslims of Eastern Bosnia, and those are defined as the Muslims of Srebrenica and Žepa, and should include Goražde, but primarily Srebrenica and Žepa, though Goražde is also part of Eastern Bosnia and they were also the focus of the ethnic cleansing campaign").

<sup>2979</sup> *Krstić* Trial Judgement, para. 559.

<sup>2980</sup> *Blagojević and Jokić* Trial Judgement, para. 667; *Krstić* Trial Judgement, para. 560. See also *Krstić* Appeal Judgement, para. 15.

(b) Underlying Acts(i) Killing Members of the Group

841. The Trial Chamber has found that several thousand Bosnian Muslims, initially residing or taking refuge in Srebrenica, were killed by Bosnian Serb Forces from 12 July until late July 1995.<sup>2981</sup> The allegation that members of a protected group were killed is therefore proven beyond reasonable doubt.

(ii) Causing Serious Bodily or Mental Harm to Members of the Group

842. The Prosecution alleges that serious bodily and mental harm was caused to the Muslims of Eastern Bosnia, including from the separation of the able-bodied men from their families and the forced movement of the population from their homes to areas outside of the RS.<sup>2982</sup>

843. The Trial Chamber recalls that forcible transfer does not constitute in and of itself an underlying act of genocide.<sup>2983</sup> The Trial Chamber notes that the Prosecution has alleged that the forcible removal of the population and the murder operation were carried out through two distinct JCEs and not all of the Accused are alleged to have been participants in each JCE. The Trial Chamber considers that reasons of fairness require it to constrain its findings on genocide generally in a manner which respects those distinctions and yet still conforms to the jurisprudence of the Tribunal. Consequently, the Trial Chamber will restrict itself to an analysis of the serious bodily and mental harm caused by the killing operation.<sup>2984</sup>

844. The Trial Chamber finds that the killing operation inflicted serious bodily and mental harm on the Muslims of Eastern Bosnia. The males in Potočari first had to endure a painful separation process and the anxiety that followed from not knowing what would happen to their families. Once detained, the men had their personal property – including identification cards and passports<sup>2985</sup> – removed and uncertainty as to their ultimate fate turned to fear and terror. They were detained in intolerable conditions of overcrowded facilities with no food, little if any water and abhorrent sanitary conditions.<sup>2986</sup> In many instances they were subjected to taunting and physical abuse.<sup>2987</sup> Similar rudimentary and cruel conditions awaited the men who were captured from the column.<sup>2988</sup>

<sup>2981</sup> The Trial Chamber has found that at least 5,336 identified individuals were killed in the executions following the fall of Srebrenica, and this number could well be as high as 7,826. *See supra*, paras. 664, 793–796.

<sup>2982</sup> Indictment, paras. 26–27; Prosecution Final Brief, paras. 1106, 1128.

<sup>2983</sup> *See supra*, para. 813.

<sup>2984</sup> For clarity, the Trial Chamber is not considering the forcible transfer in Srebrenica or Žepa.

<sup>2985</sup> *See supra*, para. 331.

<sup>2986</sup> *See supra*, paras. 329–330, 400–403.

<sup>2987</sup> *See supra*, paras. 326–328.

<sup>2988</sup> *See supra*, paras. 385, 389, 393, 398, 473, 478, 496, 529.



For all of them, any hope of survival was extinguished in the terrifying moments when they were brought to execution sites, in many instances already filled with bodies, and realized their fate.<sup>2989</sup> The Trial Chamber finds that through the operation to detain and kill, serious bodily and mental harm was inflicted on the males who were the subject of this murderous enterprise.

845. The Trial Chamber also finds that serious bodily and mental harm was caused to those who survived the killing operation. Those few who lived were often physically injured and all endured the extreme anguish and terror of a close encounter with violent death. Several were forced by circumstance to pretend to be dead and to hide under the cover of and surrounded by the bodies of those killed around them.<sup>2990</sup> They then endured harrowing circumstances in order to escape.<sup>2991</sup> The Trial Chamber has no doubt as to the intense physical suffering and mental anguish endured by these survivors as a direct result of the implementation of the plan to murder.

846. The Trial Chamber further finds that the killing operation and executions inflicted serious mental harm on the surviving family members and loved ones of those killed. These survivors also had to endure the separation process at Potočari with the heightened anxiety it created among the Bosnian Muslim population.<sup>2992</sup> The women, children and the elderly – who had been torn from their homes and all which was familiar to them – then had their brothers, fathers, husbands and sons taken from them. They were left with uncertainty about their future and fear about the fate of those they loved.

847. The evidence further demonstrates the profound impact that the murders had on the women, children and the elderly. The refugees who arrived in Tuzla around 12 or 13 July were overwhelmed with distress concerning the fate of the males;<sup>2993</sup> many continue to exist in a state of perpetual uncertainty. The Trial Chamber has received the evidence of survivors who struggle to achieve long-term recovery. In addition to grief and loss, the survivors endure the terrible psychological trauma of not knowing for certain what happened to the males. Many survivors suffer from guilt and engage in self-destructive behaviour; some would prefer to have died with the males.<sup>2994</sup> The Trial Chamber is satisfied that these survivors suffered profound physical and psychological harm as a result of the murder operation.

<sup>2989</sup> See *supra*, paras. 484, 500, 519, 538.

<sup>2990</sup> See *supra*, paras. 485, 500, 539..

<sup>2991</sup> See *supra*, paras. 408, 435.

<sup>2992</sup> See *supra*, paras. 316–324.

<sup>2993</sup> Edward Joseph, T. 14151–14152 (22 Aug 2007).

<sup>2994</sup> See Hafiza Salcihović, Ex. P03232, “92 *bis* statement” (17 June 2000); Witness DD, Ex. P02226, “under seal – 92 *bis* transcript” (26 July 2000); Hanifa Hafizović, Ex. P03230, “92 *bis* statement” (16 June 2000); Rahima Maklić, Ex. P03229, “92 *bis* statement” (17 June 2000).

(iii) Deliberately Inflicting on the Group Conditions of Life Calculated to Bring about its Physical Destruction in Whole or in Part & Imposing Measures Intended to Prevent Births within the Group

848. The Prosecution submissions concerning the commission of the underlying acts provided in Article 4(2)(c) and 4(2)(d) of the Statute overlap to a significant extent, and therefore the Trial Chamber will consider them together.

849. The Trial Chamber recalls that the Prosecution's allegations in relation to Article 4(2)(c) and 4(2)(d) of the Statute are explicitly limited to the forcible transfer of the women and children from Srebrenica and Žepa.<sup>2995</sup> Thus, in considering whether these particular underlying acts have been established, the Trial Chamber is restricted to an analysis of the circumstances resulting from the forcible transfer alone and not the combined effects of the killings and forcible transfer; the Trial Chamber's conclusion must be viewed in this context.

850. The Prosecution submits that the forcible transfer of the women and children created conditions which contributed to the destruction of the Muslims of Eastern Bosnia, including the failure of the population to live and reproduce normally.<sup>2996</sup>

851. The Prosecution specifies that the Bosnian Muslim communities of Srebrenica and Žepa were traditional patriarchal communities in which men took leadership roles in both the public and private spheres. The men generally had higher levels of education than women and served as providers, protectors, and decision-makers for their families.<sup>2997</sup> Consequently, removing the male members of the community and simultaneously uprooting the women, children, and elderly from their homes resulted in the "complete destruction of the pre-war familial and community structure of the Srebrenica Muslims."<sup>2998</sup> In support of these allegations, the Prosecution refers to the testimony of survivors who continue to struggle with the consequences of the forcible transfer, some have an indeterminate marital status; experience difficulty in caring for their surviving children; live in conditions of abject poverty; and suffer from unemployment.<sup>2999</sup>

852. The Prosecution asserts that, as a consequence, the birth rate in the community "appears to be decreasing."<sup>3000</sup> Further, survivors often cannot or will not return to their former homes because

<sup>2995</sup> See *supra*, para. 836; Indictment, para. 33.

<sup>2996</sup> Indictment, para. 33; Prosecution Final Brief, paras. 1105, 1128.

<sup>2997</sup> Prosecution Final Brief, para. 1116.

<sup>2998</sup> *Ibid.*, para. 1117.

<sup>2999</sup> Prosecution Final Brief, paras. 1118–1124.

<sup>3000</sup> *Ibid.*, para. 1120.

their property was destroyed as they were forcibly transferred, or because they cannot face the trauma of returning to where their loved-ones disappeared.<sup>3001</sup>

853. According to the Prosecution, **Pandurević, Beara, Popović, Nikolić** and **Borovčanin** were aware of the social structure of the Muslims of Eastern Bosnia, they understood the essential role occupied by men in the Bosnian Muslim family, and therefore had to have known that the effect of their actions would be the destruction of the group.<sup>3002</sup>

854. The essence of the Prosecution's allegation appears to be that the destruction of the social structure of the community and the inability of those who were forcibly transferred to reconstruct their lives constitutes the conditions of life deliberately imposed in order to bring about the physical destruction of the group. The Trial Chamber, however, is not satisfied that these are the kinds of conditions intended to be prohibited by Article 4(2)(c) of the Statute.<sup>3003</sup> Moreover, the Trial Chamber notes that the Prosecution's allegation does not include the effect of the killings on the Bosnian Muslim social structure and is therefore not satisfied that the conditions that resulted from the forcible transfer alone were deliberately imposed in order to bring about the physical destruction of the group; indeed, the Trial Chamber cannot find that it is objectively probable that such conditions would lead to the destruction of the group.<sup>3004</sup> Similarly, the Trial Chamber is not satisfied that the Prosecution has established that the forcible transfer itself was a measure intended to prevent births within the group.

855. In light of the discussion above, the Trial Chamber finds the evidence insufficient to conclude that the forcible transfer created conditions of life calculated to bring about the destruction of the Muslim population of Eastern Bosnia, or the failure of that population to live and reproduce normally.

(c) Genocidal Intent

856. The Trial Chamber has found that several thousand Bosnian Muslim males were killed by members of the Bosnian Serb Forces.<sup>3005</sup> The scale and nature of the murder operation, the targeting of the victims, the systematic and organized manner in which it was carried out, and the plain intention to eliminate every Bosnian Muslim male who was captured or surrendered proves beyond

<sup>3001</sup> Prosecution Final Brief, paras. 1123–1125.

<sup>3002</sup> *Ibid.*, para. 1127.

<sup>3003</sup> *See supra*, para. 815.

<sup>3004</sup> *See Krajišnik* Trial Judgement, para. 863 (stating that “[l]iving conditions, which may be inadequate by any number of standards, may nevertheless be adequate for the survival of the group”).

<sup>3005</sup> *See supra*, para. 664.

reasonable doubt that members of the Bosnian Serb Forces, including members of the VRS Main Staff and Security Branch, intended to destroy the Muslims of Eastern Bosnia as a group.

857. The evidence demonstrates that from the inception of the plan to murder the able-bodied men gathered in Potočari, the scope and the scale of the murder operation steadily escalated.<sup>3006</sup> The victims targeted by the operation expanded from those separated out in Potočari to those who surrendered or were captured after being pursued by Bosnian Serb Forces as they tried to flee to Bosnian Muslim territory.<sup>3007</sup> An escalation in the plans and intentions of members of the Bosnian Serb Forces, including members of the VRS Main Staff and Security Branch, is evident as thousands of Bosnian Muslim males came under their control and events progressed.

858. The Trial Chamber recalls that before their execution, the men were detained in a number of locations around Potočari, Bratunac and Zvornik and were likewise killed in a number of different places.<sup>3008</sup> Very often, the men were moved from their place of detention to a different site for execution, indicating that the killings were not by any means spontaneous. The executions were carried out by many different people, belonging to various units of the Bosnian Serb Forces.<sup>3009</sup> That the organization was designed to maximize the number of victims is further evidenced by the conditions of detention which generally disregarded even basic needs for survival such as food and water.<sup>3010</sup>

859. A staggering number of killings occurred on 13 July in particular, indicating co-ordination rather than coincidence. On 13 July alone, Bosnian Muslim prisoners were killed at Jadar River, at Cerska Valley, at the Kravica Warehouse, at Sandići Meadow, and at Luke School.<sup>3011</sup> The killings carried on for a number of days, displaying a grim determination to ensure that each and every prisoner would be killed, at Orahovac, at Petkovci Dam, at Ročević School, at Kula School, at Kozluk, at Branjevo Military Farm, at Pilica Cultural Centre, at Baljkovica (near Nezuk), from Milići Hospital, at Snagovo and at Trnovo.<sup>3012</sup>

860. The Trial Chamber finds that the evidence establishes that the killing of the Bosnian Muslim males was not the result of panic upon the capture of thousands of men, nor was it a response to any military threat the men posed; indeed, the men targeted were those who had already surrendered. It

<sup>3006</sup> See *supra*, Chapter V, Section B.1.(d).

<sup>3007</sup> See *supra*, paras. 380–382. See also *supra*, Chapter V, Section B.1.(d).

<sup>3008</sup> See *supra*, Chapter III, Section E.6(b) and 7; Chapter III, Section F.4, 5, 6; Chapter III, Section G.3; Chapter III, Section H.3,5. See *infra*, Chapter V, Section B.1.(d).

<sup>3009</sup> See *supra*, Chapter III, Section E.7; Chapter III, Section F.6; Chapter III, Section G.3; Chapter III, Section H.3,5. See *infra*, Chapter V, Section B.1.(d).

<sup>3010</sup> See *supra*, paras. 330, 385, 389, 393, 398, 473, 478, 496, 529. See *infra*, para. 1053.

<sup>3011</sup> See *supra*, paras. 353, 409, 414, 423, 445.

is clear that the males were targeted by virtue of their membership in the Bosnian Muslim group. Further, not even a cursory attempt was made to distinguish between civilian and soldier and the Trial Chamber notes that some children, elderly and infirm were also killed.<sup>3013</sup> Searches were conducted in the days that followed the fall of Srebrenica to ensure that no Bosnian Muslim male escaped the grasp of the VRS Main Staff and Security Branch.<sup>3014</sup>

861. The Trial Chamber finds that the murder operation – from the separations to detention to execution and burial – was a carefully orchestrated strategy to destroy aimed at the Muslim population of Eastern Bosnia. As found earlier, through this murderous enterprise, the underlying acts of killing and the infliction of serious bodily and mental harm were committed. The Trial Chamber is satisfied beyond all reasonable doubt that these acts were perpetrated with genocidal intent.

862. The Trial Chamber draws further support for its conclusion from “the other culpable acts systematically directed against the same group”<sup>3015</sup> in the same time period, notably the forcible transfer operation and its accompanying circumstances aimed at the population in Potočari. The frenzied efforts to forcibly remove the remainder of the population, while the male members of the community were targeted for murder, provides further evidence that the intent was to destroy.

863. Thus the Trial Chamber is satisfied that genocide was committed by members of the Bosnian Serb Forces, including members of the VRS Main Staff the VRS Security Branch, such as **Popović** and **Beara**, against the Muslims of Eastern Bosnia, as part of the Bosnian Muslims.<sup>3016</sup>

(i) Substantiality of Group

864. Having found that members of the Bosnian Serb Forces, including members of the VRS Main Staff and the Security Branch, possessed the intent to destroy a part of a protected group, the Trial Chamber must consider whether the targeted part is a substantial component of the protected group.<sup>3017</sup>

865. The Trial Chamber finds that the Muslims of Eastern Bosnia constitute a substantial component of the entire group, Bosnian Muslims. As has been found by the Appeals Chamber, although the size of the Bosnian Muslim population in Srebrenica before its capture by the VRS

<sup>3012</sup> See *supra*, paras. 492, 503, 524, 531, 550, 577, 583, 589, 599. Judge Kwon dissents with respect to the finding that the killings at Trnovo fall within the JCE to murder. See Judge Kwon’s Dissenting Opinion, *infra*, paras. 36–39.

<sup>3013</sup> See *supra* paras. 320, 401, 405, 408, 413, 478, 490, 523, 543. See *infra*, para. 1053.

<sup>3014</sup> See *supra*, paras. 380–382, 562–564.

<sup>3015</sup> *Blagojević and Jokić* Appeal Judgement, para. 123.

<sup>3016</sup> See *infra*, paras. 1181, 1318.

<sup>3017</sup> *Krstić* Appeal Judgement, para. 8.

was a small percentage of the overall Muslim population of BiH at the time, the import of the community is not appreciated solely by its size.<sup>3018</sup> The Srebrenica enclave was of immense strategic importance to the Bosnian Serb leadership because (1) the ethnically Serb state they sought to create would remain divided and access to Serbia disrupted without Srebrenica; (2) most Muslim inhabitants of the region had, at the relevant time, sought refuge in the Srebrenica enclave and the elimination of the enclave would accomplish the goal of eliminating the Muslim presence in the entire region; and (3) the enclave's elimination despite international assurances of safety would demonstrate to the Bosnian Muslims their defencelessness and be "emblematic" of the fate of all Bosnian Muslims.<sup>3019</sup> The Chamber agrees with this analysis and adopts the conclusion.

866. The Trial Chamber also finds that the killing of all of the male members of a population is a sufficient basis to infer the intent to biologically destroy the entire group. The Trial Chamber notes that some young boys, elderly men and the infirm were amongst those killed and that no distinction was made between civilians and military men.<sup>3020</sup> Thus, the scope of the killing was wider than simply the men who posed a military threat. Further, the extent of the killings undoubtedly has had a detrimental impact on the physical survival of the Muslims of Eastern Bosnia. The Chamber finds beyond reasonable doubt that the devastating impact on the community would have been evident to, and intended by, members of the Bosnian Serb Forces, including members of the VRS Main Staff and the Security Branch.<sup>3021</sup>

## F. Conspiracy to Commit Genocide

### 1. Applicable Law

867. The crime of conspiracy to commit genocide is punishable under Article 4(3)(b) of the Statute. Although this Tribunal has never addressed the crime of conspiracy to commit genocide, Chambers of the ICTR have dealt with it on several occasions.<sup>3022</sup>

868. The ICTR has defined conspiracy to commit genocide as "an agreement between two or more persons to commit the crime of genocide."<sup>3023</sup> The act of entering into an agreement to

<sup>3018</sup> *Krstić* Appeal Judgement, para. 15.

