

**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-04-81-T  
Date: 6 September 2011  
Original: English

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**IN TRIAL CHAMBER I**

**Before:** Judge Bakone Justice Moloto, Presiding  
Judge Pedro David  
Judge Michèle Picard

**Registrar:** Mr. John Hocking

**PROSECUTOR**

**v.**

**MOMČILO PERIŠIĆ**

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**JUDGEMENT**

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***PUBLIC WITH CONFIDENTIAL ANNEX C***

**The Office of the Prosecutor:**

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**XV. CONFIDENTIAL ANNEX C**

## I. INTRODUCTION

### A. The Accused Momčilo Perišić

1. Momčilo Perišić, son of Srećko, was born on 22 May 1944 in Koštunići, Serbia, in the Socialist Federal Republic of Yugoslavia (“SFRY”). After joining the Yugoslav People’s Army (“JNA”), he graduated from the Ground Forces Military Academy in 1966.<sup>1</sup>
2. When the conflict in the former Yugoslavia began, Perišić was Commander of the JNA Artillery School Centre in Zadar, Croatia.<sup>2</sup> In January 1992, he was appointed the Commander of the newly established 13<sup>th</sup> Corps of the JNA in the Mostar region, Bosnia and Herzegovina (“BiH”). After the JNA’s formal withdrawal from BiH in May 1992, Perišić became the Chief of Staff and then Commander of the 3<sup>rd</sup> Army within the Yugoslav Army (“VJ”) based in Niš, Serbia.<sup>3</sup>
3. On 26 August 1993, the President of the Federal Republic of Yugoslavia (“FRY”) appointed Perišić as Chief of the VJ General Staff, a position which made him the most senior officer in the VJ.<sup>4</sup> He held this position until 24 November 1998, when the FRY President appointed him as government advisor for defence issues.<sup>5</sup>

### B. The Case Against Momčilo Perišić

4. An initial indictment against Perišić was confirmed on 24 February 2005 and unsealed on 7 March 2005.<sup>6</sup> Perišić expressed his intention to voluntarily surrender and on 7 March 2005, he was transferred into the custody of the Tribunal.<sup>7</sup> Amended indictments were filed on 26 September 2005, 13 September 2007 and 5 February 2008, the last being the operative indictment in this case (“Indictment”).<sup>8</sup>

<sup>1</sup> Ex. P196, Decree of the President of the FRY, 26 August 1993, p. 2; Ex. P812, Transcript of Interview with Perišić, 24 January 2004, p. 1.

<sup>2</sup> Jožef Poje, T. 3089-3090; Ex. P706, Perišić’s Written Response to a Question from Trial Attorney, 19 October 2003, p. 2.

<sup>3</sup> Ex. P706, Perišić’s Written Response to a Question from Trial Attorney, 19 October 2003, p. 2; Ex. P810, Transcript of Interview with Perišić, 23 January 2004, p. 6; Ex. P815, Transcript of Interview with Perišić, 25 January 2004, p. 15.

<sup>4</sup> Ex. P196, Decree of the President of the FRY, 26 August 1993, p. 2; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, p. 26.

<sup>5</sup> Ex. P703, Presidential Decree on Deployment and Appointment of General Perišić, 24 November 1998.

<sup>6</sup> Confirmation of Indictment (under seal), 24 February 2005; Order to Disclose Indictment and Warrant of Arrest Against Momčilo Perišić, 14 March 2005.

<sup>7</sup> Order for Detention on Remand, 8 March 2005.

<sup>8</sup> Prosecution’s Filing of Amended Indictment in Compliance with Trial Chamber Order of 29 August 2005, 26 September 2005; Prosecution Filing of Second Amended Indictment, 13 September 2007; Prosecution Filing of Revised Second Amended Indictment with Annex A, 5 February 2008.

5. The Office of the Prosecutor (“Prosecution”) charges Perišić with 13 counts of violations of the laws or customs of war and crimes against humanity, pursuant to Articles 3 and 5 of the Statute of the Tribunal (“Statute”), respectively.

6. Pursuant to Article 7(1) of the Statute, Perišić is alleged to bear individual criminal responsibility for having aided and abetted in the planning, preparation, or execution of the crimes referred to in Articles 3 and 5 of the Statute.<sup>9</sup> In particular, Perišić is alleged to have provided personnel and logistical assistance to the Army of the Republika Srpska (“VRS”), contributing substantially and materially to their capacity to commit crimes.<sup>10</sup>

7. In addition, pursuant to Article 7(3) of the Statute, Perišić, as a superior, is alleged to bear individual criminal responsibility for having failed to prevent or punish the crimes committed by his subordinates as described in the Indictment.<sup>11</sup> It is alleged that Perišić had a superior-subordinate relationship with former members of the JNA who joined the newly formed VRS and Army of the Serbian Krajina (“SVK”) and who became officers in the 30<sup>th</sup> and 40<sup>th</sup> Personnel Centres (“PCs”) of the VJ General Staff.<sup>12</sup>

8. The Prosecution further alleges that Perišić created an environment of impunity in which his subordinates believed they could commit crimes without fear of sanction. The creation of this environment of impunity amounted to aiding and abetting by facilitating and encouraging the commission of the crimes alleged in the Indictment.<sup>13</sup>

#### 1. Alleged Crimes in Sarajevo (August 1993 - November 1995)

9. The Prosecution alleges that an extensive campaign of shelling and sniping took place in Sarajevo between August 1993 and November 1995, where civilians were specifically targeted or were subjected to reckless fire in areas where civilians were known to have been.<sup>14</sup> The Prosecution contends that these crimes were, in part, “planned, instigated, ordered, committed and aided” by members of the 30<sup>th</sup> PC of the VJ General Staff.<sup>15</sup>

10. The Prosecution alleges that Perišić aided and abetted these crimes with the knowledge that the assistance he provided would be used in the commission thereof.<sup>16</sup> It is further alleged that

<sup>9</sup> Indictment, paras 8-33; Prosecution Final Brief, paras 450-689.

<sup>10</sup> Indictment, para. 9.

<sup>11</sup> Indictment, paras 34-39. *See also* Prosecution Final Brief, paras 690-834.

<sup>12</sup> Indictment, para. 7.

<sup>13</sup> Indictment, para. 31.

<sup>14</sup> Indictment, paras 40, 42; Annexes A and B to the Indictment.

<sup>15</sup> Indictment, para. 43; Prosecution Final Brief, para. 387.

<sup>16</sup> Indictment, para. 44.

Perišić had reason to know that members of the 30<sup>th</sup> PC participated in the perpetration of the said crimes,<sup>17</sup> and that he failed to initiate an inquiry and to take the necessary and reasonable measures to prevent such acts or punish the perpetrators thereof.<sup>18</sup>

11. Thus, in relation to crimes allegedly committed in Sarajevo between August 1993 and November 1995, Perišić is charged with individual criminal responsibility under Articles 7(1) and 7(3) of the Statute for murder (Counts 1 and 2) as a crime against humanity pursuant to Article 5 of the Statute and as a violation of the laws or customs of war pursuant to Article 3 of the Statute; for inhumane acts (Count 3) as a crime against humanity pursuant to Article 5 of the Statute; and for attacks on civilians (Count 4) as a violation of the laws or customs of war pursuant to Article 3 of the Statute.<sup>19</sup>

## 2. Alleged Crimes in Zagreb (2 and 3 May 1995)

12. The Prosecution alleges that on 2 May 1995 an Orkan Multiple Barrel Rocket fitted with “cluster bombs” warheads was fired from the area of Petrova Gora into central Zagreb and the airport (Pleso). It is alleged that these rockets killed at least five civilians and wounded at least 146.<sup>20</sup> On 3 May 1995, an Orkan Multiple Barrel Rocket fitted with “cluster bombs” warheads was again fired from the area of Petrova Gora into central Zagreb, killing two civilians and wounding 48 others.<sup>21</sup>

13. The Prosecution submits that the shelling was not justified by military necessity and that the affected areas were either specifically targeted or were hit as the result of reckless fire in areas where civilians were known to have been.<sup>22</sup> It is alleged that the said crimes were committed by members of the 40<sup>th</sup> PC of the VJ, including, but not limited to, Milan Čeleketić.<sup>23</sup>

14. It is alleged that Perišić had reason to know that Milan Čeleketić and other senior officers who served in the SVK via the 40<sup>th</sup> PC participated in these crimes.<sup>24</sup> In spite of this, it is alleged, Perišić failed to initiate an inquiry and to take necessary and reasonable measures to prevent the alleged crimes or punish his subordinates for the perpetration thereof.<sup>25</sup>

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<sup>17</sup> Indictment, para. 45; Prosecution Final Brief, para. 808.

<sup>18</sup> Indictment, para. 46; Prosecution Final Brief, para. 808.

<sup>19</sup> Indictment, para. 46; Prosecution Closing Arguments, T. 14636.

<sup>20</sup> Indictment, para. 49.

<sup>21</sup> Indictment, para. 50.

<sup>22</sup> Indictment, para. 51.

<sup>23</sup> Indictment, para. 52. *See also* Prosecution Final Brief, para. 449.

<sup>24</sup> Indictment, para. 53; Prosecution Final Brief, paras 818-821, 833.

<sup>25</sup> Indictment, para. 54; Prosecution Final Brief, paras 822-824.