<sup>3019</sup> *Ibid.*, paras. 15–16.

<sup>3020</sup> *See supra*, paras. 320, 401, 405, 408, 413, 478, 490, 523, 543.

<sup>3021</sup> *See Krstić* Appeal Judgement, para. 27: "The killing of the military aged men was, assuredly, a physical destruction, and given the scope of the killings the Trial Chamber could legitimately draw the inference that their extermination was motivated by a genocidal intent."

<sup>3022</sup> *See Seromba* Appeal Judgement, paras. 207–225; *Nahimana et al.* Appeal Judgement, paras. 893–912; *Ntagerura et al.* Appeal Judgement, paras. 90–93; *Bagosora et al.* Trial Judgement, para. 2084–2113; *Zigiranyirazo* Trial Judgement, paras. 388–395; *Seromba* Trial Judgement, paras. 344–351; *Ntagerura et al.* Trial Judgement, paras. 49–52, 70; *Kajelijeli* Trial Judgement, paras. 785–798; *Nahimana et al.* Trial Judgement, paras. 1040–1055; *Niyitegeka* Trial Judgement, paras. 422–429; *Ntakirutimana and Ntakirutimana* Trial Judgement, paras. 797–801, 838–841; *Musema* Trial Judgement, paras. 184–198, 937–941; *Kambanda* Trial Judgement, para. 40.

commit genocide constitutes the *actus reus* of the criminal act of conspiracy to commit genocide.<sup>3024</sup> The individuals involved in the conspiracy must possess the same *mens rea* as genocide, namely, the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.<sup>3025</sup> As an inchoate crime, it is the agreement itself that is punishable – the crime is completed at the time the agreement is concluded – regardless of whether genocide is actually committed as a result of the agreement.<sup>3026</sup> The Trial Chamber agrees with the ICTR’s definition of the crime of conspiracy to commit genocide.

869. As to proof, “the existence of a formal or express agreement is not needed to prove the charge of conspiracy.”<sup>3027</sup> The *actus reus* can be inferred from circumstantial evidence, as long as the existence of conspiracy to commit genocide is the only reasonable inference.<sup>3028</sup> In particular, an agreement can be inferred from the concerted or coordinated actions of a group of individuals.<sup>3029</sup> However, the evidence must establish beyond reasonable doubt a concerted agreement to act, and not merely similar conduct<sup>3030</sup> or of a negotiation in progress.<sup>3031</sup>

870. In his Final Brief, **Nikolić** submits that conspiracy to commit genocide is not a continuing crime.<sup>3032</sup> The Trial Chamber understands the thrust of his argument to be that once an agreement is concluded, participation in any ensuing genocide incurs criminal responsibility for involvement in the genocide, not for conspiring to commit genocide.<sup>3033</sup> In particular, **Nikolić** posits that if a conspiracy to commit genocide was concluded on the evening of 11 July or morning of 12 July as charged in the Indictment, he could not subsequently join in that agreement.<sup>3034</sup> The Prosecution

<sup>3023</sup> *Seromba* Appeal Judgement, paras. 218, 221; *Nahimana et al.* Appeal Judgement, para. 894; *Ntagerura et al.* Appeal Judgement, para. 92; *Bagosora* Trial Judgement, para. 2087; *Kajelijeli* Trial Judgement, para. 787; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana and Ntakirutimana* Trial Judgement, para. 798; *Musema* Trial Judgement, para. 191.

<sup>3024</sup> *Seromba* Appeal Judgement, paras. 218, 221; *Nahimana et al.* Appeal Judgement, para. 894; *Bagosora et al.* Trial Judgement, para. 2087; *Kajelijeli* Trial Judgement, para. 788.

<sup>3025</sup> *Nahimana et al.* Appeal Judgement, paras. 894, 896; *Bagosora* Trial Judgement, para. 2087; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192.

<sup>3026</sup> *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 193. The Trial Chamber notes the following statement of the ICTY Appeals Chamber: “Joint criminal enterprise and ‘conspiracy’ are two different forms of liability. Whilst conspiracy requires a showing that several individuals have agreed to commit a certain crime or set of crimes, a joint criminal enterprise requires [...] that the parties to that agreement took action in furtherance of that agreement.” *Ojdanić* Jurisdiction Appeal Decision, para. 23.

<sup>3027</sup> *Nahimana et al.* Trial Judgement, para. 1045. Upheld by *Nahimana et al.* Appeal Judgement, para. 898.

<sup>3028</sup> *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896. For the standard of proof applicable to circumstantial evidence, see *Stakić* Appeal Judgement, para. 219; *Krstić* Appeal Judgement, para. 41; *Vasiljević* Appeal Judgement, paras. 120, 131; *Čelebići* Appeal Judgement, para. 458; *Nahimana et al.* Appeal Judgement, para. 896; *Ntagerura et al.* Appeal Judgement, paras. 306, 399.

<sup>3029</sup> *Nahimana et al.* Trial Judgement, para. 1045. Upheld by *Nahimana et al.* Appeal Judgement, para. 897.

<sup>3030</sup> *Nahimana et al.* Appeal Judgement, para. 898.

<sup>3031</sup> *Kajelijeli* Trial Judgement, para. 787.

<sup>3032</sup> *Nikolić* Final Brief, paras. 322–325.

<sup>3033</sup> See *Nikolić* Final Brief, paras. 158–162, 165–167, 325, 1598–1601; *Nikolić* Closing Arguments, T. 34549 (9 Sept 2009), 34830–34832 (14 Sept 2009).

<sup>3034</sup> *Nikolić* Final Brief, paras. 163, 1602–1603; *Nikolić* Closing Arguments, T. 34538 (9 Sept 2009), 34831 (14 Sept 2009).

argues in response that even though criminal liability arises the moment an agreement to commit genocide is concluded, the conspiracy does not stop at that point and indeed others become liable if they join the agreement to commit genocide at a later point in the conspiracy.<sup>3035</sup>

871. There is little ICTY or ICTR jurisprudence on the issue. The *Nahimana* Trial Judgement held that conspiracy “has a continuing nature that culminates in the commission of the acts contemplated by the conspiracy.”<sup>3036</sup> On appeal, the Appeals Chamber declined to review this finding,<sup>3037</sup> but did overturn the Trial Chamber’s parallel finding that direct and public incitement to commit genocide was a continuing offence.<sup>3038</sup> The Appeals Chamber noted that the notions “inchoate” and “continuing” are independent of one another,<sup>3039</sup> and held that the Trial Chamber erred in finding that incitement continues in time until the completion of the acts contemplated. Instead, the Appeals Chamber held that the crime is “completed as soon as the discourse in question is uttered or published, even though the effects of incitement may extend in time.”<sup>3040</sup>

872. **Nikolić** argues that this holding of the ICTR Appeals Chamber supports a conclusion that, as an inchoate offence like direct and public incitement to commit genocide, conspiracy is not a continuing crime.<sup>3041</sup> The Trial Chamber notes, however, that this appears to be contrary to the common law position. In the United States, conspiracy is considered a continuing crime.<sup>3042</sup> Individuals are capable of joining a conspiracy even after the initial agreement, and may be held liable for such conspiracy as though they were an original conspirator.<sup>3043</sup> The addition of new

<sup>3035</sup> Prosecution Closing Arguments, T. 34172–34173 (3 Sept 2009).

<sup>3036</sup> *Nahimana* Trial Judgement, para. 1044.

<sup>3037</sup> *Nahimana* Appeal Judgement, para. 318.

<sup>3038</sup> *Ibid.*, para. 723, referring to *Nahimana* Trial Judgement, para. 1017.

<sup>3039</sup> *Nahimana* Appeals Judgement, paras. 720–721. The Appeals Chamber explained that “an inchoate crime penalizes the commission of certain acts capable of constituting a step in the commission of another crime, even if that crime is not in fact committed.” A continuing crime “implies an ongoing criminal activity.” The Appeals Chamber referred to Black’s Law Dictionary which states that a continuing crime is “1. A crime that continues after an initial illegal act has been consummated; a crime that involves ongoing elements [...] 2. A crime ... that continues over an extended period.” Brian A. Garner (ed.), Black’s Law Dictionary, 8<sup>th</sup> ed. (Saint Paul, Minnesota: Thompson West Publishing Company, 2004), p. 399.

<sup>3040</sup> *Nahimana* Appeal Judgement, para. 723.

<sup>3041</sup> Nikolić Closing Arguments, T. 34830–34832 (14 Sept 2009).

<sup>3042</sup> See *United States v. Kissel*, 218 U.S. 601, 607 (1910) (“It is true that the unlawful agreement satisfies the definition of the crime, but it does not exhaust it. It also is true, of course, that the mere continuance of the result of a crime does not continue the crime. [...] But when the plot contemplates bringing to pass a continuous result that will not continue without the continuous cooperation of the conspirators to keep it up, and there is such continuous cooperation, it is a perversion of natural thought and of natural language to call such continuous cooperation a cinematographic series of distinct conspiracies, rather than to call it a single one.”) (Holmes, J.) (citations omitted). See also, e.g., *United States v. Noble*, 754 F.2d 1324, 1329 (7th Cir. 1985) (“parties may still be found guilty even though they join or terminate their relationship with the core conspirators at different times.”); *United States v. Knight*, 416 F.2d 1181, 1184 (9th Cir. 1969) (same).

<sup>3043</sup> See, e.g., *United States v. Santos*, 541 F.3d 63, 73 (2nd Cir. 2008) (“a defendant need not have joined a conspiracy at its inception in order to incur liability for the unlawful acts of the conspiracy committed both before and after he or she became a member”); *United States v. Knight*, 416 F.2d 1181, 1184 (9th Cir. 1969) (“One may join a conspiracy already formed and in existence, and be bound by all that has gone on before in the conspiracy.”).



conspirators does not alter the status of the original conspirators, nor create a new conspiracy.<sup>3044</sup> In the United Kingdom<sup>3045</sup> and Canada,<sup>3046</sup> the position is the same.

873. The Trial Chamber notes that the concept of criminal conspiracy incorporated into the Genocide Convention derived from the common law approach<sup>3047</sup> and that Article 4(3) of the Statute was adopted directly from the Genocide Convention. Consequently, there is good reason to follow the common law interpretation of the crime of conspiracy.

874. The Trial Chamber finds the common law position to be persuasive. Inchoate crimes developed with the principal object of frustrating the commission of a contemplated crime by arresting and punishing the offenders before they commit the crime.<sup>3048</sup> This justifies punishing a conspirator for his agreement before the commission of the crime; it does not follow that the crime of conspiracy comes to an end at that point.<sup>3049</sup>

875. The Trial Chamber also considers that the ICTR Appeals Chamber's analysis of direct and public incitement to commit genocide in *Nahimana* does not undermine this finding. The ICTR Appeals Chamber expressly distinguished the notions of inchoate and continuing offences, and its reasoning does not lead to a conclusion that every inchoate offence cannot also be a continuing one.

876. The Trial Chamber therefore concludes that conspiracy is a continuing crime and that, as such, an individual can join a conspiracy after the initial agreement is concluded.

<sup>3044</sup> See, e.g., *Marino v. United States*, 91 F.2d 691, 696 (9th Cir. 1937) (“In the situation where a conspiracy has been formed, the joinder thereof by a new member does not create a new conspiracy, does not change the status of the other conspirators, and the new member is as guilty as though he was an original conspirator.”); see also, e.g., *United States v. Bryant*, 364 F.2d 598, 603 (4th Cir. 1966) (same).

<sup>3045</sup> See *DPP v. Doot*, [1973] A.C. 807 (“When there is agreement between two or more to commit an unlawful act all the ingredients of the offence are there and in that sense the crime is complete. But a conspiracy does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry out the design. [...] The fact that a man who later joins a conspiracy may be convicted of it shows that although the offence is complete in one sense when the conspiracy is made, it is nevertheless a continuing offence.”). See also David Ormerod ed., *Smith and Hogan: Criminal Law*, 12<sup>th</sup> Edition, Oxford University Press, p. 403.

<sup>3046</sup> See *Papalia v. R.*, [1979] 2 S.C.R. 256, pp. 276-277 (“Conspiracy is an inchoate or preliminary crime. [...] On a charge of conspiracy the agreement itself is the gist of the offence. [...] The *actus reus* is the fact of agreement. [...] The agreement reached by the co-conspirators may contemplate a number of acts or offences. Any number of persons may be privy to it. Additional persons may join the ongoing scheme while others may drop out. So long as there is a continuing overall, dominant plan there may be changes in methods of operation, personnel, or victims, without bringing the conspiracy to an end. The important inquiry is not as to the acts done in pursuance of the agreement, but whether there was, in fact, a common agreement to which the acts are referable and to which all of the alleged offenders were privy.”). Cited with approval in *United States of America v. Dynar*, [1997] 2 S.C.R. 462, para. 87.

<sup>3047</sup> See UN Doc E/AC.25/SR.16. See also *Musema* Trial Judgement, para. 187.

<sup>3048</sup> See *Liangsiriprasert v. United States Government*, [1991] 1 A.C. 225, per Lord Griffiths, citing with approval *Board of Trade v. Owen*, [1957] A.C. 602, 626.

<sup>3049</sup> *Nahimana et al.* Appeal Judgement, Partly Dissenting Opinion of Judge Shahabuddeen, 28 Nov 2007, para. 32; *Ngeze and Nahimana v. The Prosecutor*, Case No. ICTR 97-27-AR72, Decision on the Interlocutory Appeals, Separate Opinion of Judge Shahabuddeen, 5 Sept 2000.

## 2. Charges

877. Count 2 of the Indictment alleges that **Popović, Beara, Nikolić, Borovčanin** and **Pandurević** conspired to commit genocide. The Prosecution specifies that these Accused entered into an agreement with several others, including Mladić, Živanović, and Krstić, to kill the able-bodied Muslim men from Srebrenica and to remove the remaining Muslim population of Srebrenica and Žepa from RS, with the intent to destroy those Muslims.<sup>3050</sup> It is the Prosecution's case that the conspiracy has the same duration and the same underlying facts as the JCE to murder the men from Srebrenica.<sup>3051</sup>

## 3. Preliminary Issue

878. **Nikolić** submits that the Prosecution charged a specific agreement to commit genocide concluded between identified conspirators at a specific place and time,<sup>3052</sup> namely, an agreement concluded between the evening of 11 July and the morning of 12 July in Bratunac, involving one or more of the Accused.<sup>3053</sup> **Nikolić** argues that the evidence must establish that this particular agreement was concluded.<sup>3054</sup> **Nikolić** submits that because the Prosecution alleges that **Nikolić's** involvement in the murder operation did not commence until the evening of 13 July,<sup>3055</sup> the Prosecution has failed to properly charge his involvement in the conspiracy.<sup>3056</sup>

879. The Trial Chamber understands **Nikolić's** argument to be that a material fact in relation to a charge of conspiracy to commit genocide is the date on which the agreement was concluded. In essence, **Nikolić** argues that having alleged that his participation in the conspiracy commenced subsequent to the date of the alleged agreement, the Prosecution has failed to prove his criminal responsibility for conspiracy.

880. The Trial Chamber first notes that the Indictment alleges that the conspiracy began "on or about 12 July 1995"<sup>3057</sup> and therefore finds that the discrepancy of dates between 12 and 13 July is not so material as to cause prejudice to **Nikolić** or the other Accused. Having plead the specific acts that the Prosecution alleges give rise to **Nikolić's** criminal responsibility for conspiracy to commit genocide,<sup>3058</sup> the Trial Chamber finds that **Nikolić** was given adequate notice of the Prosecution's

<sup>3050</sup> Indictment, para. 34.

<sup>3051</sup> T. 34172 (3 Sept 2009).

<sup>3052</sup> Nikolić Final Brief, para. 1607.

<sup>3053</sup> *Ibid.*, paras. 1608–1612.

<sup>3054</sup> *Ibid.*, para. 1612.

<sup>3055</sup> Nikolić Final Brief, para. 1632. *See also*, Indictment, para. 42(a)(i).

<sup>3056</sup> *See ibid.*, paras. 1614–1627.

<sup>3057</sup> Indictment, para. 36.

<sup>3058</sup> Indictment, para. 42.

allegations against him in relation to Count 2 of the Indictment. Further, in light of the finding that conspiracy to commit genocide is a continuing crime, **Nikolić's** argument that he could not subsequently join the conspiracy fails. **Nikolić's** individual criminal responsibility for conspiracy to commit genocide will be discussed further below.<sup>3059</sup>

#### 4. Findings

881. The Trial Chamber has found that a large-scale murder operation to kill the Bosnian Muslim males in Potočari developed on 12 July, and expanded to include the males captured from the column on 13 July.<sup>3060</sup> The Trial Chamber has also found that the ensuing execution of those Bosnian Muslim males was undertaken with genocidal intent.<sup>3061</sup>

882. A fundamental aspect of the Trial Chamber's conclusion that the murder operation was undertaken with genocidal intent is the significant coordination with which the plan was carried out. On this point, the Trial Chamber recalls that the men were not simply killed upon capture; rather, a vast process was put into place. The men from Potočari were separated from the rest of the population, detained in the area, moved by bus to Bratunac, and again detained in various locations. These men were soon joined by men from the column. Although many men were executed in the Bratunac area, a large number were taken to Zvornik to be killed.<sup>3062</sup>

883. The evidence reveals a great deal of synchronization. The separations, transportation, detentions and killings were of such a large scale that they were carried out by many people from different units of the Bosnian Serb Forces and required significant resources such as vehicles, fuel, ammunition, and machines to bury the bodies.

884. Further, certain aspects of the operation were often carried out in a strikingly similar manner across various locations, by different individuals. For example, upon being detained, the vast majority of men were prevented from keeping their personal belongings, which were often dropped in central piles.<sup>3063</sup> Further, and as noted below, the executions in Zvornik generally followed a pattern: trucks brought the prisoners from detention site to execution site, typically a secluded area close by; the geographically closest units of the Zvornik Brigade were mobilised to participate in the executions, along with other members of the Bosnian Serb Forces; throughout the operation, petrol and ammunition were sent to the detention sites.<sup>3064</sup> The only reasonable inference to be

<sup>3059</sup> See *infra*, para. 1416.

<sup>3060</sup> See *infra*, paras. 1052, 1072.

<sup>3061</sup> See *supra*, para. 863.

<sup>3062</sup> See *supra*, Chapter III, Section F.6; Chapter III, Section G.2.3.

<sup>3063</sup> See *supra*, paras. 331, 385, 389, 390, 392, 395, 401, 402, 427. See *infra*, para. 1056.

<sup>3064</sup> See *infra*, paras. 1064, 1066.

made from this evidence is that the murder operation was being coordinated at a high level of the Bosnian Serb Forces, including the VRS Main Staff and the Security Organs.<sup>3065</sup>

885. This conclusion is supported by evidence concerning the activity of members of the Bosnian Serb Forces at the crucial time. The Trial Chamber recalls that, in the evening of 13 July, Mladić issued an order which suggests that members of the Bosnian Serb Forces were hoping to conceal all information regarding the prisoners from the outside world.<sup>3066</sup> On the evening of 13 July, there were discussions concerning where to take the prisoners, where to execute them, and even where to bury those already dead.<sup>3067</sup> These conversations demonstrate not only close coordination in order to achieve a common purpose, but also that the purpose must have been decided on previously.

886. In short, the Trial Chamber finds the organised and systematic manner in which the executions were carried out, over a number of days, and the targeting of victims, presupposes the existence of a concerted agreement to destroy the Muslims of Eastern Bosnia. The conduct of members the Bosnian Serb Forces was not merely similar, it was concerted and coordinated. This level of similarity of purpose and conduct could not be achieved but by prior agreement. Consequently, the Trial Chamber finds that the only reasonable inference to be drawn from the evidence is that, at least by 13 July 1995, members of the Bosnian Serb Forces, including members of the VRS Main Staff and Security Organs entered into an agreement and thus a conspiracy to commit genocide.

### **G. Forcible Transfer as an Inhumane Act and Deportation**

887. The Indictment charges all seven Accused with forcible transfer as an underlying act of persecution, a crime against humanity pursuant to Article 5(h), an inhumane act, a crime against humanity pursuant to Article 5(i), and with deportation, a crime against humanity pursuant to Article 5(d).<sup>3068</sup>

#### 1. Applicable Law

##### (a) Forcible Transfer as an Inhumane Act under Article 5(i)

888. The category of “other inhumane acts” contained in Article 5(i) functions as a residual category encompassing serious criminal acts, which are not exhaustively enumerated in Article

<sup>3065</sup> See *infra*, paras. 1065, 1072.

<sup>3066</sup> See *infra*, paras. 1057–1058.

<sup>3067</sup> See *infra*, para. 1060.

<sup>3068</sup> Indictment, Count 7, Inhumane Acts (Forcible Transfer), and Count 8, Deportation.

5.<sup>3069</sup> The following elements are required for an act or omission to fall under the category of “other inhumane acts” under Article 5(i): (a) there was an act or omission of similar seriousness to the other enumerated crimes under Article 5; (b) the act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity; and (c) the act or omission was performed by the accused or the perpetrator with the intent to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim(s), or with the knowledge that his or her act or omission was likely to cause such suffering or a serious attack upon human dignity.<sup>3070</sup>

889. Forcible transfer has been defined in the jurisprudence of the Tribunal as the forcible displacement of persons, which may take place within national boundaries.<sup>3071</sup> The Appeals Chamber has held that “specific acts of forcible transfer *may* be sufficiently serious as to amount to other inhumane acts”.<sup>3072</sup> It has therefore to be assessed on a case-by-case basis if the specific circumstances of the forcible transfer are sufficiently serious to amount to “other inhumane acts” pursuant to Article 5(i).<sup>3073</sup>

(b) Elements of Forcible Transfer and Deportation

(i) Actus Reus

890. The elements of the crimes of forcible transfer and deportation are substantially similar. The protected interests underlying the prohibition against these two crimes include the right of victims to stay in their home and community and the right not to be deprived of their property by being forcibly displaced to another location.<sup>3074</sup>

891. Forcible transfer and deportation are defined as (i) the forced displacement of persons by expulsion or other forms of coercion (ii) from an area in which they are lawfully present (iii) without grounds permitted under international law.<sup>3075</sup>

892. There is however an important distinction in the *actus reus* for the two crimes. The Appeals Chamber has determined that while forcible transfer may be carried out within national borders, for the crime of deportation the displacement of the persons must be across a *de jure* border between

<sup>3069</sup> See e.g., *Stakić* Appeal Judgement, paras. 315–316.

<sup>3070</sup> *Vasiljević* Appeal Judgement, para. 165; *Kordić and Čerkez* Appeal Judgement, para. 117.

<sup>3071</sup> *Stakić* Appeal Judgement, para. 317.

<sup>3072</sup> *Krajišnik* Appeal Judgement, para. 331; *Stakić* Appeal Judgement, para. 317. See also *Blagojević and Jokić* Trial Judgement, para. 629; *Krstić* Trial Judgement, para. 523.

<sup>3073</sup> *Krajišnik* Appeal Judgement, para. 331; *Stakić* Appeal Judgement, para. 317; *Kordić and Čerkez* Appeal Judgement, para. 117.

<sup>3074</sup> *Stakić* Appeal Judgement, para. 277.

two states or, in certain circumstances, a *de facto* border.<sup>3076</sup> Thus, the Appeals Chamber has clearly delineated forcible transfer and deportation as two separate crimes, with deportation having an additional element. However, the actual effect of this difference, in terms of *actus reus*, has not been commented on beyond the fact that for deportation, the ultimate arrival point for the transferred person must be across a border.

893. The Trial Chamber finds that the very term *actus reus* is such that, in the case of deportation, not only must the victims end up across a border but it must be the act of the accused which determines that destination. Thus, whatever the form of forced displacement as discussed below, be it by physical force, coercion or creation of coercive conditions, it must be as a result of the force—the act of the accused—that the persons are displaced across a border. In other words, for the crime of deportation it is not sufficient to prove force on the part of the accused and the ultimate location of the victims across a border. The Prosecution must also establish the link between the two elements. To do otherwise is to leave a constituent element of the crime related not to the acts of the accused but to chance or, in many cases, to a choice made by a victim. This cannot be consistent with the concept of *actus reus* of a crime.

894. The Trial Chamber finds support for this analysis in the very word used to describe the criminal act of the accused—deport—the plain meaning of which clearly imports an action of movement across a border.

895. Therefore, the additional element of the crime of deportation is that the persons must be forcibly displaced by the accused across a *de jure* or *de facto* border.

#### a. Forced Character of the Displacement

896. It is a requirement for both forcible transfer and deportation that the displacement of persons is carried out by expulsion or other forms of coercion.<sup>3077</sup> The forced character of the displacement is determined by the transferred persons' absence of genuine choice in their displacement.<sup>3078</sup> While those displaced may consent to, or even request to be removed, that consent must be given voluntarily and as a result of the individual's free will, assessed in the light of the surrounding

<sup>3075</sup> *Krajišnik* Appeal Judgement, para. 304; *Stakić* Appeal Judgement, paras. 278, 317; *Milutinović et al.* Trial Judgement, para. 164.

<sup>3076</sup> *Stakić* Appeal Judgement, paras. 278, 289–300, 317; *Krajišnik* Appeal Judgement, para. 304. *See also, e.g., Naletilić and Martinović* Appeal Judgement, para. 152 (endorsing the finding in the *Stakić* Appeals Judgement).

<sup>3077</sup> *Stakić* Appeal Judgement, para. 279; *Krnojelac* Appeal Judgement, para. 233. Although the Appeals Chamber referred to the crime of deportation, the Trial Chamber notes that the forced character of the displacement is a requirement also for the crime of forcible transfer. *See e.g., Krajišnik* Trial Judgement, para. 724.

<sup>3078</sup> *Stakić* Appeal Judgement, para. 279; *Krnojelac* Appeal Judgement, paras. 229, 233.

circumstances.<sup>3079</sup> The term “forced” is not restricted to physical force but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, or by taking advantage of a coercive environment.<sup>3080</sup> Acts of coercion include “the shelling of civilian objects, the burning of civilian property, and the commission of—or the threat to commit—other crimes ‘calculated to terrify the population and make them flee the area [...]’”.<sup>3081</sup>

897. Furthermore, the jurisprudence of the Tribunal indicates that an agreement concluded by military commanders or other representatives of the parties in a conflict *per se* cannot make a displacement lawful.<sup>3082</sup> Such agreement *per se* “does not have any implications on the circumstances under which a transfer is lawful. Military commanders or political leaders cannot consent on behalf of the individual.”<sup>3083</sup> In addition, the assistance by humanitarian agencies, such as UNPROFOR, ICRC, and NGOs, in facilitating displacements, does not of itself render an otherwise unlawful transfer lawful.<sup>3084</sup>

898. The determination as to whether a transferred person had a genuine choice is one to be made within the context of the particular case being considered.<sup>3085</sup>

#### b. Lawful Presence

899. As previously noted, it is an element of the crime that the victims must be “lawfully present” in the area from which the forcible removal takes place.<sup>3086</sup> In this regard, **Beara** asserts that forcible transfer requires that a civilian population is displaced from an area in which they “lawfully reside”.<sup>3087</sup> **Beara** submits that “it is possible to see that the practice has followed the rationale behind the prohibition on forced displacement as stipulated by Geneva Conventions and Additional Protocols—a desire to prevent dislocation of civilians from their homes and communities in which many of them and their families have resided for decades”.<sup>3088</sup> The Prosecution submits that this

<sup>3079</sup> *Stakić* Appeal Judgement, para. 279.

<sup>3080</sup> *Krajišnik* Appeal Judgement, para. 319; *Stakić* Appeal Judgement, para. 281; *Krnojelac* Appeal Judgement, paras. 229, 233.

<sup>3081</sup> *Simić et al.* Trial Judgement, para. 126, referring to *Krstić* Trial Judgement, para. 147. See also *Milutinović et al.* Trial Judgement, para. 165.

<sup>3082</sup> *Simić* Trial Judgement, para. 127.

<sup>3083</sup> *Naletilić* Trial Judgement, para. 523. See also *Simić et al.* Trial Judgement, para. 127.

<sup>3084</sup> *Stakić* Appeal Judgement, para. 286; *Simić* Appeal Judgement, para. 180 (in the context of forcible transfer as an underlying act of persecution).

<sup>3085</sup> See e.g., *Stakić* Appeal Judgement, para. 282.

<sup>3086</sup> See *supra*, para. 891.

<sup>3087</sup> *Beara* Final Brief, paras. 839 (with regard to forcible transfer), 871 (with regard to deportation).

<sup>3088</sup> *Ibid.*, paras. 839–843, referring to, *inter alia*, *Simić et al.* Trial Judgement, para. 130, *Krstić* Trial Judgement, para. 523, and Commentary to Additional Protocol II, Art. 17, para 4847.

element imposes only the lesser requirement of lawful presence rather than the more onerous requirement of “residence”.<sup>3089</sup>

900. The Trial Chamber is of the view that the words “lawfully present” should be given their common meaning and should not be equated to the legal concept of lawful residence.<sup>3090</sup> The clear intention of the prohibition against forcible transfer and deportation is to prevent civilians from being uprooted from their homes and to guard against the wholesale destruction of communities. In that respect, whether an individual has lived in a location for a sufficient period of time to meet the requirements for residency or whether he or she has been accorded such status under immigration laws is irrelevant. Rather, what is important is that the protection is provided to those who have, for whatever reason, come to “live” in the community—whether long term or temporarily. Clearly the protection is intended to encompass, for example, internally displaced persons who have established temporary homes after being uprooted from their original community. In the view of the Trial Chamber, the requirement for lawful presence is intended to exclude only those situations where the individuals are occupying houses or premises unlawfully or illegally and not to impose a requirement for “residency” to be demonstrated as a legal standard.

### c. Grounds Permitting Forced Displacement under International Law

901. International law recognises certain grounds permitting forced displacements/evacuation.<sup>3091</sup> Article 19 of Geneva Convention III provides for the evacuation of prisoners of war out of the combat zone and into internment facilities, subject to certain conditions.<sup>3092</sup> Article 49(2) of Geneva Convention IV<sup>3093</sup> and Article 17(1) of Additional Protocol II<sup>3094</sup> allow forced displacements of

<sup>3089</sup> Prosecution Final Brief, para. 2900, fn. 6088.

<sup>3090</sup> See in this regard Beara Final Brief, paras. 839–847

<sup>3091</sup> *Stakić* Appeal Judgement, para. 284. See Art. 19 of Geneva Convention III and Art. 49 of Geneva Convention IV. Art. 17 of Additional Protocol II uses the term “displacement” to refer to this kind of removal of individuals.

<sup>3092</sup> Art. 19 of Geneva Convention III reads:

Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger. Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone. Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

<sup>3093</sup> Art. 49(2) and (3) of Geneva Convention IV provides that:

[...] the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.



populations under limited circumstances, namely if they are carried out “for the security of the persons involved or for imperative military reasons”. Evacuation is therefore an exceptional measure which is permitted when, for example, an area is in danger as a result of military operations or is liable to be subjected to intense bombing, or when the presence of persons in an area hampers military operations.<sup>3095</sup> It is unlawful to use evacuation measures based on imperative military reasons as a pretext to remove the population and effectuate control over a desired territory.<sup>3096</sup> Article 49(2) of Geneva Convention IV requires that individuals who have been evacuated be transferred back to their homes as soon as hostilities in the area in question have ceased.<sup>3097</sup>

902. Both Geneva Convention IV and Additional Protocol II lay down certain humanitarian safeguards that the evacuating party must guarantee should an evacuation be conducted, such as ensuring that the civilian population, to the extent possible and practicable, is adequately provided with accommodation, hygiene, health, safety and nutrition.<sup>3098</sup>

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Moreover, Art. 85 of Additional Protocol I prohibits “the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or part of the population of the occupied territory within or outside this territory in violation of Art. 49 of the Fourth Convention.”

<sup>3094</sup> Art. 17 of Additional Protocol II provides that:

The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

According to the Commentary, this article prohibits forced displacements “for reasons related to the conflict”. In this respect, the Commentary to Additional Protocol II, p. 1473 states that “[i]n fact, displacement may prove to be necessary in certain cases of epidemics or natural disasters such as floods or earthquakes”. Commentary to Additional Protocol II, p. 1473.

<sup>3095</sup> Commentary to Geneva Convention IV, p. 280 (regarding Art. 49), which also notes that evacuation is only permitted when overriding military consideration make it imperative; evacuation ceases to be legitimate if it is not imperative. *Ibid.*

<sup>3096</sup> Commentary to Additional Protocol II, p. 1473 (regarding Art. 17) (“The situation should be scrutinized most carefully as the adjective “imperative” reduces to a minimum cases in which displacements may be ordered. Clearly, imperative military reasons cannot be justified by political motives. For example, it would be prohibited to move a population in order to exercise more effective control over a dissident ethnic group”). *See also Blagojević and Jokić Trial Judgement*, para. 597.

<sup>3097</sup> Geneva Convention IV, Art. 49(2); Commentary to the Geneva Convention IV, pp. 280–281 (regarding Art. 49). Evacuation must not involve the movement of individuals to places outside the occupied territory, unless it is physically impossible to do otherwise. Commentary to Geneva Convention IV, p. 280 (regarding Art. 49).

<sup>3098</sup> *See also* Commentary to Geneva Convention IV, p. 280 (regarding Art. 49). While Art. 49(3) of the Geneva Convention IV provides that the evacuating party shall ensure that members of the same family are not separated to the greatest practicable extent, Art. 17 of Additional Protocol II does not contain the same provision. In this respect, the commentary of Art. 49(2) of Geneva Convention IV, p. 281 reads: “This clause naturally applies both to evacuation inside the territory and to cases where circumstances have made it necessary to evacuate the protected persons to a place outside the occupied territory.” *See also Blagojević and Jokić Trial Judgement*, para. 599 (where the Trial Chamber held that this general principle should be applicable also to non-international armed conflicts).