15. Thus, in relation to crimes allegedly committed in Zagreb on 2 and 3 May 1995, Perišić is charged with individual criminal responsibility under Article 7(3) of the Statute for murder (Counts 5 and 6), as a crime against humanity pursuant to Article 5 of the Statute and as a violation of the laws or customs of war pursuant to Article 3 of the Statute; for inhumane acts (Count 7) as a crime against humanity pursuant to Article 5 of the Statute; and for attacks on civilians (Count 8) as a violation of the laws or customs of war pursuant to Article 3 of the Statute.<sup>26</sup> Subsequently, the Prosecution clarified that it does not charge Perišić with his failure to prevent these crimes but only with his failure to punish the perpetrators thereof.<sup>27</sup>

### 3. Alleged Crimes in Srebrenica (July 1995)

16. The Prosecution alleges that on 8 March 1995, Radovan Karadžić, as the Supreme Commander of the VRS, issued Operational Directive 7, instructing the VRS to eliminate the Muslim enclaves of Srebrenica and Žepa in furtherance of the “six strategic objectives” of 12 May 1992. The Prosecution contends that between 6 and 11 July 1995, the Srebrenica enclave came under attack from the VRS and other Bosnian Serb forces under the command and control of Ratko Mladić. It is alleged that Perišić was aware of the planned attack, of the “six strategic objectives”, and of the fact that some members of the VRS would engage in criminal conduct against the Bosnian Muslim civilian population; criminal conduct that would include persecution, forcible transfers and killings.<sup>28</sup>

17. It is alleged that, between 12 July 1995 and about 20 July 1995, thousands of Bosnian Muslim men were captured by, or surrendered to, Bosnian Serb forces under the command and control of Mladić and were summarily executed between 13 and 19 July 1995 and buried in mass graves. The Prosecution contends that between 1 August 1995 and 1 November 1995, VRS units under the command of Mladić participated in an organised effort to conceal the killings by reburying bodies of Bosnian Muslim men killed in July 1995, exhumed from mass graves.<sup>29</sup>

18. From July 1995 onwards, it is alleged that the VRS forcibly transferred thousands of Bosnian Muslim civilian women, children and elderly men from Potočari and other areas surrounding Srebrenica to Kladanj and other non-Serb areas of BiH.<sup>30</sup>

<sup>26</sup> Indictment, para. 54; Prosecution Closing Arguments, T. 14636.

<sup>27</sup> Prosecution Closing Arguments, T. 14637, 14921-14922 (partly private session).

<sup>28</sup> Indictment, para. 56; Prosecution Final Brief, paras 388-404, 636.

<sup>29</sup> Indictment, para. 57; Prosecution Final Brief, paras 416-436.

<sup>30</sup> Indictment, para. 57.

19. The Prosecution alleges that these crimes were, in part, planned, instigated, ordered, committed and aided by members of the 30<sup>th</sup> PC of the VJ.<sup>31</sup> The Prosecution contends that Perišić aided and abetted these crimes with the knowledge that the assistance he provided would be used in the commission thereof. It is alleged that the said crimes were perpetrated with the intent to discriminate against the Bosnian Muslim population of Srebrenica on political, racial or religious grounds and that Perišić was aware of the perpetrators' discriminatory intent.<sup>32</sup>

20. It is argued that Perišić had reason to know that his subordinates participated in the perpetration of crimes in Srebrenica<sup>33</sup> and failed to initiate an inquiry and to take necessary and reasonable measures to prevent the alleged crimes or punish the perpetrators thereof.<sup>34</sup>

21. Thus, in relation to crimes allegedly committed in Srebrenica in July 1995, Perišić is charged with individual criminal responsibility under Articles 7(1) and 7(3) of the Statute for murder (Counts 9 and 10) as a crime against humanity pursuant to Article 5 of the Statute and as a violation of the laws or customs of war pursuant to Article 3 of the Statute. Perišić is further charged with individual criminal responsibility under Articles 7(1) and 7(3) of the Statute for inhumane acts (Count 11), for persecutions on political, racial or religious grounds (Count 12) and for extermination (Count 13) as crimes against humanity pursuant to Article 5 of the Statute.<sup>35</sup>

### C. Considerations Regarding the Evidence

#### 1. General Evidentiary Principles

22. The Trial Chamber has received evidence both in oral and documentary form. This evidence was diverse in nature, ranging from direct evidence, circumstantial evidence, original and hearsay evidence, to facts agreed upon by the Parties or previously adjudicated before this Tribunal. The evidence also included written statements in lieu of oral testimony admitted pursuant to Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules of Procedure and Evidence of the Tribunal ("Rules").

23. The Trial Chamber has duly considered and given appropriate weight to all the evidence adduced at trial in light of the entire trial record, in accordance with the Statute and the Rules even if not expressly referred to. The Trial Chamber underlines that the right of an accused to a reasoned

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<sup>31</sup> Indictment, para. 58.

<sup>32</sup> Indictment, para. 60.

<sup>33</sup> Indictment, para. 61.

<sup>34</sup> Indictment, para. 62.

<sup>35</sup> Indictment, para. 62; Prosecution Closing Arguments, T. 14636-14637.

opinion in writing, as set forth in Article 23(2) of the Statute and Rule 98 *ter*(C), in no way imposes an obligation to explain every detail of its assessment of the evidence adduced during the trial.<sup>36</sup>

24. Article 21(3) of the Statute establishes that an accused shall be presumed innocent until proven guilty.<sup>37</sup> The Prosecution bears the burden of proof for the guilt of the Accused and must establish beyond reasonable doubt each element of the crimes and of the modes of liability charged as well as any fact indispensable for conviction.<sup>38</sup> Hence, in accordance with the principle *in dubio pro reo*, the Trial Chamber resolved any reasonable doubt as to the guilt of the Accused in his favour.

25. At the start of the trial, the Trial Chamber issued “Guidelines” that governed the presentation and admission of evidence during the trial.<sup>39</sup>

26. In its evaluation of *viva voce* witnesses, the Trial Chamber took into consideration the demeanour of a witness on the stand, as well as individual circumstances, including any protective measures granted. In assessing the *viva voce* witnesses, the Trial Chamber also considered the time that elapsed since the crimes alleged in the Indictment occurred and its possible impact on the accuracy of the testimony. Hence, the lack of precision, or the existence of minor discrepancies between a previous statement or testimony and the one given in this case, did not necessarily discredit the testimony.

27. Hearsay evidence is evidence of facts not within the witness’s own knowledge.<sup>40</sup> The jurisprudence of the Tribunal allows admission of hearsay evidence pursuant to Rule 89(C). The weight to be attributed to that evidence depends on the circumstances.<sup>41</sup> In particular, the Trial Chamber has taken into account the fact that the original source was not the subject of a solemn declaration or tested by cross-examination and that the reliability of such evidence could be flawed by a potential compounding of errors of perception and memory.

28. Circumstantial evidence is evidence of circumstances surrounding an event from which a fact at issue may be reasonably inferred.<sup>42</sup> Where an inference is drawn from circumstantial

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<sup>36</sup> See *Kvočka et al.* Appeal Judgement, para. 23.

<sup>37</sup> Article 21(3) of the Statute.

<sup>38</sup> Rule 87(A) of the Rules; *Limaj et al.* Trial Judgement, para. 10; *Brdanin* Trial Judgement, para. 22. The fact that the Defence has not challenged certain factual allegations contained in the Indictment does not mean that the Trial Chamber has accepted these facts to be proven.

<sup>39</sup> Order for Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court, 29 October 2008 (“Guidelines”).

<sup>40</sup> *Halilović* Trial Judgement, para. 15.

<sup>41</sup> See *Aleksovski* February 1999 Appeal Decision, para. 15.

<sup>42</sup> See *Čelebići* Appeal Judgement, para. 458.

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>43</sup>

29. The evidence of a single witness on a material fact does not, as a matter of law, require corroboration.<sup>44</sup> However, the Trial Chamber has carefully analysed such evidence before relying upon it to a decisive extent.

30. In its Final Brief, the Defence argues that evidence originating from the same source but at different times does not amount to corroboration.<sup>45</sup> Likewise, it posits that a person giving the same narration more than once is not corroboration but mere proof of a good memory.<sup>46</sup> The Trial Chamber recalls that there is no specific legal requirement as to the source of corroboration.<sup>47</sup> However, the Trial Chamber is of the view that *generally* a person cannot corroborate his or her own testimony and has considered evidence originating from the same person but at different times to be reflective of the consistency of the witness's testimony and has accorded it appropriate weight.

31. In assessing the authenticity of documentary evidence, the Trial Chamber considered various factors such as the source of the evidence, its chain of custody and other evidence relating to the document. In accordance with its Guidelines, the Trial Chamber did not consider unsigned or unstamped documents to be necessarily void of authenticity.<sup>48</sup> When the Trial Chamber was satisfied of the authenticity of a particular document, it did not automatically accept the statements contained therein to be an accurate portrayal of the facts.<sup>49</sup> Rather, the Trial Chamber evaluated all evidence within the context of the entire trial record.

32. In evaluating the evidence adduced through witnesses in court, the Trial Chamber assessed whether the witnesses were reliable. In this light, the Trial Chamber notes that credibility is an essential element that needs to be satisfied in order for a witness to be found reliable. The Trial Chamber took into account any potential bias or partiality on the part of a witness.