903. According to the Commentary of Article 17 of Additional Protocol II, displacement for humanitarian reasons, such as epidemics or natural disasters, is justifiable.<sup>3099</sup> However, the displacement for such reasons is not justifiable if the humanitarian crisis that caused such displacement is itself the result of the physical perpetrator's or accused's own unlawful activity.<sup>3100</sup>

(ii) Mens Rea

904. Given the different elements of the *actus reus* for forcible transfer and deportation, there is also a distinct *mens rea* for the two crimes. In the case of forcible transfer, as the ultimate location does not form part of the elements of the offence, the *mens rea* is established with proof of the intent to forcibly displace the person.<sup>3101</sup> In the case of deportation, as displacement across a border is a constituent element, the *mens rea* for the offence must encompass this component of the crime. Thus, the Prosecution must establish that the accused intended to displace the victims across a *de jure* or *de facto* border.<sup>3102</sup>

905. Finally, for both crimes, the accused does not need to intend to displace the individuals on a permanent basis.<sup>3103</sup>

(c) Victims of Forcible Transfer or Deportation

906. **Nikolić** and **Gvero** put forward legal arguments concerning the status of the victims of forcible transfer or deportation. With regard to the forcible transfer of the Bosnian Muslim men from Srebrenica, **Nikolić** argues that, in law, the crime of forcible transfer cannot be committed against detainees in non-international armed conflict.<sup>3104</sup> Noting that the situation of detainees in non-international armed conflict may be compared to the situation of POWs in international armed conflict,<sup>3105</sup> **Nikolić** submits that while Article 49 of Geneva Convention IV prohibits the forcible transfer and the deportation of "protected persons", Article 46 of Geneva Convention III provides for the transfer of POWs from one location to another.<sup>3106</sup> He notes that Article 147 of Geneva Convention IV lists "unlawful deportation or transfer" as a grave breach, but Geneva Convention III, which deals with the protection of POWs, omits unlawful deportation or transfer from its list of grave breaches.<sup>3107</sup> In **Nikolić's** submission, in light of Article 5 of Additional Protocol II, which

<sup>3099</sup> Commentary to Additional Protocol II, p. 1473. See also *Stakić* Appeal Judgement, para. 287; *Krajišnik* Appeal Judgement, para. 308, fn. 739; *Blagojević and Jokić* Trial Judgement, para. 600.

<sup>3100</sup> *Stakić* Appeal Judgement, para. 287; *Krajišnik* Appeal Judgement, para. 308, fn. 739.

<sup>3101</sup> *Stakić* Appeal Judgement, para. 317. See also *Milutinović et al.* Trial Judgement, Vol. 1, para. 164.

<sup>3102</sup> *Stakić* Appeal Judgement, paras. 278, 300. See also *Milutinović et al.* Trial Judgement, Vol. 1, para. 164.

<sup>3103</sup> *Stakić* Appeal Judgement, paras. 278, 307, 317; *Brdanin* Appeal Judgement, para. 206.

<sup>3104</sup> *Nikolić* Final Brief, paras. 216–231.

<sup>3105</sup> *Ibid.*, para. 218.

<sup>3106</sup> *Ibid.*, para. 219.

<sup>3107</sup> *Ibid.*, para. 220.

sets minimum safeguards for “persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained”, the law applicable to non-international armed conflict makes no determination on the legality of such detention.<sup>3108</sup> In light of these arguments, **Nikolić** contends that, as is the case for POWs in international armed conflict, detainees who are justifiably detained for reasons linked to a non-international conflict cannot be considered victims of forcible transfer if they are moved between detention facilities.<sup>3109</sup> According to **Nikolić**, only civilians can be victims of forcible transfer.<sup>3110</sup>

907. With regard to the Bosnian Muslim able-bodied men in Žepa, **Nikolić** submits that they cannot be considered victims of the crime of deportation as long as they were “members of the ABiH or they participated directly in hostilities”.<sup>3111</sup> **Nikolić** advances the same argument with regard to the men in the column.<sup>3112</sup>

908. Drawing a similar comparison between Article 49 of Geneva Convention IV and Geneva Convention III, **Gvero** argues that the prohibition of forced displacement for the purpose of Article 49 relates only to “civilians” and not to combatants or persons directly participating in hostilities.<sup>3113</sup> **Gvero** also submits that Article 85 of Additional Protocol I and Article 17 of Additional Protocol II similarly only forbid forced displacement of the civilian population.<sup>3114</sup> In his submission, the jurisprudence of the Tribunal also defines the prohibition of forced displacement as that of civilians.<sup>3115</sup>

909. **Gvero** further contends that the status of the victims as civilians or their entitlement to civilian protection is a constituent element of the crime of deportation; and that this element could be proved only if it is shown that the perpetrator was aware that the victims were civilians and that they were protected at the time in which the crime occurred.<sup>3116</sup> Referring to the Appeals Chamber’s rulings in *Blaškić*, and *Kordić and Čerkez*, **Gvero** submits that the definition of civilians as applied by this Tribunal excludes combatants, as defined by international humanitarian law.<sup>3117</sup>

<sup>3108</sup> Nikolić Final Brief, para. 221.

<sup>3109</sup> *Ibid.*, para. 222.

<sup>3110</sup> *Ibid.*, para. 222.

<sup>3111</sup> *Ibid.*, paras. 241-24 (referring to the *Mrkšić et al.* Trial Judgement, para. 458, in which the Trial Chamber stated that “deportation under Art. 5(d) cannot be committed against prisoners of war”).

<sup>3112</sup> Nikolić Final Brief, para. 231.

<sup>3113</sup> Gvero Final Brief, para. 106.

<sup>3114</sup> *Ibid.*

<sup>3115</sup> *Ibid.*, (referring to *Stakić* Trial Judgement, para. 618 and *Mrkšić et al.* Trial Judgement, para. 458).

<sup>3116</sup> *Ibid.*, para. 107. See also *ibid.*, para. 108.

<sup>3117</sup> *Ibid.*, paras. 110-111 (referring, *inter alia*, to *Blaškić* Appeal Judgement, paras. 110, 104 and *Kordić and Čerkez* Appeal Judgement, paras. 51, 458, 461).

910. In the Trial Chamber’s opinion, the arguments advanced by **Nikolić** and **Gvero**, which focus on the “status” of the victims, are misplaced.<sup>3118</sup> While the Geneva Conventions and Additional Protocols evidence that the crime of deportation—and by analogy the crime of forcible transfer—relates to a civilian population, this is already recognised by the placement of these crimes within the Statute. Forcible transfer as an inhumane act and deportation are incorporated as crimes against humanity, which by definition must be directed against a civilian population. As the Appeals Chamber has recently clarified, it is through an assessment of the general requirements of Article 5 that the determination is made as to whether the alleged crime formed part of an attack against a civilian population so as to constitute a crime against humanity.<sup>3119</sup> If this attack has been established and there is a sufficient nexus to the alleged crime, there is no additional requirement to prove that the actual victims were civilians. While this conclusion has been reached previously in the context of allegations of murder,<sup>3120</sup> there is no basis to treat the crimes of forcible transfer or deportation differently. Thus, contrary to the arguments of **Nikolić** and **Gvero**, the civilian status of the victims is not an element of the crime, which the Prosecution must prove beyond reasonable doubt.

911. This conclusion does not mean, however, that the status of the victims is not relevant to the overall determination as to whether forcible transfer or deportation as a crime against humanity has been proven. As the Appeals Chamber has noted for other crimes, the status of the victims may be relevant for the decision as to whether the general requirements of Article 5 have been met.<sup>3121</sup> It may also be an important factor to consider in assessing whether the allegations factually meet the definition of the crime.

912. In the case of forcible transfer and deportation, because of the nature of these crimes, it may be that the evidence of “status of victims” is even more relevant than with respect to other crimes. That is, since the acts of detention and forced movement in some circumstances can be perfectly legitimate, the status of the victims may be very relevant to distinguish lawful acts from criminal ones. This is the case in some of the factual scenarios proffered by **Nikolić** and **Gvero**. The actions described would not constitute the crime of forcible transfer or deportation because the elements of the crime have not been established, rather than because of the “combatant” status of the victims.

913. Therefore, in the opinion of the Trial Chamber, there is no legal requirement for either forcible transfer or deportation as crimes against humanity that the victims of the crimes be civilian. However, on a case by case basis all of the facts—including evidence as to the status of the victims

<sup>3118</sup> *But see* Judge Kwon’s Dissenting Opinion, *infra*, fn. 6416.

<sup>3119</sup> *Mrkšić and Šljivančanin* Appeal Judgement, paras. 42–43.

<sup>3120</sup> *See Mrkšić and Šljivančanin* Appeal Judgement, paras. 35–44; *Martić* Appeal Judgement, 272–314.

—will need to be assessed to determine if the chapeau requirements have been met and if the elements of the crimes alleged have been proved.

## 2. Findings

### (a) Srebrenica

914. The Prosecution alleges that forcible transfer was committed in Srebrenica through (a) the forced busing of the Bosnian Muslim women, children and the elderly from Potočari to ABiH-held territory, (b) the forced flight of the column of Bosnian Muslim men who attempted to escape to ABiH-held territory,<sup>3122</sup> and (c) the forced busing of the Bosnian Muslim men separated at Potočari, or who were captured or surrendered from the column up to Zvornik where they were ultimately executed.<sup>3123</sup>

#### (i) The Forced Busing of the Bosnian Muslim Women, Children and the Elderly in Potočari

915. As previously described, the plan to forcibly displace the Bosnian Muslim population was already in existence and action had been taken by the VRS to execute it before the actual busing of the Bosnian Muslim women, children and the elderly in Potočari took place.<sup>3124</sup> The circumstances of 12 and 13 July were a culmination of that plan. Mladić's intercepted words on 12 July capture this clearly—“[...] we'll evacuate them all – those who want to [go] and those who don't want to”.<sup>3125</sup> This belies his words in the Hotel Fontana meeting and to the Bosnian Muslims gathered in Potočari on 12 July, suggesting the Bosnian Muslim population still had a choice to stay.<sup>3126</sup>

916. The real intention of the Bosnian Serbs Forces is also evident in their actions following the fall of Srebrenica. When in the late afternoon of 11 July, Mladić and other members of the VRS marched into Srebrenica town, members of the 10th Sabotage Detachment called on the few Bosnian Muslims still remaining there to leave their houses.<sup>3127</sup> Some 200 Bosnian Muslim civilians were driven out of their homes and sent towards the football field on the other side of Srebrenica town.<sup>3128</sup> A few days later, on 13 July, as the last of the Bosnian Muslim women,

<sup>3121</sup> *Mrkšić and Šljivančanin* Appeal Judgement, paras. 35–44.

<sup>3122</sup> Indictment, para. 56; Prosecution Pre-Trial Brief, para 145. *But see* Judge Kwon's Dissenting Opinion, *infra*, paras. 2–14.

<sup>3123</sup> Indictment, para. 48(e).

<sup>3124</sup> *See supra*, paras. 762–775, 1085–1087.

<sup>3125</sup> Ex. P01113a, “Intercept, 12 July 1995, 12:50 hours”.

<sup>3126</sup> *See supra*, paras. 290, 318.

<sup>3127</sup> *See supra*, para. 261.

<sup>3128</sup> *See supra*, para. 261. *See also* Nura Efendić, Ex. P03238, “92 *bis* statement” (21 June 2000), p. 2 (stating that in July 1995, members of the Bosnian Serbs Forces entered Efendić's village and ordered the villagers to go to the DutchBat compound in Potočari, which they had to do).

children and the elderly were boarding the vehicles in Potočari, orders were issued for the military police to go to Srebrenica to check if any Bosnian Muslims were still there.<sup>3129</sup> It is evident that the intent of the Bosnian Serb Forces was to ensure that no Bosnian Muslims remained in Srebrenica.<sup>3130</sup>

917. The circumstances leading up to the busing of the Bosnian Muslim women, children and the elderly further evidence the compulsive nature of their departure. As a result of a military assault on the enclave, the population of Srebrenica fled their homes, eventually gathering for safety in Potočari. The situation and atmosphere there was marked by panic, fear, and despair.<sup>3131</sup> There was shelling and shooting in the immediate vicinity of the DutchBat compound where the Bosnian Muslims were gathered throughout the day on 11 July.<sup>3132</sup> Between 11 and 13 July, the humanitarian situation which had been dire became catastrophic.<sup>3133</sup> In the surrounding hills burning houses and haystacks could be seen.<sup>3134</sup> Instances of actual abuse—physical and mental—coupled with threats, mockery and persistent rumours of assault, rape and murder created an unbearable situation of terror for the population.<sup>3135</sup> The sense of hopelessness and vulnerability culminated as the Bosnian Muslims gathered in Potočari witnessed the disabling of DutchBat—the UN force designated to protect them.<sup>3136</sup> The Trial Chamber therefore finds that the conditions and atmosphere in Potočari were coercive to such an extent that the only option for the Bosnian Muslim women, children and the elderly was to leave.

918. Conditions of compulsion continued once the vehicles arrived and the physical movement of the Bosnian Muslim women, children and the elderly began. In addition to actual instances of the use of force to move people on to overcrowded buses, the entire boarding process was carried out in the presence and under the supervision of the feared Bosnian Serb Forces.<sup>3137</sup> The use of German shepherd dogs and other acts of intimidation enhanced the atmosphere of oppression.<sup>3138</sup> As they boarded the buses, the women, children and the elderly of Srebrenica also faced a forced and painful separation from their men.<sup>3139</sup> As a final act, the busing process on 12 and 13 July confirmed that no option remained for the civilian population of Srebrenica but to leave.<sup>3140</sup>

<sup>3129</sup> See *supra*, para. 324.

<sup>3130</sup> See *supra*, paras. 1085–1087.

<sup>3131</sup> See *supra*, paras. 312–315.

<sup>3132</sup> See *supra*, paras. 266, 272.

<sup>3133</sup> See *supra*, paras. 309–311.

<sup>3134</sup> See *supra*, para. 303.

<sup>3135</sup> See *supra*, para. 303.

<sup>3136</sup> See *supra*, paras. 306–308.

<sup>3137</sup> See *supra*, paras. 316–324.

<sup>3138</sup> See *supra*, para. 317.

<sup>3139</sup> See *supra*, paras. 319–324.

<sup>3140</sup> See *supra*, paras. 1085–1087.

919. It is argued that the Bosnian Muslim population actually wanted to leave the enclave and that this negates the forcible transfer alleged.<sup>3141</sup> There is evidence before the Trial Chamber that at various times, some of the population wanted to leave Srebrenica because of the living conditions.<sup>3142</sup> The BiH authorities were opposed to this and there are examples of measures put in place to prevent it.<sup>3143</sup> However, while the BiH authorities continued to refuse to allow the population to leave the enclave even up to a few days before the fall of Srebrenica, the Srebrenica municipal authorities had already considered a possible evacuation as “the last unpopular step to save the population”.<sup>3144</sup>

920. The wish of some Bosnian Muslims to leave the enclave in the months preceding the fall of Srebrenica, does not negate the forcible nature of the ultimate removal of the whole population. The mass exodus on 11 and 13 July was not the result of a voluntary request from the population, acceded to by the Bosnian Serb Forces. It was the consequence of a deliberate plan carried out over several months culminating in a military attack and the creation of disastrous conditions which compelled the entire population to abandon their homes.<sup>3145</sup> In the view of the Trial Chamber, the evidence that some wished to leave therefore raises no doubt as to the forcible nature of the transfer of the Bosnian Muslim population.

921. Similarly, Karremans’ comments at the Hotel Fontana meeting that it was the wish of Bosnian Muslims to leave the enclave do not raise doubt as to the forced nature of the subsequent removal.<sup>3146</sup> By the time his remarks were made, the plan to forcibly remove had come to near fruition. The population of Srebrenica had already fled to Potočari *en masse* and the conditions which ultimately compelled their departure were already present. Karremans simply put voice to the conclusion of the Bosnian Muslims that the circumstances were such that they had no option but to leave. Further, as mentioned, it is the consent of each individual and not of a collective group or official authorities deciding on behalf of a group, that determines the voluntariness or otherwise of a transfer.<sup>3147</sup>

<sup>3141</sup> See Nikolić Final Brief, paras. 136, 228; Borovčanin Final Brief, para. 113.

<sup>3142</sup> Exs. 1D00495, 5D00509, “Report on meeting with Ken Biser sent by the ABiH 2nd Corps Command in Tuzla to Rasim Delić signed by Sead Delić, 9 Dec 1994”, pp. 2–3; Ex. 5D00244, “Order from the the ABiH 28th Division to the 285th Žepa Brigade, Ramiz Bećirović, 27 May 1995”.

<sup>3143</sup> See Ex. 5D00244, “Order from the ABiH 28th Division to the the 285th Žepa Brigade, Ramiz Bećirović, 27 May 1995”.

<sup>3144</sup> Ex. 4DP00009, “Report from the session of the Srebrenica Municipality Presidency held July 1995 signed by President of the Presidency Osman Suljić”, 9 July 1995; Ex. 1D00035, “Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation of Srebrenica, 12 July 1995”, p. 2.

<sup>3145</sup> See *supra*, paras. 762–775, 1085–1087.

<sup>3146</sup> See *supra*, para. 275.

<sup>3147</sup> See *supra*, para. 897; *Simić et al.* Trial Judgement, para. 128.

922. The Bosnian Serb civilian and military authorities tried to give the forcible transfer of the Bosnian Muslim women, children and the elderly a veneer of legitimacy. The 17 July 1995 statement signed by Mandžić, Deronjić and Franken, stating that each Bosnian Muslim could have chosen to stay in or leave Srebrenica but they chose to be evacuated to Kladanj, was such an attempt.<sup>3148</sup> Considering it in the context of all the circumstances outlined above, the Trial Chamber is satisfied it did not reflect the reality of the situation and it casts no doubt on the forcible nature of the removal of the population.

923. With regard to the requirement of lawful presence, the Trial Chamber, as previously indicated, is satisfied that the population of Srebrenica was lawfully present and recalls that in mid-1995, the population in Srebrenica was approximately 42,000, 85 per cent of whom were internally displaced persons.<sup>3149</sup> The Trial Chamber finds that the population of Srebrenica was lawfully present there.

924. The Trial Chamber also finds that the forcible displacement took place after the heavy military action was over, negating any suggestion that this was for the civilians' own security or for imperative military reasons. It was triggered by the conflict and was not necessary for reasons of epidemics or because of natural disasters, for example. Furthermore, the humanitarian catastrophe was the result of the Bosnian Serbs' own unlawful activity in the months leading up to and during the attack on Srebrenica.<sup>3150</sup> No justification for the displacement can therefore be premised on conditions that were created by the Bosnian Serbs themselves. Lastly, the temporary requirement—that the persons evacuated be transferred back to their homes as soon as the hostilities cease—has not been met.<sup>3151</sup>

925. For the foregoing reasons, and for the reasons explained previously in the context of the discussion on Article 5, the Trial Chamber finds that the organised transportation of the Bosnian Muslim women, children and the elderly out of Potočari constitutes forcible transfer.<sup>3152</sup>

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<sup>3148</sup> See *supra*, para. 292.

<sup>3149</sup> See *supra*, paras. 899–900.

<sup>3150</sup> See *supra*, paras. 762–775.

<sup>3151</sup> See Mevlida Bektić, Ex. P03245, “92 *bis* statement” (16 June 2000), p. 5 (stating that if it were possible they would go back to her village); Hana Mehmedović, Ex. P03244, “92 *bis* statement” (17 June 2000), p. 7 (stating she would like to go back to her village); Salih Mehmedović, Ex. P03241, “92 *bis* statement” (15 June 2000), pp. 3, 5 (stating that he would like to return to his village). See also Senija Suljić, Ex. P03242, “92 *bis* statement” (17 June 2000), pp. 2–3 (stating she “can never go back to Srebrenica”); Amer Malagić, Ex. P03240, “92 *bis* statement” (15 June 2000), pp. 4–5 (stating that he is not planning to return to Bratunac).

<sup>3152</sup> See *supra*, paras. 762–776.



(ii) The Bosnian Muslim Men in the Column Fleeing to ABiH-Held Territory

926. The factors that contributed to and constituted the plan to forcibly displace the Bosnian Muslim population were already in place by the evening of 11 July when the column began to move out of the Srebrenica enclave.<sup>3153</sup> The indiscriminate military attack on Srebrenica which prompted parts of the population to flee to Potočari, similarly compelled the departure of the men to the surrounding villages. The men who gathered around the villages of Šušnjari and Jagličići and ultimately left through the woods to ABiH-held territory in the evening of 11 July, were driven out of their homes just as the women, children and the elderly had been.<sup>3154</sup> However, the column, predominantly consisting of able-bodied men, was of a different nature in that it was mixed in composition—partly military and partly civilian.<sup>3155</sup> As indicated previously, there is no requirement at law to demonstrate that the victims of forcible transfer are civilians.<sup>3156</sup> However, in the opinion of the Trial Chamber there are separate factual considerations of relevance with respect to these two components of the column in terms of the constituent elements of forcible transfer.<sup>3157</sup>

927. The Trial Chamber has assessed the testimony of various Bosnian Muslim witnesses indicating that the men in the column had no choice but to leave the enclave for fear of their lives.<sup>3158</sup> The Trial Chamber finds that the recollection of some of the Bosnian Muslim witnesses it has heard as to why they left Srebrenica on the night of 11 July has been understandably coloured by the horrific events which followed and the terrible fate of the men who remained, surrendered or were captured. With hindsight, the flight of the men was a question of life or death. But for the legal element of forcible transfer, the issue is whether at the time they did so by choice or because of force. Looking at the totality of the evidence before it, the Trial Chamber finds that the military component of the column, unlike the civilian component, had options other than fleeing. They had

<sup>3153</sup> See *supra*, paras. 762–775, 1085–1087.

<sup>3154</sup> See *supra*, para. 267–271, 780–783.

<sup>3155</sup> See *supra*, para. 270; See also Samila Salčinović, Ex. P03233, “92 bis statement” (18 June 2000), pp. 2–3 (stating that her husband, who was a soldier in the ABiH, told her that he had been ordered to leave before Srebrenica fell).

<sup>3156</sup> See *supra*, paras. 906–913.

<sup>3157</sup> But see Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–14.

<sup>3158</sup> See Mevlida Bektić, Ex. P03245, “92 bis statement” (16 June 2000), p. 2; Hana Mehmedović, Ex. P03244, “92 bis statement” (17 June 2000), pp. 1–3; Salih Mehmedović, Ex. P03241, “92 bis statement” (15 June 2000), p. 1; Hanifa Hafizović, Ex. P03230, “92 bis statement” (16 June 2000), p. 2 (stating that her son-in-law and his brother were afraid to get killed if they went to the DutchBat compound in Potočari and that indeed all the men who went to Potočari were killed); PW-119, Ex. P02272, “92 ter transcript”, KT. 3239 (23 May 2000) (stating that he left for the woods as, after the Bosnian Serbs took over Srebrenica town, the situation was chaotic and there was no way out, as they could only expect death in Potočari given they had no protection from DutchBat); See also Samila Salčinović, Ex. P03233, “92 bis statement” (18 June 2000), pp. 1–2 (stating that male members of her family were afraid to go to Potočari); PW-127, T. 3509, 3537 (2 Nov 2006) (stating that it was evident that the objective of the Bosnian Serbs was “to kill us all”. PW-127 concluded this “because of everything that had been happening from the beginning of the war, and all the shelling in Srebrenica.” He also stated “that because we were Muslims, they wanted to kill us.” That is why he left with the column); PW-111, T. 6972 (6 Feb 2007) (stating that the situation in Srebrenica was chaotic, the artillery and shelling attacks were intense, so they had to leave and he left with the column).

the choice to stay and fight, to surrender or to retreat. As the tragic events of Srebrenica were unprecedented in the conflict, the decision of the members of the ABiH and others who were active participants in the hostilities was a strategic one in a military context. While the risks of battle and the difficult conditions for prisoners of war may have motivated the decision to leave, it was in the end a choice made and cannot be categorized as a forcible transfer.

928. However, the Trial Chamber finds, by majority, Judge Kwon dissenting,<sup>3159</sup> that the situation is completely different for the large civilian component of the column. The prohibitions on deportation and forcible transfer are designed specifically to guard against forcing civilians from their homes. In the context of armed conflict, civilians—male or female—cannot be made to choose to fight, surrender or flee. For a civilian, it amounts to no choice at all. Thus, while the military men in the column voluntarily left the enclave that evening, the same cannot be said of the civilians who were with them.

929. As indicated, these civilians, primarily men, fled their homes under the same conditions of fear and panic which triggered the departure of the population generally from Srebrenica. Thus they had been forced from their homes by the military action levelled against the enclave by the VRS. However, this portion of the population—distinct from the women, children and the elderly—went to the surrounding villages to await further developments rather than proceeding to Potočari.<sup>3160</sup> As a result, they did not experience the catastrophic conditions which befell those taking shelter in Potočari and which contributed to the atmosphere of compulsion leading to the forced transfer of the women, children and the elderly. Nevertheless, these civilian men had been forced from their homes and were left without the choice to return to Srebrenica as they had no one to defend them. By the evening of 11 July, with the triumphant march through the town of Srebrenica by Mladić and others, followed by the clearing of any remaining residents by VRS forces, it was evident to all that the enclave and town had fallen under Bosnian Serb control and Bosnian Muslims would not be allowed to return to their homes there.<sup>3161</sup> In these circumstances, in the context of the evident and irreversible fall of Srebrenica to the Bosnian Serb Forces, and the departure of the ABiH 28<sup>th</sup> Division, their last protection, the civilians were left with no other option but to leave their homes. The Trial Chamber, by majority, Judge Kwon dissenting,<sup>3162</sup> is therefore satisfied that the civilian members of the column did not exercise a genuine choice to leave. Rather they were forced to

<sup>3159</sup> See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–14.

<sup>3160</sup> See *supra*, para. 267–271.

<sup>3161</sup> See *supra*, paras. 260–261.

<sup>3162</sup> See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–14.

abandon their homes and flee by the actions of the Bosnian Serb Forces in circumstances which amounted to forcible transfer.<sup>3163</sup>

930. The Trial Chamber, by majority, Judge Kwon dissenting,<sup>3164</sup> therefore finds that the crime of forcible transfer was committed with reference to the civilian component of the column which fled Srebrenica on the evening of 11 July.

931. The Trial Chamber refers to its discussion above on the requirement of lawful presence and of whether the forcible transfer of the civilians in the column amounted to an evacuation permitted under international law. The same findings are applicable in this case.

(iii) The Forced Busing of the Bosnian Muslim Men Separated and Detained in Potočari or Those Surrendered or Captured from the Column to Bratunac and the Zvornik area

932. The Bosnian Muslim men separated from their families in Potočari on 12 and 13 July and those who surrendered or were captured along the Bratunac-Konjević Polje Road on 13 July, were transported to various temporary detention centres in Bratunac town.<sup>3165</sup> Subsequently, they were moved to other detention sites in the Zvornik area where they were ultimately murdered.<sup>3166</sup>

933. As will be further discussed below, the Trial Chamber finds that the Bosnian Muslim men were detained and then moved, from one detention site to another, as part of the plan to murder them. The plan to kill the Bosnian Muslim men had already been conceived as of the morning of 12 July.<sup>3167</sup> Thus by the time the VRS transferred these men to Bratunac and then to the Zvornik area it was done in execution of the plan to murder. The Trial Chamber finds that the VRS's intent at that point was to murder the Bosnian Muslim men and not to forcibly transfer them.

934. Absent the requisite *mens rea*, the Trial Chamber cannot find that forcible transfer was committed against the Bosnian Muslim men who were detained in Potočari and those who surrendered or were captured along the Bratunac-Konjević Polje Road when they were transported to Bratunac and then to the Zvornik area.

935. Lastly, the Trial Chamber notes that **Nikolić's** argument that the factual requirement pleaded by the Prosecution—that these Bosnian Muslim men and those in the column be displaced to areas

<sup>3163</sup> See *supra*, Chapter III, Section C–D.

<sup>3164</sup> See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–14.

<sup>3165</sup> See *supra*, paras. 338, 340. The Bosnian Muslim men who surrendered or were captured along the Bratunac-Konjević Polje Road were first detained at various locations, including Sandići Meadow, Konjević Polje, and Nova Kasaba Football Field, before being transported to Bratunac. See *supra*, paras. 384–389, 392–395.

<sup>3166</sup> See *supra*, paras. 468, 472–473.

<sup>3167</sup> See *infra*, para. 1051.

outside the control of the RS—has not been proven.<sup>3168</sup> The Trial Chamber considers that as forcible transfer with reference to the detained men has not been found, it need not consider this argument. With regard to the civilian men in the column, although the allegation of the Prosecution with respect to movement outside the RS has not been proven beyond reasonable doubt, as this does not constitute an element of forcible transfer, it does not affect whether the crime has been established.

(iv) Conclusion

936. The Trial Chamber finds that the elements of the crime of forcible transfer with regard to the Bosnian Muslim women, children and the elderly who were transported out of Potočari have been met and that the crime of forcible transfer was committed against them. Further, the Trial Chamber, by majority, Judge Kwon dissenting,<sup>3169</sup> finds that the elements of the crime with regard to the civilians in the column have also been met, and that the crime of forcible transfer was similarly committed against them.

937. Furthermore, the Trial Chamber finds that the forcible transfer of the Bosnian Muslim women, children and the elderly and, by majority, Judge Kwon dissenting,<sup>3170</sup> the forcible transfer of the civilians in the column were of similar seriousness to other acts enumerated in Article 5, as they involved a mass transfer under duress and in terror. In the case of the women, children and the elderly, the mass transfer was also systematic. This happened in the context of an indiscriminate attack against the civilian population, under a cloud of great uncertainty, and with no guarantees of when and where they would be re-united with their families, with the consequent serious mental harm this caused. For the women, children and the elderly, this also happened in the context of the painful separations from their male family members. The Trial Chamber finds that these acts of forcible transfer are sufficiently serious to amount to “other inhumane acts” under Article 5(i) of the Statute.

<sup>3168</sup> Nikolić Final Brief, paras. 224, 231, 1023, 1025; Nikolić Closing Arguments, T. 34514 (9 Sept 2009). *See also* Prosecution 98 *bis* submission, T. 21432 (18 Feb 2008). Nikolić also argues that detainees in non-international armed conflict who are justifiably detained for reasons related to the armed conflict cannot be considered victims of forcible transfer if they are moved between detention facilities, similar to the case of prisoners of war in international armed conflict situations. According to Nikolić, only civilians can be victims of forcible transfer. Nikolić Final Brief, paras. 216–231; Nikolić Closing Arguments, T. 34508–34510 (9 Sept 2009). *See also* Borovčanin Final Brief, paras. 110, 509–518. The Trial Chamber refers to its discussion above on the merits of this argument. *See supra*, paras. 910–913.

<sup>3169</sup> *See* Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–14.

<sup>3170</sup> *See* Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–14.

(b) Žepa

938. The Prosecution alleges that the crime of forcible transfer was committed in Žepa through the forced busing of the Bosnian Muslim population to ABiH-held territory and the forced movement of the able-bodied men across the Drina River to Serbia, and that the crime of deportation was committed through the forced movement of the Bosnian Muslim men across the Drina River to Serbia.<sup>3171</sup> The Prosecution charges all the Accused with the crime of forcible transfer as an inhumane act under Count 7 and the crime of deportation under Count 8.<sup>3172</sup>

(i) Lead up to Military Attack in July 1995

939. Although in the first part of 1995 the humanitarian situation in Žepa was not as desperate as that in Srebrenica, the VRS increasingly refused or hindered the delivery of humanitarian aid to Žepa and blocked fuel transportation.<sup>3173</sup> About a month prior to the fall of Žepa, the humanitarian aid decreased.<sup>3174</sup> As a result, by July 1995, the living conditions were very difficult. Meanwhile, from June 1995, the VRS intensified its sporadic shelling of the enclave, causing civilian casualties and the destruction of some villages in the enclave.<sup>3175</sup>

(ii) The Forced Busing of the Bosnian Muslim Civilians

940. Having forcibly removed the Bosnian Muslim population of Srebrenica, the VRS proceeded steadily to Žepa. The plan to forcibly remove the Bosnian Muslim population from the two enclaves culminated in the forced movement of the Bosnian Muslims from Žepa.

941. The VRS initiated discussions regarding the removal of the population of Žepa before their arriving militarily at the enclave. Three rounds of “negotiations” to discuss the transportation of the Bosnian Muslim population out of Žepa took place. In the Trial Chamber’s view, the atmosphere was coercive throughout.<sup>3176</sup> At each juncture, military force was the means used to compel concessions from the civilian population of Žepa. The first round of negotiations, held on 13 July 1995, was preceded by the fall of Srebrenica. These discussions began at the same time the VRS was marching towards Žepa. The prevailing tone is best captured by the ultimatum issued at that time: “complete evacuation of the entire population or a military solution”.<sup>3177</sup>

<sup>3171</sup> Indictment, paras. 48(e), 71, 84.

<sup>3172</sup> *Ibid.*, paras. 71, 84.

<sup>3173</sup> *See supra*, paras. 237–241, 665.

<sup>3174</sup> *See supra*, paras. 234, 241, 767.

<sup>3175</sup> *See supra*, paras. 666, 671.

<sup>3176</sup> *See supra*, paras. 675–679, 689–690, 702–704.

<sup>3177</sup> *See supra*, para. 679.

942. When, after the first round, the Bosnian Muslim representatives in Žepa failed to accept the VRS's proposal to remove the population, the VRS mounted an indiscriminate attack on the protected UN enclave, comprised of infantry assaults and shelling,<sup>3178</sup> contrary to Krstić's order that the Bosnian Muslim civilian population and UNPROFOR should not be targets.<sup>3179</sup> UKRCoy checkpoints were assailed and at least one was taken over completely.<sup>3180</sup> Despite organised resistance from the ABiH, by 19 July it was evident to all that the Žepa enclave was about to fall in the wake of the military assault by the VRS. It was in these circumstances on 19 July that Mladić called for a halt of hostilities in order to open a second round of "negotiations".<sup>3181</sup> By that stage, already the Bosnian Muslim representatives had no choice but to give in to Mladić's demand to move out the population from Žepa.<sup>3182</sup> This reality was only reinforced when after the collapse of the second round of discussions the VRS intensified its attack on Žepa, targeting defence lines, buildings and houses, as well as UKRCoy.<sup>3183</sup>

943. It was at this critical juncture that news about the fate of the Bosnian Muslims from Srebrenica began to circulate in Žepa.<sup>3184</sup> Rumours of atrocities, made even more terrifying by uncertainty, added to the anxiety of an already fearful population. Meanwhile in the enclave, loudspeakers were broadcasting a message that there was no chance for the Bosnian Muslim population as the area was controlled by Mladić.<sup>3185</sup>

944. It was in this context that the last round of "negotiations" was held, leading to the signing of the 24 July 1995 Agreement. Having considered the totality of the circumstances, the Trial Chamber is satisfied beyond reasonable doubt that, at this point, the population of Žepa had no choice but to leave the enclave. Those who gathered to be transported away were there not by choice but through circumstances of compulsion. As one witness described, the choice was "to leave Žepa under very cruel and humiliating circumstances [...] or to remain and then either be killed or be subjected to suffering".<sup>3186</sup> Even as the transfer was being carried out, a VRS vehicle carrying a "Serb" flag would periodically drive through the town, emphasising to the frightened population the precarious nature of their circumstances.<sup>3187</sup> Thus, however orderly the physical

<sup>3178</sup> See *supra*, para. 680.

<sup>3179</sup> Ex. P00114, "Order from Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995", p. 4.

<sup>3180</sup> See *supra*, para. 683.

<sup>3181</sup> See *supra*, paras. 683–687.

<sup>3182</sup> See *supra*, para. 690.

<sup>3183</sup> See *supra*, para. 696.