33. Some of the witnesses may have had close links with persons involved in the commission of crimes during the conflict in the former Yugoslavia and thus may have had a personal interest in

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<sup>43</sup> *Stakić* Appeal Judgement, para. 219. See also *Čelebići* Appeal Judgement, para. 458; *Hadžihasanović and Kubura* Appeal Judgement, para. 286.

<sup>44</sup> *Aleksovski* Appeal Judgement, para. 62; *Čelebići* Appeal Judgement, para. 506. See also *Tadić* Appeal Judgement, para. 65.

<sup>45</sup> Defence Final Brief, para. 32.

<sup>46</sup> *Ibid.*

<sup>47</sup> See *Haraqija and Morina* Appeal Judgement, para. 62.

<sup>48</sup> See Decision on Prosecution's Second and Third Bar Table Motions, 16 November 2009, para. 13; Guidelines, para. 34.

<sup>49</sup> See Guidelines, para. 32.

being inaccurate in their testimony. In other cases, witnesses seemed to feel a sense of loyalty towards the Accused and were evasive in providing answers implicating the acts or omissions of Perišić. The Chamber has considered this factor when weighing and assessing their credibility.<sup>50</sup>

34. Where witnesses were found to have displayed a lack of candour towards the Trial Chamber, their evidence was not relied upon. However, in cases where only part of the testimony was found to be unreliable, the Trial Chamber did not disregard the entire testimony but only rejected the portion it found to be unreliable.

## 2. Specific Evidentiary Considerations

### (a) Statements of the Accused

35. Article 21(4)(g) of the Statute provides that an accused shall not be compelled to testify against himself. In the present case, the Accused elected not to give evidence during the trial. In accordance with existing jurisprudence of this Tribunal,<sup>51</sup> the Trial Chamber, in the determination of his guilt or innocence, has not drawn any inference from his silence.

36. The Trial Chamber notes that the Accused gave an unsworn statement at the commencement of the trial on 3 October 2008, pursuant to Rule 84 *bis*(A).<sup>52</sup> 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>53</sup> The Trial Chamber has the discretion to decide as to any probative value of statements given pursuant to Rule 84 *bis*.<sup>54</sup> In this regard, the Trial Chamber has decided to attach limited weight to the Accused's Rule 84 *bis* statement.

### (b) Suspect Interview

37. On 9 March 2009, the Trial Chamber admitted into evidence the statement given by the Accused at the end of 2003 and early 2004, as well as his written response to questions asked by the Prosecution ("Suspect Interview").<sup>55</sup> In its Final Brief, the Defence "urges extreme caution in

<sup>50</sup> See e.g. Dragomir Vasić and Borivoje Tešić.

<sup>51</sup> See *Čelebići* Appeal Judgement, para. 783.

<sup>52</sup> Momčilo Perišić Rule 84 *bis* Statement, 3 October 2008, T. 425-432.

<sup>53</sup> *Prlić et al.* April 2009 Appeal Decision, para. 13.

<sup>54</sup> *Prlić et al.* April 2009 Appeal Decision, para. 28.

<sup>55</sup> See Bretton Randall, T. 4117-4118; Ex. P705, Transcript of Interview with Perišić, 6 December 2003; Ex. P706, Perišić's Written Response to a Question from Trial Attorney, 19 October 2003. See also Ex. P801, Transcript of Interview with Perišić, 7 December 2003; Ex. P802, Transcript of Interview with Perišić, 7 December 2003; Ex. P803, Transcript of Interview with Perišić, 8 December 2003; Ex. P804, Transcript of Interview with Perišić, 18 December 2003; Ex. P805, Transcript of Interview with Perišić, 18 December 2003; Ex. P806, Transcript of Interview with Perišić, 19 December 2003; Ex. P807, Transcript of Interview with Perišić, 19 December 2003; Ex. P808, Transcript of Interview with Perišić, 20 December 2003; Ex. P809, Transcript of Interview with Perišić, 20 December 2003; Ex. P810, Transcript of Interview with Perišić, 23 January 2004; Ex. P811,

relying on any parts of the interview” on the grounds that the Accused was not able to review prior to this interview many of the documents later introduced at trial. The Defence further avers that the interview took place almost ten years after the events on which the Accused was questioned.<sup>56</sup> The Trial Chamber is satisfied, however, that the procedural safeguards set out in Rules 42 and 43 were made available to the Accused during his interview with the Prosecution.<sup>57</sup> Furthermore, the Trial Chamber notes that the Accused submitted his written response through his counsel,<sup>58</sup> and that counsel was present during the interview.<sup>59</sup> The Trial Chamber has thus awarded appropriate weight to the Suspect Interview in light of all the evidence on the trial record.

(c) Evidence of Persons Convicted by the Tribunal

38. The Trial Chamber received testimony from several witnesses who have been the subject of criminal proceedings before this Tribunal, namely Momir Nikolić, Miroslav Deronjić, Milan Babić and Dražen Erdemović. This testimony was received *viva voce*, as well as pursuant to Rules 92 *ter* and 92 *quater*.<sup>60</sup> Such evidence was examined by the Trial Chamber with great caution.<sup>61</sup> This evidence has been considered throughout the Judgement accordingly.

(d) Evidence Pursuant to Rule 92 *bis*, *ter*, *quater*

39. The Trial Chamber has received evidence adduced by both Parties pursuant to Rule 92 *bis*, 92 *ter* and 92 *quater*.<sup>62</sup>

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Transcript of Interview with Perišić, 23 January 2004; Ex. P812, Transcript of Interview with Perišić, 24 January 2004; Ex. P813, Transcript of Interview with Perišić, 24 January 2004; Ex. P814, Transcript of Interview with Perišić, 25 January 2004; Ex. P815, Transcript of Interview with Perišić, 25 January 2004; Ex. P816, Transcript of Interview with Perišić, 26 January 2004; Ex. P817, Transcript of Interview with Perišić, 27 January 2004.

<sup>56</sup> Defence Final Brief, para. 40.

<sup>57</sup> See Ex. P705, Transcript of Interview with Perišić, 6 December 2003, pp 1-6.

<sup>58</sup> Ex. P706, Perišić’s Written Response to a Question from Trial Attorney, 23 July 1998, p. 1.

<sup>59</sup> Ex. P705, Transcript of Interview with Perišić, 6 December 2003, pp 1-4.

<sup>60</sup> Ex. P2511, Transcript of Momir Nikolić from *Prosecutor v. Popović et al.*, 21 April 2009; Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003; Ex. P2513, Supplementary Statement of Momir Nikolić, 16 April 2009; Ex. P2514, Joint Motion for Consideration of Plea Agreement Between Momir Nikolić and the Prosecution, 7 May 2003; Ex. P2515, Tab B to Joint Motion for Consideration of Plea Agreement Between Momir Nikolić and the Prosecution, 6 May 2003; Ex. P2516, Minutes of Bratunac Brigade Meetings From 28 June 1995 Through 16 October 1995; Ex. P2517, Transcript of Momir Nikolić from *Prosecutor v. Popović et al.*, 22 April 2009.

<sup>61</sup> See *Krajišnik* Appeal Judgement, para. 146, stating 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”.

<sup>62</sup> Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 2 October 2008; Decision on Prosecution Motion to add Garry Selsky as a 92 *bis* Witness, 21 January 2010; Decision on Mr. Perišić’s Motion for the Admission of Evidence Pursuant to Rule 92 *bis* with Public Annex A, 13 April 2010; Decision on Mr. Perišić’s Motion for the Admission of Evidence Pursuant to Rule 92 *bis*, 29 October 2010; Decision on Defence Motions to Amend its Rule 65 *ter* Witness List and to Admit Evidence Pursuant to Rule 92 *bis*, 2 December 2010; Decision on Mr. Perišić’s Motion for the Admission of Evidence Pursuant to Rule 92 *bis* Regarding the Prosecution Motion to Reopen, 14 December 2010; Decision on Prosecution Motions for Admission of Evidence Pursuant to Rule 92 *quater*, 10 October 2008 (confidential); Decision on Prosecution

(i) Use of Rule 92 bis Statements

40. The Trial Chamber is guided by the Appeals Chamber holding in *Galić*, according to which “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 evidence which corroborates the statement”.<sup>63</sup>

41. In its Final Brief, the Defence submits that 92 *bis* evidence must be accorded less weight than evidence admitted through *viva voce* witnesses who were available to answer questions in court.<sup>64</sup> While there is no basis for assuming that as a general rule, Rule 92 *bis* evidence carries less weight than the *viva voce* evidence, in evaluating and weighing it, the Trial Chamber took into account the fact that the witnesses were not cross-examined. The Trial Chamber has awarded appropriate weight to 92 *bis* evidence in light of all the evidence on the trial record.

(ii) Use of Rule 92 ter Statements

42. The Trial Chamber further recalls that Rule 92 *ter* allows for the admission of evidence that relates to the proof of the acts or conduct of the accused.<sup>65</sup> The Trial Chamber admitted evidence in accordance with its Guidelines<sup>66</sup> and the requirements of Rule 92 *ter*.<sup>67</sup> The Trial Chamber took into account the fact that the witnesses were present in court and available for cross-examination, as well as the fact that the said transcripts or statements reflected the testimony that the witnesses would give if examined in court. The Trial Chamber considered such testimony in the same manner as it would consider other *viva voce* testimony.