<sup>3184</sup> The Trial Chamber is satisfied that reports of the Srebrenica events—forcible transfer and killings—had reached Žepa. See *supra*, para. 690.

<sup>3185</sup> See *supra*, para. 695.

<sup>3186</sup> See *supra*, para. 714.

<sup>3187</sup> See *supra*, para. 716.

transfer was,<sup>3188</sup> it cannot negate the relentless pressure brought by the VRS, which resulted in a forced movement of the population of Žepa.

945. There is evidence that during the course of the transfer UNPROFOR and ICRC were present. That, however, does not render the transportation lawful.<sup>3189</sup> Similarly, the Trial Chamber is satisfied that the 24 July 1995 Agreement, signed in the presence of the UKRCoy Commander, in no way altered the forcible nature of the transfer. An agreement reached by parties to the conflict, even with the participation of international organisations cannot *per se* make a forcible displacement lawful.<sup>3190</sup> Further, the accession to it by the “representatives” of the population in these particular circumstances cannot be categorised as a voluntary action and the agreement in no way reflected the reality of the circumstances. The Trial Chamber finds that the agreement represented nothing more than an attempt by the VRS to put a legitimate veneer on an otherwise unlawful forcible transfer.

946. There is also evidence that, in the first part of 1995, some of the Bosnian Muslims in Žepa wanted to leave the enclave but both the Bosnian Muslim political and military authorities put measures in place to prevent this movement.<sup>3191</sup> It is argued by **Beara** and **Gvero** that this evidences that the ultimate evacuation of the population in July 1995 reflected the choice of the population and did not amount to forcible transfer.<sup>3192</sup>

947. In the view of the Trial Chamber, the fact that some of the population wanted to leave Žepa is but one factor to be considered in assessing whether the circumstances in July 1995, considered in totality, amounted to forcible transfer. In the opinion of the Trial Chamber, the conditions created in July 1995 particularly by the military action overshadowed any previous inclination of segments of the civilian population to leave the enclave. This evidence is not sufficient to raise a doubt as to the involuntary nature of the transfer.

948. With regard to the requirement for lawful presence, the Trial Chamber recalls that in 1995, there were 6,500 to 8,000 people living in Žepa and 65% or two thirds of the population were internally displaced persons.<sup>3193</sup> There is no evidence indicating an unlawful presence and the Trial Chamber is satisfied that the Bosnian Muslim population was lawfully present in Žepa.

<sup>3188</sup> See *supra*, paras. 713, 716.

<sup>3189</sup> See *supra*, paras. 712, 716–718.

<sup>3190</sup> See *supra*, para. 897.

<sup>3191</sup> See *supra*, para. 667.

<sup>3192</sup> Beara Final Brief, paras. 834–838; Gvero Final Brief, para. 94.

<sup>3193</sup> See *supra*, paras. 667, 670.

949. Furthermore, the VRS undertook the transportation of the Bosnian Muslim civilians neither for the security of the population, nor for imperative military reasons. Following the signature of the 24 July 1995 Agreement, the Žepa enclave fell and the major fighting ceased.<sup>3194</sup> Therefore, no military threat existed following the fall of Žepa. Moreover, no humanitarian reasons justified the transportation of the Bosnian Muslim civilians out of Žepa. In fact, the humanitarian crisis in Žepa was induced by the VRS's conduct with the clear aim of driving the Bosnian Muslim population out of the enclave, as planned in Directive 7.<sup>3195</sup> While there is evidence that the Bosnian Muslims may also have burnt houses in the surrounding hills, this does not negate the fact that the VRS participated in the looting and burning of houses in Žepa.<sup>3196</sup> This conduct evidences that the VRS did not intend to return the transferred Bosnian Muslim civilians to where they lived after the end of hostilities.

950. The circumstances provide abundant evidence from which the requisite *mens rea* to forcibly remove the population of Žepa can be found. The negotiations between the Bosnian Muslim representatives and the VRS were initiated by the VRS and from the very beginning the stated purpose was to discuss the removal of the Bosnian Muslim population. The discussions were carried out in an intimidating fashion and under threat of military action. Every time the negotiations failed to produce the desired result, the VRS responded with escalated attacks on the enclave, targeting civilians and houses.<sup>3197</sup> Even before an agreement had been achieved, Mladić was seeking the assistance of Smith in arranging for vehicles for transportation.<sup>3198</sup> While the 24 July 1995 Agreement provided that the Bosnian Muslim civilians “shall enjoy freedom of choice of place of living and residence” in accordance with international humanitarian law, this option was never discussed.<sup>3199</sup> Furthermore, the VRS announced their intention for all to hear by broadcasting messages using loudspeakers, exhorting the population to leave the enclave.<sup>3200</sup> The Trial Chamber is satisfied beyond all reasonable doubt of the intent of the VRS to remove the Bosnian Muslim population from the enclave.

951. In view of the forgoing reasons, the Trial Chamber therefore finds that the systematic transportation of the Bosnian Muslim civilians out of the Žepa enclave amounts to the crime of forcible transfer.

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<sup>3194</sup> See *supra*, para. 708.

<sup>3195</sup> See *supra*, para. 199.

<sup>3196</sup> See *supra*, para. 723.

<sup>3197</sup> See *supra*, paras. 675–701.

<sup>3198</sup> See *supra*, para. 693.

<sup>3199</sup> See *supra*, paras. 703–704.

<sup>3200</sup> See *supra*, para. 695.



(iii) The Forced Movement of the Bosnian Muslim Able-Bodied Mena. Preliminary Issue: the Alleged Victims of Forcible Transfer and Deportation

952. The Trial Chamber first addresses a preliminary matter in respect of the Bosnian Muslim able-bodied men in the enclave and the charges in the Indictment.<sup>3201</sup>

953. It is clear that under paragraph 84 the Indictment charges the Accused with the crime of deportation in relation to the Bosnian Muslim able-bodied men who fled to Serbia and this allegation has been addressed by all the Accused.<sup>3202</sup> However, in the view of the Trial Chamber, by majority, Judge Kwon dissenting,<sup>3203</sup> it is also clear that alternatively the Prosecution has alleged that the same factual circumstances constitute forcible transfer as an inhumane act. This factual allegation can be found in paragraph 71 of the Indictment which reads as follows:

The Transportation of the women and children of Žepa began on 25 July 1995. On or about the same day, hundreds of mostly able-bodied Muslim men began to flee across the Drina River to Serbia where many of them were registered by the International Committee for the Red Cross (ICRC) and eventually released. The Muslim men fled to Serbia because they feared they would be harmed or killed if they surrendered to the VRS.<sup>3204</sup>

In the Trial Chamber's opinion by majority, Judge Kwon dissenting, the Indictment thus alleges that the able-bodied men who swam across the Drina River to Serbia were victims of the crimes of forcible transfer and deportation under Counts 7 and 8, respectively.

954. The Trial Chamber will now consider the facts related to the able-bodied men who fled across the Drina River to Serbia in relation to these counts.

b. Forcible Transfer or Deportation of the Able-Bodied Men

955. As previously described,<sup>3205</sup> no determination as to the status of the Bosnian Muslim able-bodied men is necessary as an element of forcible transfer or deportation.<sup>3206</sup> It may, however, have a factual effect in certain circumstances on the issue of whether the movement was forced or not. The able-bodied men of Žepa, including the soldiers, started fleeing the enclave once the forced

<sup>3201</sup> Though not specifically argued, the submissions of **Nikolić** raised the question as to whether the flight of the able-bodied men across the Drina River into Serbia has been charged both as deportation and forcible transfer. **Nikolić** Final Brief, paras. 233–237.

<sup>3202</sup> The Prosecution has not charged either forcible transfer or deportation in relation to the other able-bodied men of Žepa who fled within the territory of BiH.

<sup>3203</sup> See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–6, 15–20.

<sup>3204</sup> Indictment, para. 71.

<sup>3205</sup> See *supra*, paras. 906–913.

<sup>3206</sup> *But see* Judge Kwon Dissenting Opinion, *infra*, paras. 2–6, 15–20.

busing of the Bosnian Muslim civilians proceeded.<sup>3207</sup> Like others in the population, these men had faced the same living conditions in Žepa and they had encountered the same military action against the enclave. Unlike Srebrenica, the ABiH soldiers on this occasion chose to remain in the woods around Žepa town and to resist the attack of the VRS militarily.<sup>3208</sup> Once however it became clear that the enclave had fallen under Bosnian Serb control, the men of Žepa—civilian and military—were in a similar situation to those of Srebrenica. For the civilian men of Žepa, the stark refusal of the VRS during the negotiations to allow them to be transferred with the rest of the population made it even more apparent that they would not be allowed to remain in Žepa. Like the civilian men of Srebrenica, they had no option but to flee.

956. As for the military and those participating in hostilities, the circumstances were very different from those which their counterparts in Srebrenica had faced. The Trial Chamber is satisfied that, by 24 July 1995, these men would have been well aware of the reports of mass killing after the fall of Srebrenica.<sup>3209</sup> Their decision to flee cannot be categorised as a strategic one taken in military terms. Simply, they fled the enclave in fear for their lives.<sup>3210</sup> That the majority chose to escape to Serbia to face surrender and detention as POWs evidences their desperation.<sup>3211</sup> While the VRS maintained that those men who surrendered their weapons would be exchanged with the VRS POWs held by the ABiH,<sup>3212</sup> it is clear that the able-bodied men had no faith in those words.<sup>3213</sup> The Trial Chamber is satisfied that the able-bodied men—civilian and military—fled the enclave because they had no other genuine choice but to do so. That was the only option left for them to survive.

957. Lastly, with regard to the requirement for lawful presence of the able-bodied men in Žepa, the Trial Chamber notes the submission by **Miletić** that the able-bodied men—“members of the Muslim armed forces”—were not legally present in the enclave, which was supposed to be demilitarised.<sup>3214</sup> In the Trial Chamber’s view, soldiers *per se* were not excluded from living in the enclave. Rather, it is the arms that were prohibited and thus it is not the case that the presence of the soldiers was unlawful *per se*. In July 1995, 1,200 to 2,000 of the inhabitants were able-bodied men.<sup>3215</sup> The Trial Chamber has no doubt that they were lawfully present there.

<sup>3207</sup> See *supra*, paras. 732–738.

<sup>3208</sup> See *supra*, paras. 724, 727, 729–730, 733.

<sup>3209</sup> See *supra*, paras. 680, 690, 706.

<sup>3210</sup> See *supra*, paras. 690, 706.

<sup>3211</sup> See *supra*, paras. 731–738.

<sup>3212</sup> See *supra*, paras. 679–680, 689–690, 694, 697, 699–704, 725, 728–731.

<sup>3213</sup> See *supra*, paras. 690, 706.

<sup>3214</sup> Miletić Final Brief, paras. 607, 609.

<sup>3215</sup> See *supra*, para. 670.

958. The Trial Chamber therefore finds by majority, Judge Kwon dissenting,<sup>3216</sup> that the movement across the Drina River of able-bodied men from the Žepa enclave amounts to forcible transfer.

959. As noted previously, for the crime of deportation to be established, it is not sufficient to prove force on the part of the Accused and the ultimate location of the victims across a border.<sup>3217</sup> The Prosecution must also establish the link between the two elements. In this instance, while the able-bodied men ultimately ended up in Serbia, the evidence does not support that it was the acts of the accused which caused them to cross the border.<sup>3218</sup> In fact, while these men swam across the Drina River to Serbia, the evidence shows that there were others who fled to various areas within national borders such as Kladanj, Goražde, Tuzla and Sarajevo.<sup>3219</sup> In these circumstances, while the men were forced out of Žepa, those who fled to Serbia made the choice to flee across the border. It therefore cannot be said that they were deported.

960. Moreover, there is no evidence to show that the VRS had the intent to deport the men across a border. In fact, there is evidence to the contrary in that subsequently members of the VRS were anxious to secure the return of the men who had crossed into Serbia.<sup>3220</sup> This negates the existence of any intent to deport them.

961. The Trial Chamber therefore finds that the forced movement of the able-bodied men from the Žepa enclave does not amount to the crime of deportation.

(iv) Conclusion

962. For the foregoing reasons, the Trial Chamber finds that the elements of the crime of forcible transfer under Count 7 are established in relation to the forced busing of the Bosnian Muslim civilians. In addition, it also finds, by majority, Judge Kwon dissenting,<sup>3221</sup> that the crime of forcible transfer is also established with regard to the able-bodied men who fled across the Drina River out of the Žepa enclave. Furthermore, the crime of forcible transfer in Žepa was sufficiently serious to amount to an inhumane act under Article 5(i). It caused serious mental suffering to the Bosnian Muslim civilians as they were forced to leave their homes against their will. Finally, the Trial Chamber finds that the elements of the crime of deportation under Count 8 are not established in relation to the able-bodied men who swam across the Drina River to Serbia.

<sup>3216</sup> See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–6, 15–20.

<sup>3217</sup> See *supra*, paras. 892–895.

<sup>3218</sup> See *supra*, paras. 731–738.

<sup>3219</sup> See *supra*, paras. 732–733, 736–737.

<sup>3220</sup> See *supra*, para. 735.

<sup>3221</sup> See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–6, 15–20.

## H. Persecution on political, racial and religious grounds

963. The Indictment charges the Accused with persecution on political, racial and religious grounds, a crime against humanity through murder, cruel and inhuman treatment, terrorising the civilian population, destruction of personal property, forcible transfer and deportation, in violation of Article 5 of the Statute.<sup>3222</sup>

### 1. Applicable Law

#### (a) Elements of the Crime of Persecution

964. The crime of persecution is defined by the jurisprudence of the Tribunal as an act or omission that:

(1) discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law;<sup>3223</sup> and

(2) was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics.<sup>3224</sup>

#### (i) Underlying Acts or Omissions

965. The crime of persecution can be committed by either a single or a series of intentional act(s) or omission(s).<sup>3225</sup> There is no comprehensive list of acts or omissions that may amount to persecution,<sup>3226</sup> and the determination of whether the underlying acts constitute persecution needs to be done on a case-by-case basis.<sup>3227</sup> However, although persecution is considered to be an “umbrella” crime,<sup>3228</sup> the Prosecution must plead in the indictment the particular acts or omissions which it alleges amount to persecution.<sup>3229</sup>

<sup>3222</sup> Indictment, p. 26.

<sup>3223</sup> On the interpretation given by the Appeals Chamber on the requirement to “discriminate in fact”, see *Krnojelac* Appeal Judgement para. 185.

<sup>3224</sup> *Stakić* Appeal Judgement, para. 327 (referring to *Kordić and Čerkez* Appeal Judgement, para. 101; *Blaškić* Appeal Judgement, para. 131; *Vasiljević* Appeal Judgement, para. 113; *Krnojelac* Appeal Judgement, para. 185); *Nahimana et al.* Appeal Judgement, para. 985.

<sup>3225</sup> *Blaškić* Appeal Judgement, para. 135 (quoting *Vasiljević* Appeal Judgement, para.113).

<sup>3226</sup> *Lukić and Lukić* Trial Judgement, para. 993; *Brdanin* Trial Judgement, para. 994; *Stakić* Trial Judgement, para. 735; *Kordić and Čerkez* Trial Judgement, para. 192; *Blaškić* Trial Judgement, para. 219; *Kupreškić et al.* Trial Judgement, para. 567; *Tadić* Trial Judgement, para. 694. According to Judge Shahabuddeen “Article 5 of the Statute deals with crimes against humanity committed through certain supporting crimes. Under paragraph (h) of the provision, the relevant supporting crime is ‘persecution’, the underlying act or acts being only evidence of the persecution.” Separate Opinion of Judge Shahabuddeen, *Krnojelac* Appeal Judgement, para. 6.

<sup>3227</sup> *Vasiljević* Trial Judgement, para. 246 (referring to *Krnojelac* Trial Judgement, para. 433; *Kupreškić et al.* Trial Judgement, para. 626). See *Brdanin* Appeal Judgement, para. 295. See also the discussion in para. 966 about acts or omissions that can amount to persecution.

<sup>3228</sup> *Kupreškić et al.* Appeal Judgement, para. 98.

<sup>3229</sup> *Blaškić* Appeal Judgement, para. 139; *Kupreškić et al.* Appeal Judgement, paras. 98, 113–114.

966. The acts or omissions that can amount to persecution include crimes enumerated in Article 5 or elsewhere in the Statute<sup>3230</sup> as well as intentional<sup>3231</sup> acts and omissions which are not listed in the Statute.<sup>3232</sup> It is not required that acts or omissions underlying persecution be considered crimes under international law.<sup>3233</sup> Not every denial of a human right is serious enough to constitute a crime against humanity.<sup>3234</sup> While crimes enumerated in Article 5 of the Statute are by definition considered to be serious enough to amount to persecution, crimes listed under other Articles of the Statute or acts or omissions not listed in the Statute need to meet an additional test. These acts or omissions need to be of equal gravity to the crimes listed in Article 5 whether considered in isolation or in conjunction with other acts.<sup>3235</sup> The test of equal gravity can only be met by a gross or blatant denial of a fundamental right,<sup>3236</sup> and must be determined based on “a fact specific inquiry.”<sup>3237</sup>

967. Persecutory acts might often form part of a discriminatory policy or at least of a patterned discriminatory practice.<sup>3238</sup> However, the existence of a discriminatory policy is not a necessary requirement for proving persecution.<sup>3239</sup> An act or omission is considered discriminatory when a victim is targeted because of his or her membership in a group defined by the perpetrator on a political, racial or religious basis.<sup>3240</sup>

<sup>3230</sup> *Krnojelac* Appeal Judgement, para. 219.

<sup>3231</sup> *Stakić* Appeal Judgement, para. 328.

<sup>3232</sup> *Brdanin* Appeal Judgement, para. 296; *Kvočka et al.* Appeal Judgement, para. 321; *Blaškić* Appeal Judgement, paras. 135, 138; *Krnojelac* Appeal Judgement, para. 199.

<sup>3233</sup> *Brdanin* Appeal Judgement, para. 296; *Kvočka et al.* Appeal Judgement, paras. 323, 325; *Nahimana et al.* Appeal Judgement, para. 985.

<sup>3234</sup> *Milutinović et al.* Trial Judgement, Vol. 1, para. 178; *Blagojević and Jokić* Trial Judgement, para. 580 (referring to *Kupreškić et al.* Trial Judgement, para. 618); *Brdanin* Trial Judgement, para. 995. See also *Nahimana et al.* Appeal Judgement, para. 985 (stating that “not every act of discrimination will constitute the crime of persecution”).

<sup>3235</sup> *Brdanin* Appeal Judgement, para. 296; *Simić* Appeal Judgement, para. 177; *Naletilić and Martinović* Appeal Judgement, para. 574; *Kvočka et al.* Appeal Judgement, paras. 321, 323, 325; *Blaškić* Appeal Judgement, paras. 135, 139, 154–155, 160; *Kordić and Čerkez* Appeal Judgement, paras. 102–103, 672; *Krnojelac* Appeal Judgement, paras. 199, 221; *Nahimana et al.* Appeal Judgement, paras. 985–988.

<sup>3236</sup> *Brdanin* Trial Judgement, para. 995; *Simić et al.* Trial Judgement, para. 48; *Naletilić and Martinović* Trial Judgement, para. 635; *Krnojelac* Trial Judgement, para. 434; *Kvočka et al.* Trial Judgement, paras. 184–185; *Kupreškić et al.* Trial Judgement, paras. 620–621, 627. See *Kordić and Čerkez* Appeal Judgement, para. 103; *Blaškić* Appeal Judgement, para. 139.

<sup>3237</sup> *Brdanin* Appeal Judgement, para. 295.

<sup>3238</sup> *Kupreškić et al.* Trial Judgement, para. 615.

<sup>3239</sup> *Blagojević and Jokić* Trial Judgement, para. 582; *Brdanin* Trial Judgement, para. 996; *Stakić* Trial Judgement, para. 739; *Krnojelac* Trial Judgement, para. 435 (citing *Kupreškić et al.* Trial Judgement, para. 625).

<sup>3240</sup> *Blagojević and Jokić* Trial Judgement, para. 583; *Naletilić and Martinović* Trial Judgement, para. 636. Although Article 5(h) reads “persecutions on political, racial and religious grounds” the three listed grounds are alternatives and the establishment of one of the grounds is sufficient basis for a finding of persecution. *Blaškić* Appeal Judgement, para. 135 (quoting *Vasiljević* Appeal Judgement, para. 113).

(ii) Specific Intent

968. Persecution requires a specific intent to discriminate on political, racial or religious grounds.<sup>3241</sup> This discriminatory intent requirement distinguishes the crime of persecution from the other crimes listed under Article 5,<sup>3242</sup> by requiring that the accused acted with the intent to harm a human being because he or she belongs to a particular community or group.<sup>3243</sup>

969. The discriminatory intent must relate to each specific act or omission underlying the charge of persecution.<sup>3244</sup> Circumstances which may be taken into consideration include the systematic nature of the crimes committed against a targeted group and the general attitude of the accused as demonstrated by his behaviour.<sup>3245</sup> Furthermore, a discriminatory intent has been inferred from an accused's knowing participation in a system or enterprise that discriminated on political, racial or religious grounds.<sup>3246</sup>

(b) Specific Acts Charged as Persecution

970. The Indictment charges the Accused with persecution committed through various underlying acts.<sup>3247</sup> Some of these underlying acts have also been charged as separate crimes (murder, forcible transfer and deportation), whose elements have been dealt with separately. It is, however, still required to determine whether they meet the requisite criteria for the crime of persecution. The elements of those underlying acts not already examined as separate charges (acts of cruel and inhuman treatment; terrorising civilians; and destruction of personal property) will be addressed in greater detail below, before examining whether they also fulfil the requisite criteria for the crime of persecution.

(i) Murder

971. Paragraph 48(a) of the Indictment charges the Accused with persecution through "the murder of thousands of Bosnian Muslim civilians, including men, women, children and elderly persons, as described in paragraphs 30 to 31 of this Indictment, with the exception of **Radivoje**

<sup>3241</sup> *Stakić* Appeal Judgement, paras. 327–328.

<sup>3242</sup> *Tadić* Appeal Judgement, para. 305. *See also Krnojelac* Appeal Judgement, para. 184.

<sup>3243</sup> *Blaškić* Appeal Judgement, para. 165. The group can be defined based on positive or negative criteria. *See also Kvočka et al.* Appeal Judgement, paras. 347, 366; *Krnojelac* Appeal Judgement, para. 186.

<sup>3244</sup> *Blagojević and Jokić* Trial Judgement, para. 584; *Simić et al.* Trial Judgement, para. 51; *Vasiljević* Trial Judgement, para. 249. *See Blaškić* Appeal Judgement, para. 164; *Krnojelac* Appeal Judgement, para. 184.

<sup>3245</sup> *Kvočka et al.* Appeal Judgement, paras. 366, 460. *See also Krnojelac et al.* Appeal Judgement para. 186.

<sup>3246</sup> *Simić et al.* Trial Judgement, para. 51; *Kvočka et al.* Trial Judgement, paras. 201, 413(e). The finding of the *Kvočka et al.* Trial Chamber was upheld by the Appeals Chamber, but was limited to the "context of the case". *Kvočka et al.* Appeal Judgement, paras. 347, 367.

<sup>3247</sup> Indictment, para. 48.

**Miletić** and **Milan Gvero**, for whom the relevant paragraph is 31 exclusively (‘Opportunistic Killings’).”

972. Murder is set out as a crime against humanity pursuant to Article 5(a), and as such, can amount to persecution.<sup>3248</sup> The definition of murder has been discussed separately.

(ii) Cruel and Inhumane Treatment

973. Paragraph 48(b) of the Indictment charges the Accused with persecution through “cruel and inhumane treatment of Bosnian Muslim civilians, including murder and severe beatings at Potočari and in detention facilities in Bratunac and Zvornik.”

974. Cruel and inhumane treatment is defined as an act or omission, which causes serious mental or physical suffering or injury, or which constitutes a serious attack on human dignity.<sup>3249</sup> The act or omission must be committed with the intent to cause serious mental or physical suffering or injury or serious attack on human dignity, or, with the knowledge that serious mental or physical suffering or injury or serious attack on human dignity was a probable consequence of the act or omission.<sup>3250</sup>

975. The Appeals Chamber has held that the right to life and to be free from cruel, inhumane or degrading treatment or punishment is recognised under customary international law and enshrined in international human rights instruments.<sup>3251</sup> Furthermore, it has been established in the jurisprudence of the Tribunal that acts of serious bodily and mental harm are of sufficient gravity as compared to the other crimes enumerated in Article 5 of the Statute, and therefore can amount to persecution.<sup>3252</sup>

<sup>3248</sup> See *supra*, paras. 787–789, 966. See also *Blagojević and Jokić* Trial Judgement, para. 585.

<sup>3249</sup> *Kordić and Čerkez* Appeal Judgement, paras. 39, 524, 546; *Blaškić* Appeal Judgement, para. 595 (referring to *Čelebići* Appeal Judgement, paras. 424, 426). The seriousness of the harm or injury must be assessed on a case-by-case basis, taking into account such factors as the severity of the alleged conduct, the nature of the act or omission, the context in which the conduct occurred, its duration and/or repetition, its physical and mental effects on the victim and, in some instances, the personal circumstances of the victim, including age, gender and health. In cases before the Tribunal, Chambers found certain incidents of beatings and inhumane living conditions in a detention centre, among other acts, to constitute cruel or inhumane treatment. *Kvočka et al* Appeal Judgement, paras. 581, 584–585; *Kordić and Čerkez* Appeal Judgement, paras. 572–573; *Krnjelac* Appeal Judgement, paras. 108–112; *Mrkšić et al.* Trial Judgement, paras. 525, 537–539; *Krnjelac* Trial Judgement, paras. 146–165; *Čelebići* Trial Judgement, paras. 554–558.

<sup>3250</sup> *Mrkšić et al.* Trial Judgement, para. 516 (referring to *Limaj et al* Trial Judgement, para. 231; *Strugar* Trial Judgement, para. 261).

<sup>3251</sup> *Kordić and Čerkez* Appeal Judgement, para. 106 (referring to *Blaškić* Appeal Judgement, para. 143 as well as Articles 6 and 7 of the ICCPR, and Articles 2 and 3 of the ECHR). See also Articles 3 and 5 of the UDHR; Articles 4 and 5 of the African Charter on Human and Peoples’ rights; Articles 4 and 5 of the American Convention on Human Rights; Articles 5 and 8 of the Arab Charter on Human Rights.

<sup>3252</sup> *Kordić and Čerkez* Appeal Judgement, paras. 106–107; *Blaškić* Appeal Judgement, para. 143.

(iii) Terrorising Civilians

976. Paragraph 48(c) of the Indictment charges the Accused with persecution through “the terrorising of Bosnian Muslim civilians in Srebrenica and at Potočari.”

977. The protection of civilians from terror is enshrined in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II.<sup>3253</sup>

978. The protection of civilians from terror was further addressed by the *Galić* Appeals Chamber, which held that “acts or threats of violence the primary purpose of which is to spread terror among the civilian population”, as enshrined in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, constitute a crime punishable under Article 3 of the Statute.<sup>3254</sup>

979. The definition of ‘terrorising civilians’ means acts or threats of violence directed against the civilian population or individual civilians not taking direct part in hostilities with the intent to spread terror among the civilian population.<sup>3255</sup> Such acts or threats of violence can comprise attacks or threats of attacks against the civilian population.<sup>3256</sup> While their nature was described by the Appeals Chamber as “a case of ‘extensive trauma and psychological damage’ being caused by ‘attacks [which] were designed to keep the inhabitants in a constant state of terror’”,<sup>3257</sup> “the actual terrorisation of the civilian population is not an element of the crime.”<sup>3258</sup>

980. The purpose of spreading terror among the civilian population need not be the only purpose of these acts or threats, but must be the principal aim,<sup>3259</sup> and can be inferred from the

<sup>3253</sup> These Articles provide that: “The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.” The commentary to the Additional Protocols clarifies that although “there is no doubt that acts of violence related to state of war almost always give rise to some degree of terror among the population [...] this provision is intended to prohibit acts of violence the primary purpose of which is to spread terror among the civilian population without offering substantial military advantage.” Commentary to Additional Protocols, paras. 1940, 4774.

<sup>3254</sup> *Galić* Appeal Judgement, paras. 69, 85, 98.

<sup>3255</sup> See *Galić* Appeal Judgement, paras. 102–104; *Galić* Trial Judgement, para. 133. See also Commentary to the Additional Protocols, paras. 1938, 4761.

<sup>3256</sup> *Milošević* Appeal Judgement, paras. 32–33; *Galić* Appeal Judgement, para. 102. The *Galić* Appeals Chamber clarified that such acts or threats are not “limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof. The nature of the acts or threats of violence directed against the civilian population can vary; the primary concern [...] is that those acts or threats of violence be committed with the specific intent to spread terror among the civilian population.” *Galić* Appeal Judgement, para. 102 (referring to Article 49(1) of Additional Protocol I and the *Travaux Préparatoires* of the Additional Protocols).

<sup>3257</sup> *Galić* Appeal Judgement, para. 102. The Appeals Chamber held that “[t]error could be defined [...] as ‘extreme fear’.” *Galić* Appeal Judgement, para. 103, fn. 320 (referring to *Galić* Trial Judgement, para. 137).

<sup>3258</sup> *Milošević* Appeal Judgement, para. 35; *Galić* Appeal Judgement, paras. 103–104 (referring to the *Travaux préparatoires* of the Additional Protocols).

<sup>3259</sup> *Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 104; *Blagojević and Jokić* Trial Judgement, para. 591.



circumstances of the acts or threats, including their nature, manner, timing and duration.<sup>3260</sup> However, this is not an exhaustive list of mandatory considerations but an indication of some factors that *may* be taken into account according to the circumstances of the case.<sup>3261</sup>

981. The case-law of the Tribunal has found the protection of civilians to be a principle of customary international law.<sup>3262</sup> Attacks in which civilians are targeted, as well as indiscriminate attacks on cities, towns and villages are recognised to be of sufficient gravity as compared to the crimes enumerated in Article 5 of the Statute, and therefore can amount to persecution.<sup>3263</sup> The Trial Chamber notes that in addition to the prohibition against acts or threats of violence enshrined in the Additional Protocols, the exposure to terror is a violation of the fundamental right to security of person laid down in various international and regional legal instruments.<sup>3264</sup> Accordingly, the terrorisation of civilians is of sufficient gravity to amount to persecution.<sup>3265</sup>

(iv) Destruction of Personal Property

982. Paragraph 48(d) of the Indictment charges the Accused with persecution through “the destruction of personal property and effects belonging to the Bosnian Muslims.”<sup>3266</sup>

983. The right to property is protected in various international and regional legal instruments.<sup>3267</sup> It is not an absolute right, and its enjoyment may be subject to certain limitations.<sup>3268</sup>

<sup>3260</sup> *Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 104.

<sup>3261</sup> *Milošević* Appeal Judgement, para. 37 (emphasis in original).

<sup>3262</sup> Among the customary rules that have developed the Appeals Chamber mentioned the prohibition of an attack on civilians (Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II), the protection of civilians against indiscriminate attacks (Article 51(3), (4) and (5) of Additional Protocol I), and the prohibition to attack or bombard undefended towns, villages, dwellings or buildings (Article 25 of the Fourth Hague Convention of 1907). *Blaškić* Appeal Judgement, paras. 157–158.

<sup>3263</sup> *Blaškić* Appeal Judgement, para. 159.

<sup>3264</sup> Article 3 of the UDHR; Article 9 of the ICCPR; Article 6 of the African Charter on Human and Peoples’ rights; Article 7 of the American Convention on Human Rights; Article 5 of the ECHR; Article 14 of the Arab Charter on Human Rights.

<sup>3265</sup> The *Blagojević and Jokić* Trial Chamber found that, *inter alia*, terrorising of the civilian population constitutes blatant denials of fundamental rights that had a severe impact on the victims and therefore amount to persecution. *Blagojević and Jokić* Trial Judgement, para. 620; The *Krstić* Trial Chamber found that persecution was committed *inter alia* through the underlying act of terrorising the civilians. *Krstić* Trial Judgement, paras. 537–538. *See also* *Blaškić* Appeal Judgement, para. 159.

<sup>3266</sup> More specifically the Prosecution charges the Accused with the destruction of “personal property and effects belonging to the Bosnian Muslim male prisoners, including their identification documents and valuables.” The destruction of dwellings is not charged in the Indictment. *See* Indictment, para. 64. *See also* Prosecution Pre-Trial Brief, para. 200; Prosecution Final Brief, para. 2907.

<sup>3267</sup> *Blaškić* Appeal Judgement, para. 145 (referring to Article 17(2) of the UDHR; Article 14 of the African Charter on Human and Peoples’ Rights; Article 21 of the American Convention on Human Rights; Article 1 of the Protocol to the ECHR on the Enforcement of certain Rights and Freedoms not included in Section I of the Convention). *See also* Article 31 of the Arab Charter on Human Rights.

<sup>3268</sup> Article 29 of the UDHR; Article 14 of the African Charter on Human and Peoples’ Rights; Article 21 of the American Convention on Human Rights; Article 1 of Protocol to the ECHR; Article 31 of the Arab Charter on Human Rights.

984. Different forms of destruction of property are prohibited under customary international law and treaty law. The prohibition on the destruction of property is not absolute. Article 23(g) of the 1907 Hague Regulations prohibits destruction of enemy's property, unless such destruction is "imperatively demanded by the necessities of war". The scope of the prohibition is limited to destruction that is not justified by military necessity.<sup>3269</sup>

985. Different forms of destruction of property are also criminalised under the Statute. The scope of these crimes is also limited to destruction that is not justified by military necessity.<sup>3270</sup>

986. The Trial Chamber thus finds that the underlying acts of "destruction of personal property and effects" as persecution encompass only destruction which is not justified by military necessity.

987. The Appeals Chamber has recognised that depending on the nature and extent of the destruction, the destruction of property may amount to persecution.<sup>3271</sup> To constitute an underlying act of persecution, the destruction must be intentional and it must have a severe impact on the victim.<sup>3272</sup> Factors such as the nature and extent of the destruction, including the type of the property involved,<sup>3273</sup> must be taken into consideration.

(v) Forcible Transfer and Deportation

988. The Indictment charges the Accused with forcible transfer and deportation as underlying acts of persecution.

<sup>3269</sup> Article 53 of Geneva Convention IV provides that: "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations." See also Article 50 of Geneva Convention I, Article 51 of Geneva Convention II and Article 147 of Geneva Convention IV (which consider as grave breaches the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly"); Articles 52, 54(5), 67(4) of Additional Protocol I; Article 4(2) and Article 11(2) of the Hague Cultural Property Convention; Article 6 of the Hague Cultural Property Protocol II. See also *Martić* Appeal Judgement, para. 98.