(iii) Use of Rule 92 quater Statements

43. In its Final Brief, the Defence argues that some of the evidence submitted by the Prosecution pursuant to Rule 92 *quater* should be found unreliable and disregarded as it was ultimately not corroborated by witnesses.<sup>68</sup>

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Motions for Admission of Evidence Pursuant to Rule 92 *quater*, 23 April 2009; Decision on Prosecution’s Second Motion for Admission of Evidence Relating to Mirsad Kučanin Pursuant to Rule 92 *quater*, 20 May 2009 (confidential); Decision on Defence Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 21 April 2010.

<sup>63</sup> *Galić* June 2002 Appeal Rule 92 *bis*(C) Decision; *Blagojević and Jokić* Trial Judgement, paras 316-318.

<sup>64</sup> Defence Final Brief, para. 37.

<sup>65</sup> Rule 92 *ter*(B) of the Rules.

<sup>66</sup> Guidelines, paras 20-21.

<sup>67</sup> The evidence of 36 witnesses was admitted pursuant to Rule 92 *ter*.

<sup>68</sup> Defence Final Brief, para. 38.

44. In this regard, the Trial Chamber recalls that Rule 92 *quater* evidence, as a general rule, does not require corroboration. However, the jurisprudence of the Tribunal is clear that uncorroborated Rule 92 *quater* evidence cannot form the sole basis for a conviction.<sup>69</sup> In all other circumstances, corroboration is simply one factor that the Trial Chamber, in its discretion, may consider when determining the weight to be given to such evidence.<sup>70</sup> In addition, the Trial Chamber, in evaluating the weight of the evidence admitted pursuant to Rule 92 *quater*, carefully considered the fact that the evidence was admitted without the possibility of cross-examination.<sup>71</sup>

(e) Evidence Pursuant to Rule 71

45. On 13 December 2008 a deposition was taken pursuant to Rule 71, pursuant to a decision by the Trial Chamber.<sup>72</sup>

46. The Trial Chamber in evaluating this evidence considered that it was given during trial, it was taken in the presence of the Senior Legal Officer of Trial Chamber I, both Parties and representatives of the Registry and that the Defence had the possibility to cross-examine the person whose deposition was taken.<sup>73</sup> Hence, Trial Chamber in assessing this evidence considered it in the same way that it considers evidence admitted in court.

(f) Evidence Pursuant to Rule 94 *bis*

47. The Trial Chamber admitted the testimony and reports of several expert witnesses pursuant to Rule 94 *bis*.<sup>74</sup> The jurisprudence of the Tribunal defines an expert as a person who by virtue of some specialised knowledge, skill or training can assist the Trial Chamber to understand or determine an issue.<sup>75</sup>

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<sup>69</sup> *Martić* September 2006 Appeal Decision, para. 20; *Popović et al.* Trial Judgement, para. 60, stating that “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”; *Prlić et al.* November 2007 Appeal Decision, para. 53. *See also* *Gotovina et al.* Trial Judgement, para. 43, stating that the “Trial Chamber used as a standard that it would not enter into a conviction where the evidence supporting that conviction was based solely on hearsay evidence. Similarly, with regard to written, non cross-examined evidence, such as Rule 92 *bis* or *quater* statements, the Trial Chamber required corroboration of other evidence before entering into a conviction”.

<sup>70</sup> *D. Milošević* Appeal Judgement, para. 215.

<sup>71</sup> *See Galić* June 2002 Appeal Rule 92 *bis*(C) Decision, fn. 34; *Prlić et al.* November 2007 Appeal Decision, paras 50-61; *Popović et al.* Trial Judgement, para. 60.

<sup>72</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 2-3.

<sup>73</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 5-28.

<sup>74</sup> *See e.g.* Decision on Uncontested Srebrenica Expert Reports, 26 August 2009; Decision on Expert Reports of Ewa Tabeau, 23 April 2009; Decision on Expert Report by Richard Phillips, 10 March 2009; Decision on Expert Reports by Richard Butler, 4 March 2009; Decision on Mungu Melvin’s Status as an Expert, 21 October 2009.

<sup>75</sup> *Galić* July 2002 Trial Expert Witnesses Decision, p. 2.



48. In evaluating such evidence, the Trial Chamber took into account the totality of evidence admitted during the entire case.<sup>76</sup> The Trial Chamber further considered factors such as professional competence of the expert, the material at his disposal, the methodology used, the credibility of the findings made in light of these factors and other evidence, the proximity of the expert to the party offering him or her as an expert, as well as whether the opposing party opposed some of the expert evidence and/or reports.<sup>77</sup>

49. The Defence contends that the Trial Chamber should “place little to no weight on the conclusions, opinions and summaries” of experts Patrick Treanor and Robert Donia.<sup>78</sup> It also challenges the report of Prosecution expert witness Morten Torkildsen.<sup>79</sup>

50. As regards Treanor’s report, the Defence recalls the Trial Chamber’s concerns regarding the methodology used, as well as the criteria chosen in selecting the documents cited in his report.<sup>80</sup> The Trial Chamber recalls that Treanor was extensively questioned by the Defence and the Trial Chamber between 3 November 2008 and 12 November 2008 *inter alia* on his methodology and selection criteria.<sup>81</sup> The Trial Chamber further recalls that in its decision admitting the expert report, the Majority held that: “although the Report does not explicitly state the methodology and criteria used for selecting documents, a certain methodology can nonetheless be inferred from it”.<sup>82</sup> When determining the weight to be given to the report, the Trial Chamber took into consideration the witness’s testimony, particularly his cross-examination and the Defence’s concerns.<sup>83</sup> The Trial Chamber has given limited weight to the report and used it only to support findings related to the background of this case or when corroborated.

51. As regards Donia’s reports, the Defence repeats its concerns expressed during the trial phase regarding the lack of objectivity of the report and its lack of value to the Trial Chamber.<sup>84</sup> The Trial Chamber recalls its finding that “the concerns advanced by the Defence concerning the fact that Dr. Donia’s opinions and conclusions are mixed with factual summaries and that his Reports are ‘essentially the prosecution’s version of what happened in Sarajevo [and RS] during the time

<sup>76</sup> *Galić* June 2002 Appeal Rule 92 *bis*(C) Decision, fn. 34; *Prlić et al.* November 2007 Appeal Decision, paras 50-61.

<sup>77</sup> Decision on Expert Reports of Richard Higgs, 26 January 2009, para. 3; Decision on Uncontested Srebrenica Expert Reports, 26 August 2009, para. 2.

<sup>78</sup> Defence Final Brief, paras 107-122.

<sup>79</sup> Defence Final Brief, paras 123-125.

<sup>80</sup> Defence Final Brief, para. 109, citing Trial Chamber “Decision on Defence Motions to Exclude the Expert Reports of Mr. Patrick J. Treanor”, 27 October 2008, para. 23.

<sup>81</sup> Patrick Treanor, T. 905-1416.

<sup>82</sup> Decision on Admissibility of Expert Report of Patrick Treanor, 27 November 2008, para. 15.

<sup>83</sup> Decision on Admissibility of Expert Report of Patrick Treanor, 27 November 2008, para. 17.

<sup>84</sup> Defence Final Brief, paras 117-122, referring to Trial Chamber Decision on the Defence Motion to Exclude the Expert Reports of Robert Donia, paras 11, 12, 16.

alleged in the indictment' might have an impact on the weight given to such Reports".<sup>85</sup> The Trial Chamber has taken the Defence's concerns into account when determining the weight to attribute to these reports and has given them limited weight, using them only for findings related to the background of this case or when corroborated.

52. Similarly, the Defence repeats its concerns relating to the Torkildsen report.<sup>86</sup> The Trial Chamber notes that these concerns were taken into consideration during the admission of the said report.<sup>87</sup> The Trial Chamber has attributed limited weight to this expert report and only used it when corroborated.

53. With respect to Defence expert witness Ivan Đokić, the Trial Chamber defers its assessment of his credibility to a separate part of the Judgement.<sup>88</sup>

(g) Use of Unscheduled Incidents

54. In its Final Brief, the Defence "maintains its standing objection to the use of unscheduled incidents" on the grounds that they are prejudicial to the Accused and that it did not have any notice in order to adequately respond to them.<sup>89</sup> The Trial Chamber recalls that these Defence objections were extensively addressed in the Trial Chamber's decision of 31 October 2008. In this decision, the Trial Chamber found that evidence relating to the campaign of sniping and shelling did not constitute unscheduled incidents.<sup>90</sup> The Trial Chamber recalled that in relation to crimes against humanity, "it is well-established in the jurisprudence that the Prosecution must prove not only the underlying offences of those crimes (which are represented by the scheduled incidents), but also the existence of a widespread or systematic attack on the civilian population".<sup>91</sup> In the same decision, the Trial Chamber also found that no prejudice was caused to the Accused as he was put on notice well in advance by the 65 *ter* witness summaries which made reference to unscheduled incidents in relation to which the Prosecution had to seek leave of the Trial Chamber.<sup>92</sup>

<sup>85</sup> See Decision on the Defence Motion to Exclude the Expert Reports of Robert Donia, 27 October 2008, para. 16.

<sup>86</sup> Defence Final Brief, paras 123-125.

<sup>87</sup> Morten Torkildsen, T. 1611-1617. See Decision on Defence Motion to Exclude the Expert Report of Morten Torkildsen, 30 October 2008, paras 12-19.

<sup>88</sup> See *infra* section VI.E.

<sup>89</sup> Defence Final Brief, para. 555.

<sup>90</sup> Decision on Prosecution's Submission on Interpretation of the Trial Chamber's Decision of 15 May 2007 Regarding "Unscheduled Incidents", 31 October 2008, para. 10.

<sup>91</sup> Decision on Prosecution's Submission on Interpretation of the Trial Chamber's Decision of 15 May 2007 Regarding "Unscheduled Incidents", 31 October 2008, para. 11.

<sup>92</sup> Decision on Prosecution's Submission on Interpretation of the Trial Chamber's Decision of 15 May 2007 Regarding "Unscheduled Incidents", 31 October 2008, para. 14.

(h) Intercepted Communications

55. On 21 December 2009, the Trial Chamber admitted several intercepted communications (“intercepts”) into evidence.<sup>93</sup> The Trial Chamber also took judicial notice of intercepted communications that had been admitted into evidence in the *Prosecutor v. Popović et al.* case.<sup>94</sup> In its Final Brief, the Defence submits that there is no proof as to the methodology for the collection of the intercepts. In particular, it avers that MP-17 failed to provide any adequate foundation and that “[the intelligence notes] are replete with conjecture, speculation and assumptions that cannot be tested”.<sup>95</sup> The Trial Chamber notes that the documents the Defence refers to as “intelligence notes” include both intercepts and intelligence notes.<sup>96</sup> Intercepts of the more important conversations were both transcribed and copied on other tapes for archive, while less important conversations were summarised into what were called intelligence notes.<sup>97</sup> The Trial Chamber notes that the concerns raised by the Defence relate to the reliability of these documents and were taken in consideration when deciding on the admission of the documents.<sup>98</sup> In addition, in assessing the intercepts, the Trial Chamber duly considered the testimony of MP-16 and MP-17 on the process of interception and transcription of communication.<sup>99</sup> The Trial Chamber has also taken into account the testimony of those witnesses in relation to the voice recognition and use of code-names in communication.<sup>100</sup> Hence, the Trial Chamber is satisfied with the methodology used in putting together the intelligence notes and transcribing the intercepts.

56. Regarding the intercepted communications of which the Trial Chamber took judicial notice, the Trial Chamber notes that Rule 94(B) creates a presumption for the authenticity of these documents, which has not been rebutted by the Defence.<sup>101</sup>

57. In light of all the evidence on the trial record, the Trial Chamber has awarded appropriate weight to both intercepts and intelligence notes taking into account the fact that intelligence notes are summaries of conversations rather than transcriptions of conversations.

<sup>93</sup> Decision Regarding Outstanding Documents Marked for Identification, 21 December 2009 (confidential), paras 47-75.

<sup>94</sup> Decision on Prosecution’s Motion for Judicial Notice of Srebrenica Intercepts, with Confidential Annexes, 1 September 2008; Decision on Motion for Reconsideration of the Trial Chamber’s Decision of 1 September 2008, 7 October 2008. *See also Popović et al.* December 2007 Trial Decision, para. 79, Appendix I. Defence Final Brief, para. 45.

<sup>95</sup> *See* Defence Final Brief, para. 45, fn. 53.

<sup>96</sup> *See* MP-16, T. 5085, 5159-5166.

<sup>97</sup> Decision Regarding Outstanding Documents Marked for Identification, 21 December 2009 (confidential), paras 73-75.

<sup>98</sup> MP-16, T. 5163 (closed session); MP-17, T. 4968, 5078-5079 (closed session).

<sup>99</sup> *See e.g.* MP-16, T. 5138, 5190-5191 (closed session); MP-17, T. 4970-4972 (closed session).

<sup>100</sup> *See Stanišić and Župljanin* February 2011 Trial Decision, para. 14.

(i) Documents and Statements of Individuals Admitted Solely for Credibility Purposes and Not for the Truth of Their Content

58. During the trial, several documents including prior statements of witnesses were admitted by the Trial Chamber solely for the purpose of assessing witnesses' credibility.<sup>102</sup> The Trial Chamber used such evidence strictly for the purpose for which it was admitted, *i.e.* to assess the credibility of the witness, and disregarded it in relation to the truth of its content.

(j) Paragraphs 12 and 13 of the Guidelines

59. In its Final Brief, the Defence argues that Paragraphs 12 and 13 of the Guidelines violated the Accused's right to examine or have examined the witnesses who testified against him.<sup>103</sup> In addition, the Defence submits that based on Paragraph 13 of the Guidelines, the Trial Chamber would be obliged to disregard Krayishnik's testimony regarding Lešić's witness statement as the latter did not testify in the present case.<sup>104</sup>

60. The Trial Chamber recalls that the Guidelines governed the admission and presentation of evidence in court during the trial and were equally applicable to both parties.<sup>105</sup> The purpose of this part of the Guidelines was to ensure that a party using a prior statement of a different person to confront a witness also calls that person to testify as a witness. In relation to Krayishnik's testimony, the Defence posed questions to Krayishnik based on Milan Lešić's prior interview with the Prosecution.<sup>106</sup> Since the Defence did not call or try to call Lešić to testify during the Defence case, the part of Krayishnik's testimony regarding Lešić's prior interview will not be considered by the Trial Chamber. Considering that the Defence had the opportunity to call Lešić and was well aware of the Guidelines the Trial Chamber is of the view that the Accused was not prejudiced by the application of paragraphs 12 and 13 of the Guidelines. In addition, the Trial Chamber notes that neither party sought reconsideration of the Guidelines, nor certification to appeal them, upon their adoption at the start of the trial.

<sup>102</sup> See *e.g.* Siniša Borović, T. 14108-14112, concerning Ex. P2930, Report on Splav Operation. See also Ex. P2893, Order for Engineering Support of the VRS, undated; Ex. P2894, Operational Documents of the Drina Corps Command From a Folder Marked From the VRS Main Staff, Drina Corps; Ex. P2895, List of Documents of the SRK submitted to the VRS Main Staff, 2 February 1994; Ex. P2896, Order for the Use of the SRK, 26 January 1994; Ex. P2897, Document relating to the Use of the Anti-Aircraft Forces and the Air Force, undated; Ex. P2898, Plan for Morale, Psychological Activities and Information for the SRK, undated; Ex. P2899, Plan for Morale, Psychological Activities and Information for the SRK, undated; Ex. P2900, Plan for Security Measures for the SRK, undated.

<sup>103</sup> Defence Final Brief, para. 11.

<sup>104</sup> Defence Final Brief, para. 13.

<sup>105</sup> Guidelines, p. 2.

<sup>106</sup> Ned Krayishnik, T. 9639-9644.

(k) Documents Admitted through the Bar Table

61. The Trial Chamber admitted into evidence hundreds of documents through the bar table in accordance with Rule 89(C).<sup>107</sup> In its Final Brief, the Defence urged the Trial Chamber to exercise extreme caution in attributing weight to documents admitted through the bar table and thus introduced in isolation. The Defence submits that the vast majority of these documents were never testified to by a witness and should thus be awarded less weight than those that were explained by the testimony of a witness.<sup>108</sup> While there is no basis for assuming that, as a general rule, bar table documents carry less weight than those that were explained by the testimony of a witness, especially in light of the fact that many of them were self-explanatory, the Trial Chamber has carefully considered them in light of all the evidence adduced at trial and given them appropriate weight.

(l) Agreed Facts, Adjudicated Facts and Stipulations(i) Agreed Facts and Stipulations

62. Upon the encouragement of the Trial Chamber, the Parties reached an agreement on material facts relating to the Indictment on 31 May 2007.<sup>109</sup> However, due to the fact that, the Accused apparently did not consent to the facts contained in the agreement, the Parties sought permission to withdraw the agreement and substitute it with a new agreement.<sup>110</sup> The Trial Chamber subsequently admitted the new agreed facts into evidence.<sup>111</sup> The Trial Chamber also admitted a “Joint Stipulation” by the Parties relating to Schedule B of the Indictment.<sup>112</sup> The Trial Chamber considered this stipulation as an agreed fact. At the same time, the Trial Chamber underlines that it is not bound by any agreements reached by the Parties and is not obliged to make explicit findings on such agreed facts.<sup>113</sup> The Trial Chamber notes that the reference to such facts is by itself indicative that the Trial Chamber considers those facts to be accurate.

(ii) Judicial Notice of Adjudicated Facts

<sup>107</sup> Decision on Prosecution’s First Bar Table Motion, 5 October 2009 (confidential); Decision on Prosecution’s Second and Third Bar Table Motions, 16 November 2009 (confidential); Decision on Prosecution’s Fourth Bar Table Motion, 22 December 2009 (confidential); Decision on Motion to Reopen the Prosecution Case and Tender Documents through the Bar Table, 4 November 2010; Decision on Defence Motion to Amend 65 *ter* List and Second Bar Table, 1 December 2010; Decision on Defence Motion for the Admission of Evidence from the Bar Table, 1 December 2010.

<sup>108</sup> Defence Final Brief, para. 27.

<sup>109</sup> Parties Joint Submission: Agreements on Matters of Fact, 1 June 2007.