<sup>3270</sup> Article 2(d) of the Statute prohibits the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly." Article 3(b) of the Statute prohibits the "wanton destruction of cities, towns or villages, or devastation not justified by military necessity." Trial Chambers understood the prohibition on destruction of institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science enshrined in Article 3(d) of Statute to be limited to property that was not used for military purposes. *Martić* Trial Judgement, para. 96; *Strugar* Trial Judgement, paras. 300–301, 310 (referring to *Blaškić* Trial Judgement, para. 185; *Naletilić and Martinović* Trial Judgement, para. 605); *Brđanin* Trial Judgement, paras. 596, 598. See also *Strugar* Appeal Judgement, para. 326; *Kordić and Čerkez* Appeal Judgement, paras. 74, 76; *Orić* Trial Judgement, para. 581; *Strugar* Trial Judgement, paras. 292, 295; *Brđanin* Trial Judgement, paras. 588, 592; *Naletilić and Martinović* Trial Judgement, paras. 578–579; *Kordić and Čerkez* Trial Judgement, paras. 346, 362; *Blaškić* Trial Judgement, para. 185.

<sup>3271</sup> *Kordić and Čerkez* Appeal Judgement, para. 108; *Blaškić* Appeal Judgement, para. 149

<sup>3272</sup> See *Blaškić* Appeal Judgement, para. 146.

<sup>3273</sup> *Kordić and Čerkez* Appeal Judgement, para. 108; *Blaškić* Appeal Judgement, para. 146 (referring to *Kupreškić et al.* Trial Judgement, para. 631).

989. Forcible transfer as an inhumane act and deportation are crimes against humanity pursuant to Articles 5(i) and (d), and as such, can amount to persecution.<sup>3274</sup>

## 2. Findings

### (a) Underlying Acts

#### (i) Murder<sup>3275</sup>

990. The Chamber recalls that it found that from 12 July until late July 1995, thousands of able-bodied Bosnian Muslim males were killed in the Potočari, Bratunac, Zvornik and Trnovo areas.<sup>3276</sup> The Trial Chamber finds that among those killed there were also some women, children and elderly.<sup>3277</sup> Murder is enumerated in Article 5 of the Statute and by definition considered to be serious enough to amount to persecution.

991. As to specific intent, the Trial Chamber has considered the massive scale of the murder operation aimed at only one ethnic group, the Bosnian Muslims, the systematic manner in which it was carried out, and the behaviour and general attitude of the perpetrators participating in the murder.<sup>3278</sup> In all these circumstances, the Trial Chamber finds that these killings, including the

<sup>3274</sup> See *supra*, paras. 888–889, 966. See also *Stakić* Appeal Judgement, para. 317; *Blaškić* Appeal Judgement, para. 153; *Krnojelac* Appeal Judgement, paras. 221–222.

<sup>3275</sup> Paragraph 48(a) of the Indictment charges the Accused with persecution through “the murder of thousands of Bosnian Muslim civilians, including men, women, children and elderly persons, as described in paragraphs 30 to 31 of this Indictment, with the exception of **Radivoje Miletić** and **Milan Gvero**, for whom the relevant paragraph is 31 exclusively (“Opportunistic Killings”).

<sup>3276</sup> See *supra*, paras. 793–796.

<sup>3277</sup> Helge Brunborg, T. 6800 (1 Feb 2007); Ex. P02424, “Chart - Age Distribution of Srebrenica-Related Missing and Dead (Absolute Numbers)” (68 persons on the 2007 List of Missing and Deceased are female, and among them 2 are under 16 and 29 are over 60. Among the men, 78 were under 16 and 668 were over 60); Ex. P03159, “Report titled Srebrenica Missing: The 2007 Progress Report on the DNA- Based Identification by ICMP, by E. Tabeau and A. Hetland, 11 January 2008, with Annexes I and II”, p. 8 (Of those persons on the 2007 List of Missing and Deceased who had been identified by the ICMP through DNA analysis, 30 persons (only male) were below 16 years of age and 360 persons (including one woman) were older than 60 years of age.). There is other evidence that the victims of the killings included women, children and the elderly. Among the corpses that Jevto Bogdanović saw inside of the Pilica Cultural Centre two were female. Jevto Bogdanović, T. 11330–11331 (10 May 2007). Ahmo Hasić testified that the men with whom he was detained in Pilica ranged from 15 to 80 years of age. Ahmo Hasić, T. 1194 (6 Sept 2006). At an execution site in Kozluk, a boy aged around 13 was shot dead despite “begging to be spared his life.” Veljko Ivanović, T. 18190 (private session) (26 Nov 2007).

<sup>3278</sup> The Bosnian Muslims were often called by names disparaging their Bosnian Muslim identity and were forced to chant pro-Serb slogans or sing Serbian songs before they were killed. See e.g. PW-116, Ex. P02205, “92 bis transcript”, KT. 2965 (14 Apr 2000) (stating that the Bosnian Muslim men were ordered to chant pro-Serb slogans as they entered Petkovci School); PW-111, T. 7006 (7 Feb 2007) (stating that the wounded who were called out of the Kravica Warehouse were made to sing nationalistic Serb songs and were then killed); PW-156, T. 7096–7097 (private session) (8 Feb 2007) (stating that Bosnian Muslims suffered curses against their “Turkish mother” and “Islam tribe” before they were killed at Kravica Warehouse); PW-113, Ex. P02280, “92 ter transcript”, BT. 1386 (stating that Bosnian Muslims suffered curses against their “balija mother” when they were captured in the woods), BT. 1388 (stating that Bosnian Muslims were ordered to raise three fingers up, which was a Serb sign of greeting), BT. 1396–1397 (stating that Bosnian Muslims were forced to lie on their stomach with their hands above their necks and say “long live the king, long live Serbia”), BT. 1405 (stating that Bosnian Muslims were forced to repeat that Srebrenica belonged to the Serbs) (21 July 2003), BT. 1419 (22 July 2003) (stating that a Bosnian Muslim was ordered to say “Allah Akbar”); PW-113, T. 3368 (31 Oct 2006) (stating that Bosnian Muslims were forced to shout

“opportunistic” killings, were committed against the Bosnian Muslims with a discriminatory intent on political, racial or religious grounds.

(ii) Cruel and Inhumane Treatment<sup>3279</sup>

992. The 20,000 to 30,000 people gathered in Potočari for safety faced a situation and atmosphere marked by panic, fear and despair as described above.<sup>3280</sup>

993. The evidence also establishes that the Bosnian Muslim men who were detained in the White House in Potočari, vehicles in Bratunac and other detention facilities in Bratunac and Zvornik were subject to intolerable conditions. The prisoners held in packed vehicles and detention centres had little, if any, food, water or medical treatment.<sup>3281</sup> Some prisoners were so thirsty that they drank their own urine.<sup>3282</sup> Toilet facilities were very limited and in some instances prisoners were compelled to relieve themselves where they stood.<sup>3283</sup> The prisoners were also exposed to physical and verbal abuse, including severe beatings,<sup>3284</sup> and often screams, moans and bursts of gunfire were heard.<sup>3285</sup> Of the men who were taken away from the places of detention, some were brought back in a terrible condition to be shown to other captives, while others never returned at all.<sup>3286</sup>

994. The Trial Chamber finds that, as described above, the Bosnian Muslims in Potočari and detained elsewhere were subjected to horrific and inhumane conditions, as well as physical assaults. These combined circumstances constituted a serious attack on their human dignity and inflicted serious mental and physical suffering and injury. Furthermore, the civilian population gathered in Potočari had to endure a forced and painful separation process and the terrifying uncertainty which followed as to the fate of the men left behind. The Trial Chamber is satisfied these circumstances inflicted serious mental harm on the men, women and children of Srebrenica. For those few men who ultimately survived the executions, the horrendous circumstances they lived through—witnessing the mass execution of all around them and escaping the same fate by chance—there can be no doubt as to severe mental harm inflicted upon them. The Chamber finds that this cruel and

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Serb slogans); PW-118, Ex. P02210, "92 *ter* transcript", KT. 1297 (24 Mar 2000) (stating that Bosnian Serb soldiers cursed PW-118 before they began to shoot him). After the execution, one of the Bosnian Serb soldiers said "We committed genocide, [like the] genocide in Jasenovac in 1941." Ahmo Hasić, T. 1204 (6 Sept 2006).

<sup>3279</sup> Paragraph 48(b) of the Indictment charges the Accused with persecution through "cruel and inhumane treatment of Bosnian Muslim civilians, including murder and severe beatings at Potočari and in detention facilities in Bratunac and Zvornik." The Trial Chamber will not consider murder as an underlying mode of cruel and inhumane treatment further, as murder as an underlying act of persecution has already been discussed above. *See supra*, paras. 990–991.

<sup>3280</sup> *See supra*, paras. 917–918.

<sup>3281</sup> *See supra*, paras. 329–330, 385, 393, 398, 400–403, 427, 436, 478, 495–496, 518, 529, 538.

<sup>3282</sup> *See supra*, para. 398. *See also supra*, fn. 1799.

<sup>3283</sup> *See supra*, paras. 330, 404, 478, 496, 529.

<sup>3284</sup> *See supra*, paras. 326, 351, 353, 388, 390, 402, 404–405, 408, 446–449, 452–454, 460, 495–497, 529.

<sup>3285</sup> *See supra*, paras. 404–405, 446, 453, 460–461, 480, 497, 529.

<sup>3286</sup> *See supra*, paras. 404, 446, 452, 460–461, 480, 497, 529.

inhumane treatment is of equal gravity to the crimes listed in Article 5 and constitutes a blatant denial of fundamental rights that had a severe impact on the victims. The Trial Chamber therefore concludes that it amounts to an underlying act of persecution.

995. As to specific intent, the Trial Chamber recalls that Bosnian Muslims in Potočari were threatened and cursed, and often these remarks were tied to their ethnicity.<sup>3287</sup> The victims were subjected to cruel and inhumane treatment solely on the basis that they were Bosnian Muslims. The Trial Chamber concludes that the circumstances surrounding the infliction of the cruel and inhumane treatment leave no doubt that it was carried out with the intention to discriminate against the Bosnian Muslims on political, racial or religious grounds.

(iii) Terrorising Civilians<sup>3288</sup>

996. The Trial Chamber has found that in the months preceding the fall of Srebrenica there were instances of shelling and sniping directed at the civilian population of Srebrenica.<sup>3289</sup> The Chamber recalls its finding that on 10 July 1995 the situation in Srebrenica town was tense with heavy shelling.<sup>3290</sup> Shells landed, among other locations, on the direct surroundings of a hospital in which 2,000 civilians sought refuge, killing six of them.<sup>3291</sup> On 11 July 1995, although the members of the ABiH 28<sup>th</sup> Division had already left the town, the DutchBat Bravo Company compound in Srebrenica town in which thousands of desperate people sought protection was shelled.<sup>3292</sup> Several people were wounded.<sup>3293</sup> The population was shelled and shot at as it left and proceeded along the road from Srebrenica towards Potočari.<sup>3294</sup> Some people were wounded, there were dead bodies along the road, and the civilians were terrified.

997. Furthermore, the Trial Chamber recalls the fearful and oppressive atmosphere in Potočari created by the Bosnian Serb Forces as described above.<sup>3295</sup> In addition, the sombre and menacing mood during the meetings at Hotel Fontana—two of which held in the presence of civilian representatives—contributed to the pervading terror of the situation.<sup>3296</sup> Mladić's own words

<sup>3287</sup> See e.g., Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2117–2118 (5 Apr 2000); Johannes Rutten, T. 4877 (30 Nov 2006) (stating that there were incidents of mockery and threats against those in Potočari); PW-126, T. 3601 (6 Nov 2006) (stating that Bosnian Serb Forces cursed Bosnian Muslims by saying that "[they] will never go back to Srebrenica" or "[y]ou are Turks and you would be best to go to Turkey.").

<sup>3288</sup> Paragraph 48(c) of the Indictment charges the Accused with persecution through "the terrorising of Bosnian Muslim civilians in Srebrenica and at Potočari."

<sup>3289</sup> See *supra*, paras. 207, 210, 249–251.

<sup>3290</sup> See *supra*, para. 255.

<sup>3291</sup> *Ibid.*

<sup>3292</sup> See *supra*, para. 257.

<sup>3293</sup> *Ibid.*

<sup>3294</sup> See *supra*, para. 265. *But see* Judge Kwon's Separate Opinion, *supra*, fn. 849.

<sup>3295</sup> See *supra*, paras. 917–918.

<sup>3296</sup> See *supra*, paras. 277–279, 289–290.

perhaps best evidence the deliberate intent to terrify when he commented to the Bosnian Muslims that they could “either survive or disappear.”<sup>3297</sup>

998. The Trial Chamber conclusively finds that these actions taken against civilians in Srebrenica and Potočari were committed in an indiscriminate manner and caused extensive trauma and psychological damage. Having considered their nature, manner, timing and duration, the Trial Chamber is satisfied that their primary purpose was to spread terror among the civilian population. The Trial Chamber also finds that the terrorising of civilians as described above is of equal gravity to the crimes listed in Article 5 and constitutes a gross denial of fundamental rights, *inter alia*, the right to security. It therefore finds that it amounts to an underlying act of persecution.

999. As to specific intent, the Trial Chamber recalls the indiscriminate nature of the attack on Bosnian Muslim civilians in Srebrenica and the circumstances surrounding the terrorisation of the civilians in Potočari as described above in the findings on cruel and inhumane treatment.<sup>3298</sup> The Trial Chamber concludes that all these circumstances clearly show that the acts of terrorisation were carried out with the intention to discriminate against the Bosnian Muslims on political, racial or religious grounds.

(iv) Destruction of Personal Property<sup>3299</sup>

1000. It has been established that the Bosnian Muslim men who were taken to the White House had to leave their personal belongings including their identity cards and passports outside the building and that all those belongings were subsequently burned.<sup>3300</sup> The Trial Chamber further recalls evidence as to a pile of burning personal belongings on the football field near Nova Kasaba where hundreds of Bosnian Muslim men had been detained.<sup>3301</sup> The Trial Chamber finds that the destruction of those personal belongings was not justified by military necessity.

1001. However, the Trial Chamber considers the nature and extent of the destruction together with the circumstances in which it took place does not support a finding that the burning of those personal belongings had a severe enough impact on the victims to reach the threshold of equal gravity as the acts listed in Article 5 of the Statute.

<sup>3297</sup> See *supra*, para. 290.

<sup>3298</sup> See *supra*, paras. 992–994, 996.

<sup>3299</sup> Paragraph 48(d) of the Indictment charges the Accused with persecution through “the destruction of personal property and effects belonging to the Bosnian Muslims.”

<sup>3300</sup> See *supra*, para. 331.

<sup>3301</sup> See *supra*, para. 395. The Trial Chamber notes that there is further evidence before it that Bosnian Muslims who were detained were forced to leave their personal belongings behind. See *supra*, paras. 385, 390, 402, 478. However, there is no evidence as to the destruction of these personal belongings.

(v) Forcible Transfer and Deportation<sup>3302</sup>

1002. The Trial Chamber recalls that it has found that while there was no deportation, the transportation of the women, children and the elderly from Srebrenica, the forced departure of the civilian males from Srebrenica in the column,<sup>3303</sup> the transportation of the women, children and the elderly from Žepa and the flight of the men from Žepa across the Drina River<sup>3304</sup> amounted to forcible transfer, which is a crime against humanity punishable under Article 5(i) of the Statute.<sup>3305</sup>

1003. As to specific intent, the Trial Chamber recalls the issuance of Directive 7 which reveals clearly the discriminatory intent of the Bosnian Serb Forces to forcibly remove Bosnian Muslims from Srebrenica and Žepa. Furthermore, considering all circumstances surrounding the displacement of Bosnian Muslims, the Trial Chamber is satisfied that the forcible transfer was carried out with the intent to discriminate against Bosnian Muslims on political, racial or religious grounds.

(b) Conclusion

1004. As noted above, the acts of murder, cruel and inhumane treatment, terrorising civilians, and forcible transfer were committed against the Bosnian Muslims with a discriminatory intent. Moreover, surrounding the commission of those underlying acts of persecution, there were numerous occasions on which those participating gave expression to their discriminatory intent. The Trial Chamber recalls hearing evidence as to speeches or remarks revealing discriminatory intent such as the announcement of Mladić in Srebrenica that “we give this town to the Serb people as a gift. [...] the time has come for us to take revenge upon the Turks in this region.”<sup>3306</sup> Thus, the Trial Chamber finds that all these circumstances provide a consolidated picture of an overall discriminatory design. The Trial Chamber therefore concludes that the underlying acts of murder, cruel and inhumane treatment, terrorising civilians, and forcible transfer constitute persecution as defined in Article 5 of the Statute. These underlying acts of persecution were committed in the context of a widespread and systematic attack and thus constitute crimes against humanity.

<sup>3302</sup> Paragraph 48(e) of the Indictment charges the Accused with persecution through the forcible transfer of Bosnian Muslims from Srebrenica and Žepa, and the deportation of the Bosnian Muslim men from Žepa. *But see* Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–20.

<sup>3303</sup> *But see* Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–14.

<sup>3304</sup> *But see* Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–6, 15–20.

<sup>3305</sup> *See supra*, Chapter IV, Section G.2.

<sup>3306</sup> Ex. P02048, “Srebrenica Trial Video Transcript”, p. 11. *See also* Leendert Van Duijn, T. 2292–2293 (27 Sept 2006) (stating that Mladić said “in ten years the Serb army would be in the Netherlands protecting [Dutch] from Muslims and other races”); PW-118, Ex. P02210, “92 *ter* transcript”, KT. 1285 (24 Mar 2000) (stating that a prisoner at Luke School overheard the soldiers discussing Kravica and how they had “finished with the balijas”); Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 2; Momir Nikolić, T. 32918 (21 Apr 2009) (reporting that Popović said “All the balija have to be killed”); Ex. P00059, “Dispatch signed by Dragomir Vasić, 12 July 1995”; Ex. P01395c, “Intercept, 2 August 1995 at 13:00”.