<sup>110</sup> Joint Submission in Respect of Srebrenica Agreed Facts, 24 July 2009 (partially confidential).

<sup>111</sup> Decision in Respect of Srebrenica Agreed Facts, 19 August 2009; Second Decision in Respect of Srebrenica Agreed Facts, 30 September 2009; Decision in Respect of Joint Submission of Agreed Facts Proposed by the Defence, 29 June 2010.

<sup>112</sup> Hearing, T. 14580-14581.

<sup>113</sup> See *Babić* Sentencing Appeal Judgement, para. 18; *Popović et al.* Trial Judgement, para. 68.

63. The Trial Chamber took judicial notice of hundreds of adjudicated facts pursuant to Rule 94(B) from the following cases: *Galić, Martić, Krstić, Blagojević and Jokić*, and *Dragomir Milošević*.<sup>114</sup>

64. The effect of taking judicial notice pursuant to Rule 94(B) is that the Prosecution is relieved of its initial burden to produce evidence on the point; and the Defence may then put the point into question by introducing reliable and credible evidence to the contrary.<sup>115</sup> Importantly, however, the judicial notice of adjudicated facts “does not shift the ultimate burden of persuasion which remains with the Prosecution”.<sup>116</sup> The Trial Chamber in assessing the ultimate weight to be given to the adjudicated facts took into consideration the totality of the trial record and, in particular, the evidence adduced by the non-moving party to rebut the adjudicated facts.

(m) Supreme Defence Council (“SDC”) Stenographic Transcripts and Minutes

65. The Trial Chamber admitted several stenographic transcripts and minutes of the FRY SDC.<sup>117</sup> In its Final Brief, the Defence contends that the Prosecution must corroborate statements found in these documents when they are “relied on to prove intent, liability and factual matters”.<sup>118</sup>

66. The Trial Chamber took into account the stenographic transcripts as well as the minutes of the FRY SDC in light of the entire evidence adduced in this case and gave them appropriate weight. The Trial Chamber generally finds that the SDC stenographic transcripts and minutes are reliable contemporaneous records of the events that occurred.

(n) VJ Collegium Stenographic Transcripts and Minutes

67. The Trial Chamber admitted into evidence a number of VJ Collegium stenographic transcripts and minutes. In its Final Brief, the Defence maintains that these documents lack sufficient indicia of authenticity. It argues that it would be unsafe to rely on these extracted pages on which the Accused is recorded as being the speaker without having an understanding of the totality of the circumstances.<sup>119</sup>

<sup>114</sup> Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts Concerning Sarajevo, 26 June 2008; Decision on Prosecution’s Motion for Judicial Notice of Facts and Documents Relevant to the Zagreb Crime Base, 2 September 2008; Decision on Second Motion for Judicial Notice of Facts Relevant to the Sarajevo Crime Base, 17 September 2008; Decision on Prosecution’s Motion for Judicial Notice of Facts Relevant to the Srebrenica Crime Base, 22 September 2008.

<sup>115</sup> *Karemera et al.* June 2006 Appeal Decision, para. 42.

<sup>116</sup> See *D. Milošević* June 2007 Appeal Decision, paras 16.

<sup>117</sup> See e.g. Ex. P708, Minutes from the 43<sup>rd</sup> Session of SDC, 29 August 1995; Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993; Ex. P726, Minutes from the 63<sup>rd</sup> Session of the SDC, 27 March 1997; Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the of the SDC, 30 August 1994.

<sup>118</sup> Defence Final Brief, para. 43.

<sup>119</sup> Defence Final Brief, para. 44.

68. In its decision of 21 December 2009 admitting these documents into evidence, the Trial Chamber addressed the Defence's objections regarding their authenticity.<sup>120</sup> The Trial Chamber has carefully considered them in light of all the evidence adduced at trial, as well as the relevant context, when deciding on the appropriate weight. In some instances it has decided to disregard them.

(o) Mladić Notebook Excerpts

69. On 29 March 2010, the Serbian Government handed over to the Prosecution the Mladić Notebooks.<sup>121</sup> The Trial Chamber has admitted into evidence several excerpts of the notebooks.<sup>122</sup> In its Final Brief, the Defence submits that the content of the Mladić Notebooks must be viewed with extreme caution, particularly in cases where the Prosecution introduced portions thereof without any corroboration. The Defence further submits that in cases where the Mladić Notebooks "reflect a fact" or the purpose of their usage is to prove acts and conduct or establish the knowledge of the Accused, the Trial Chamber should not rely on them devoid of any corroborating evidence.<sup>123</sup>

70. In assessing the Mladić Notebooks, the Trial Chamber finds that although some of the excerpts were not testified to by a *viva voce* witness or otherwise corroborated, the Mladić Notebooks are generally reliable and an authentic contemporaneous record of the events that occurred. The Trial Chamber recalls in this respect that it gave the Defence the possibility to recall certain witnesses to address the issues raised in the Mladić Notebooks.<sup>124</sup> The Trial Chamber has carefully considered them in light of all the evidence adduced at trial and given them appropriate weight.

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<sup>120</sup> Decision Regarding Outstanding Documents Marked for Identification, 21 December 2009 (confidential), paras 30-46. *See also* Republic of Serbia's Request for Protective Measures, 26 September 2008 (confidential), para. 15.

<sup>121</sup> These were notebooks/diaries kept by General Ratko Mladić during the period of the war in the former Yugoslavia. They were seized from his family premises and handed over to the Prosecution, *see* Order on Protective Measures for Disclosure Batch 410, 13 April 2010 (confidential).

<sup>122</sup> Decision on Motion to Reopen the Prosecution Case and Tender Documents through the Bar Table, 4 November 2010.

<sup>123</sup> Defence Final Brief, para. 46.

<sup>124</sup> Decision on Motion to Reopen the Prosecution Case and Tender Documents through the Bar Table, 4 November 2010, para. 14.

## II. APPLICABLE LAW

### A. General Requirements of Article 3 of the Statute

71. Momčilo Perišić is charged with violations of the laws and customs of war pursuant to Article 3 of the Statute, namely three counts of murder<sup>125</sup> and two counts of attacks on civilians.<sup>126</sup> In accordance with the Tribunal's jurisprudence, for Article 3 to apply, the following preliminary requirements must be met.

#### 1. Existence of an Armed Conflict and Nexus Between the Alleged Acts of the Perpetrator and the Armed Conflict

72. The first requirement is that an armed conflict, either of international or non-international character,<sup>127</sup> existed at the time material to the indictment.<sup>128</sup> According to the Appeals Chamber, an "armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State".<sup>129</sup> Until a general conclusion of peace or a peaceful settlement is reached, international humanitarian law continues to apply "in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there".<sup>130</sup>

73. A further requirement of Article 3 is that there be a sufficient link between the armed conflict and the perpetrator's alleged conduct.<sup>131</sup> The alleged crime does not need to have been committed at a time when, or in a place where, actual fighting was taking place.<sup>132</sup> It is sufficient that the alleged crimes were closely related to hostilities occurring in other parts of territories controlled by the parties to the conflict.<sup>133</sup> However, it is essential that a Trial Chamber establish the

<sup>125</sup> Indictment, Counts 2, 6, 10.

<sup>126</sup> Indictment, Counts 4, 8.

<sup>127</sup> *Tadić* October 1995 Appeal Jurisdiction Decision, para. 137; *Čelebići et al.* Appeal Judgement, paras 140, 150.

<sup>128</sup> *Tadić* October 1995 Appeal Jurisdiction Decision, para. 70.

<sup>129</sup> *Ibid.*

<sup>130</sup> *Tadić* October 1995 Appeal Jurisdiction Decision, para. 70. *See also Kunarac et al.* Appeal Judgement, paras 57, 64. In para. 64, the Appeals Chamber held that "the Prosecutor did not have to prove that there was an armed conflict in each and every square inch of the general area. The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties".

<sup>131</sup> *Tadić* October 1995 Appeal Jurisdiction Decision, para. 70; *Tadić* Trial Judgement, paras 572-573. The nexus requirement serves to distinguish war crimes from purely domestic crimes and also prevents purely random or isolated criminal occurrences from being characterised as war crimes, *Boškoski and Tarčulovski* Trial Judgement, para. 293.

<sup>132</sup> *Kunarac et al.* Appeal Judgement, para. 57. The Appeals Chamber in the *Tadić* case held that international humanitarian law applies "in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, *whether or not actual combat takes place there*", *Tadić* October 1995 Appeal Jurisdiction Decision, para. 70 (emphasis added). *See also Kordić and Čerkez* Appeal Judgement, para. 319.

<sup>133</sup> *Kunarac et al.* Appeal Judgement, para. 57.



existence of a geographical and temporal link between the crimes ascribed to the accused and the armed conflict.<sup>134</sup> 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>135</sup>

## 2. The Tadić Conditions

74. In the *Tadić* Jurisdiction Decision, the Appeals Chamber held that “Article 3 is a general clause covering all violations of humanitarian law not falling under Article 2 or covered by Articles 4 or 5”<sup>136</sup> and that it “functions as a residual clause designed to ensure that no serious violation of international humanitarian law is taken away from the jurisdiction of the International Tribunal”.<sup>137</sup>

75. For criminal conduct to fall under Article 3 of the Statute, four conditions, commonly referred to as the “*Tadić* conditions”, must be met:

- (i) The violation must constitute an infringement of a rule of international humanitarian law;
- (ii) The rule must be customary in nature, or, if it belongs to treaty law, the required conditions must be met;
- (iii) The violation must be “serious”, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim; and
- (iv) The violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.<sup>138</sup>

76. The crime of murder is proscribed by Article 3(1)(a) common to the four Geneva Conventions of 12 August 1949 (“Common Article 3”). It is settled jurisprudence of the Tribunal that Article 3 of the Statute encompasses violations of Common Article 3.<sup>139</sup> The Appeals Chamber has held that Common Article 3 “is indeed regarded as being part of customary international law, and serious violations thereof would at once satisfy the four requirements”.<sup>140</sup>

<sup>134</sup> *Stakić* Appeal Judgement, para. 342.

<sup>135</sup> *Stakić* Appeal Judgement, para. 342; *Kunarac et al.* Appeal Judgement, para. 58; *Boškoski and Tarčulovski* Trial Judgement, para. 293.

<sup>136</sup> *Tadić* October 1995 Appeal Jurisdiction Decision, para. 89.

<sup>137</sup> *Tadić* October 1995 Appeal Jurisdiction Decision, para. 91. Article 3 thus refers to a broad category of offences, providing a merely illustrative list in the article itself, *Kunarac et al.* Trial Judgement, para. 401. *See also Tadić* October 1995 Appeal Jurisdiction Decision, para. 87.

<sup>138</sup> *Kunarac et al.* Appeal Judgement, para. 66; *Tadić* October 1995 Appeal Jurisdiction Decision, para. 94.

<sup>139</sup> *Čelebići* Appeal Judgement, para. 136; *Tadić* October 1995 Appeal Jurisdiction Decision, paras 87, 89; *Krnjelac* Trial Judgement, para. 52.

<sup>140</sup> *Kunarac et al.* Appeal Judgement, para. 68, referring to *Tadić* October 1995 Appeal Jurisdiction Decision, paras 98, 134; *Čelebići* Appeal Judgement, para. 125.

77. The crime of attacks on civilians is proscribed by Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II to the Geneva Conventions of 1949. These articles both provide, in relevant part, that “[t]he civilian population as such, as well as individual civilians, shall not be made the object of attack”. The Appeals Chamber held that the principles contained in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II have attained the status of customary international law.<sup>141</sup> Furthermore, the jurisprudence of the Tribunal has repeatedly held that “attacks against civilians undoubtedly breach rules protecting important values and involves grave consequences for the victim”.<sup>142</sup> The Appeals Chamber also held that “[c]ustomary international law establishes that a violation of these principles entails individual criminal responsibility”.<sup>143</sup> The Trial Chamber therefore finds that in regard to the crime of attacks on civilians all four *Tadić* conditions are met in the present case.

### 3. Status of the Victims

78. Violations of Common Article 3 must have been committed against “[p]ersons 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”.<sup>144</sup> The perpetrator must have or should have been aware of this fact.<sup>145</sup> The legal test for determining whether the victim was taking an active part in hostilities was first adopted in the *Tadić* Trial Judgement, when the Trial Chamber noted that “[i]t is sufficient to examine the relevant facts of each victim and to ascertain whether, in each individual’s circumstances, that person was actively involved in hostilities at the relevant time”.<sup>146</sup> The Appeals Chamber further clarified the concept of active participation in hostilities, holding that the victim, at the time of the alleged offence, must not have been “participating in acts of war which by their nature or purpose are intended to cause actual harm to the personnel or equipment of the enemy’s armed forces”,<sup>147</sup> adding that the status determination is to be done on a case-by-case basis.<sup>148</sup>

<sup>141</sup> *Blaškić* Appeal Judgement, para. 157; *Strugar* November 2002 Appeal Decision, para. 9. *See also Tadić* October 1995 Appeal Jurisdiction Decision, para. 127; *Kupreškić et al.* Trial Judgement, para. 521.

<sup>142</sup> *Martić* Trial Judgement, para. 45. *See also Galić* Trial Judgement, para. 45; *Strugar* Trial Judgement, para. 221. *Strugar* November 2002 Appeal Decision, para. 10.

<sup>143</sup> Common Article 3. *See also Čelebići* Appeal Judgement, para. 420.

<sup>144</sup> *Halilović* Trial Judgement, para. 36; *Krajišnik* Trial Judgement, para. 847.

<sup>145</sup> *Tadić* Trial Judgement, para. 616. *See also Halilović* Trial Judgement, paras 33-34. Relevant factors to be considered in this respect include the activity, whether or not the victim was carrying weapons, clothing, age and gender of the victims at the time of the alleged offence, *Orić* Trial Judgement, para. 258; *Martić* Trial Judgement, para. 47; *Galić* Trial Judgement, para. 50.

<sup>146</sup> *Strugar* Appeal Judgement, para. 178.

<sup>147</sup> *Ibid.*

<sup>148</sup>

## **B. General Requirements of Article 5 of the Statute**

79. Momčilo Perišić is charged with crimes against humanity under Article 5 of the Statute, namely three counts of murder,<sup>149</sup> three counts of inhumane acts,<sup>150</sup> one count of persecution on political, racial or religious grounds<sup>151</sup> and one count of extermination.<sup>152</sup>

### 1. Requirements of Article 5 of the Statute

80. In order to constitute a crime against humanity under Article 5 of the Statute, it is required that (i) there was an armed conflict, and (ii) the acts of the perpetrator were geographically and temporally linked with the armed conflict.<sup>153</sup>

81. Moreover, it is required that the acts of the perpetrator be part of a widespread or systematic attack “directed against any civilian population”.<sup>154</sup> This requirement encompasses the five elements listed below.

82. *There must have been an “attack”.*<sup>155</sup> An “attack” may be defined as a course of conduct involving the commission of acts of violence.<sup>156</sup> In the context of crimes against humanity, an “attack” is distinct from the concept of “armed conflict” and not limited to the use of armed force. Rather, it may encompass any mistreatment of the civilian population.<sup>157</sup> The attack may precede, outlast or continue during the armed conflict and need not be part of it.<sup>158</sup>

83. *The attack must have been directed against the civilian population.*<sup>159</sup> This means that the civilian population must be the *primary* object of attack.<sup>160</sup> It is not a requirement that the attack be against the *whole* civilian population. However, a Trial Chamber must be satisfied that the attack

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<sup>149</sup> Indictment, Counts 1, 5, 9.

<sup>150</sup> Indictment, Counts 3, 7, 11.

<sup>151</sup> Indictment, Count 12.

<sup>152</sup> Indictment, Count 13.

<sup>153</sup> *Kunarac et al.* Appeal Judgement, para. 83; *Tadić* Appeal Judgement, paras 249, 251. This is a jurisdictional limitation on the Tribunal which is not part of the customary law definition of crimes against humanity, *Tadić* October 1995 Appeal Jurisdiction Decision, para. 141; *Tadić* Appeal Judgement, para. 251.

<sup>154</sup> *Blaškić* Appeal Judgement, para. 98; *Kunarac et al.* Appeal Judgement, para. 85.

<sup>155</sup> *Kunarac et al.* Appeal Judgement, para. 85.

<sup>156</sup> *Krnojelac* Trial Judgement, para. 54; *Kunarac et al.* Appeal Judgement, para. 89, affirming *Kunarac et al.* Trial Judgement, para. 415.

<sup>157</sup> *Kunarac et al.* Appeal Judgement, paras 86, 89, affirming *Kunarac et al.* Trial Judgement, para. 416.

<sup>158</sup> See *Kunarac et al.* Appeal Judgement, para. 86; *Tadić* Appeal Judgement, para. 251.

<sup>159</sup> *Kunarac et al.* Appeal Judgement, para. 85.

<sup>160</sup> *Martić* Appeal Judgement, para. 305; *Kunarac et al.* Appeal Judgement, para. 91, affirming *Kunarac et al.* Trial Judgement, para. 421. The Appeals Chamber in *Kunarac et al.* indicated that the relevant factors to be considered in this regard include: “the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war”, *Kunarac et al.* Appeal Judgement, para. 91.

was in fact directed against a civilian *population*, rather than against a limited and randomly selected number of individuals.<sup>161</sup>

84. A population may qualify as “civilian” even if individuals who do not fall within the definition of civilians are among it.<sup>162</sup> In order to determine whether the presence of non-civilians deprives the population of its civilian character, the number of non-civilians, as well as whether they are on leave or laid down their arms, must be examined.<sup>163</sup>

85. The requirement under Article 5 that an attack be directed against a civilian population does not mean that the individual victims of criminal acts committed within the attack must be civilians only.<sup>164</sup> The jurisprudence of the Tribunal does not suggest that a Trial Chamber is required to determine whether every single individual victim of the alleged crimes against humanity is a “civilian” under international humanitarian law.<sup>165</sup> As a consequence, persons *hors de combat* may also fall under the protection of Article 5 of the Statute.<sup>166</sup>

86. *The attack must also be widespread or systematic.*<sup>167</sup> “Widespread” means that the attack is large in scale with a large number of victims, while “systematic” refers to the organised nature of the attack.<sup>168</sup> It is settled jurisprudence that the existence of a plan need not be proven.<sup>169</sup>

87. *The acts of the perpetrator must form part of the attack.*<sup>170</sup> However, they need not be committed in the midst of that attack. A crime which is committed before or after the main attack against the civilian population or away from it could still, if sufficiently connected, be part of that attack for the purpose of Article 5.<sup>171</sup>

<sup>161</sup> *Martić* Appeal Judgement, para. 305; *Kunarac et al.* Appeal Judgement, para. 90.

<sup>162</sup> See Article 50(3) of Additional Protocol I; *Galić* Appeal Judgement, paras 136-137, 144; *Kordić and Čerkez* Appeal Judgement, paras 50, 97; *Blaškić* Appeal Judgement, paras 113, 115. The Appeals Chamber held “that the definition of civilian contained in Article 50 of Additional Protocol I reflects the definition of civilian for the purpose of applying Article 5 of the Statute”, *Martić* Appeal Judgement, para. 302. See also *Galić* Appeal Judgement, para. 144, fn. 437; *Kordić and Čerkez* Appeal Judgement, para. 97; *Blaškić* Appeal Judgement, paras 110-114. As regards the definition of civilians, see also *infra* para. 92.

<sup>163</sup> See *Galić* Appeal Judgement, paras 136-137, 144; *Blaškić* Appeal Judgement, paras 113, 115.

<sup>164</sup> *Martić* Appeal Judgement, paras 305, 307.

<sup>165</sup> *Martić* Appeal Judgement, para. 308.

<sup>166</sup> *Martić* Appeal Judgement, para. 311.

<sup>167</sup> *Kunarac et al.* Appeal Judgement, para. 85.

<sup>168</sup> *Galić* Trial Judgement, para. 146; *Kunarac et al.* Appeal Judgement, para. 94. Whether the attack was widespread or systematic must be ascertained in light of the means, methods, patterns, resources, participation of officials or authorities, and result of the attack upon that population, *Kunarac et al.* Appeal Judgement, para. 95.

<sup>169</sup> See *Kunarac et al.* Appeal Judgement, para. 98; *Blaškić* Appeal Judgement, para. 120, also holding that the existence of a plan “may be evidentially relevant in proving that an attack was directed against a civilian population and that it was widespread or systematic”.

<sup>170</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 41; *Kunarac et al.* Appeal Judgement, paras 85, 99-100; *Tadić* Appeal Judgement, paras 248, 255.

<sup>171</sup> *Kunarac et al.* Appeal Judgement, para. 100.

88. *The perpetrator must know that there is an attack directed against the civilian population and that his acts are part of that attack*, or at least he must take the risk that his acts form part thereof.<sup>172</sup> However, knowledge of the details of the attack is not necessary.<sup>173</sup> Neither is it required that the perpetrator share the purpose or goal behind the attack.<sup>174</sup>

### C. Attacks on Civilians

89. Perišić is charged with two counts of attacks on civilians, a violation of the laws or customs of war pursuant to Article 3 of the Statute (Counts 4 and 8). The crime of attacks on civilians is based upon Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II both of which provide, in their relevant parts, that “[t]he civilian population as such, as well as individual civilians, shall not be made the object of attack”.<sup>175</sup>

#### 1. Actus Reus

90. The *actus reus* of the crime of attacks on civilians is conducting an attack directed against the civilian population or individual civilians causing death or serious injury to body or health.<sup>176</sup>

91. The term “attack” is defined under Article 49 of Additional Protocol I as “acts of violence against the adversary, whether in offence or in defence”.<sup>177</sup>

92. Article 50 of Additional Protocol I<sup>178</sup> defines a “civilian” as “any person who does not belong to one of the categories of persons referred to in Article 4(A)(1), (2), (3) and (6) of the Third Geneva Convention and in Article 43 of Additional Protocol I”. The term “civilian” is defined negatively as anyone who is not a member of the armed forces or of an organised military group belonging to a party to the conflict.<sup>179</sup> Members of the armed forces and members of militias or

<sup>172</sup> *Blaškić* Appeal Judgement, para. 124; *Kordić and Čerkez* Appeal Judgement, para. 99; *Kunarac et al.* Appeal Judgement, paras 99, 102; *Tadić* Appeal Judgement, para. 248.

<sup>173</sup> *Kunarac et al.* Appeal Judgement, para. 102.

<sup>174</sup> *Kunarac et al.* Appeal Judgement, para. 103, also providing that it is the attack, not the acts of the perpetrator, which must be directed against the target population.

<sup>175</sup> See Article 51(2) of Additional Protocol I; Article 13(2) of Additional Protocol II.

<sup>176</sup> *D. Milošević* Trial Judgement, para. 942; *Galić* Trial Judgement, paras 53, 56.

<sup>177</sup> *Kordić and Čerkez* Appeal Judgement, para. 47; *Martić* Trial Judgement, para. 68; *Galić* Trial Judgement, para. 52.

<sup>178</sup> In interpreting Article 50 of Additional Protocol I in the context of Article 3 of the Statute, the Trial Chamber has referred to the jurisprudence concerning the definitions of a “civilian” and a “civilian population” in the context of Article 5 of the Statute and in light of the following Appeals Chamber holdings: *Blaškić* Appeal Judgement, para. 110 (stating that “Article 50 of Additional Protocol I contains a definition of civilians and civilian populations, and the provisions in this article may largely be viewed as reflecting customary law”); *Martić* Appeal Judgement, para. 299 (holding that “while certain terms have been defined differently in international humanitarian law and in the context of crimes against humanity, the fundamental character of the notion of civilian in international humanitarian law and international criminal law militates against giving it differing meanings under Article 3 and Article 5 of the Statute”).

<sup>179</sup> *Galić* Trial Judgement, para. 47; *D. Milošević* Trial Judgement, para. 945.

volunteer corps forming part of such armed forces cannot claim civilian status. Neither can members of organised resistance groups.<sup>180</sup> The Appeals Chamber has held that:

[T]he specific situation of the victim at the time the crimes are committed may not be determinative of his civilian or non-civilian status. If he is indeed a member of an armed organization, the fact that he is not armed or in combat at the time of the commission of crimes, does not accord him civilian status.<sup>181</sup>

93. The protection from attack afforded to civilians is suspended when and for such time they directly take part in hostilities.<sup>182</sup> In such cases, they become a legitimate target. Taking “direct” part in the hostilities entails engaging in acts of war that by their nature or purpose are likely to cause actual harm to the personnel or matériel of the enemy armed forces.<sup>183</sup>

94. The presence of individual combatants within the population being attacked does not necessarily deprive the population of its characterisation as civilian.<sup>184</sup> The Appeals Chamber has held that “in order to determine whether the presence of soldiers within a civilian population deprives the population of its civilian character, the number of soldiers, as well as whether they are on leave, must be examined”.<sup>185</sup>

95. In determining whether the attack was directed against civilians or the civilian population, the Trial Chamber is entitled to base itself on a case-by-case analysis, taking into account various factors, including:

[T]he means and method used in the course of the attack, the status of the victims, their number, [...] the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.<sup>186</sup>

In addition, the distance between the victims and the source of fire, the ongoing combat activity at the time and location of the incident, the presence of military activities or facilities in the vicinity of

<sup>180</sup> *Blaškić* Appeal Judgement, para. 113; *Martić* Appeal Judgement, para. 292. See also Article 4(A) of the Third Geneva Convention.

<sup>181</sup> *Martić* Appeal Judgement, para. 295; *Galić* Appeal Judgement, fn. 437; *Blaškić* Appeal Judgement, para. 114. See also ICRC Commentary on Additional Protocols, para. 1676 (with respect to Article 43(2) of Additional Protocol I).

<sup>182</sup> Article 51(3) of Additional Protocol I; Article 13(3) of Additional Protocol II; *D. Milošević* Trial Judgement, para. 947; *Galić* Trial Judgement, para. 48.

<sup>183</sup> *D. Milošević* Trial Judgement, para. 947; *Galić* Trial Judgement, para. 48; ICRC Commentary on Additional Protocols, para. 1944 (with respect to Article 51(3) of Additional Protocol I).

<sup>184</sup> *Galić* Appeal Judgement, para. 136; *Blaškić* Appeal Judgement, paras 113, 115; *Kordić and Čerkez* Appeal Judgement, para. 50.

<sup>185</sup> *Galić* Appeal Judgement, para. 137; *Blaškić* Appeal Judgement, para. 115; ICRC Commentary on Additional Protocols, para. 1922 (with respect to Article 50(2) and (3) of Additional Protocol I).

<sup>186</sup> *Galić* Appeal Judgement, para. 132; *Blaškić* Appeal Judgement, para. 106; *Kunarac et al.* Appeal Judgement, para. 91.

the incident, the victims' appearance, including their age, gender, clothing and activity may also be relevant.<sup>187</sup>

96. In customary international law, there is an absolute prohibition against targeting of civilians which may not be derogated from due to military necessity.<sup>188</sup> However, this does not exclude the possibility of civilian casualties incidental to an attack aimed at legitimate military targets provided they are proportionate to the concrete and direct military advantage anticipated prior to the attack.<sup>189</sup>

97. Indiscriminate attacks, that is to say, attacks which strike civilians or civilian objects and military objectives without distinction, may qualify as direct attacks on civilians.<sup>190</sup> In this regard, a direct attack against civilians can be inferred from the indiscriminate character of the weapon used.<sup>191</sup> An attack which may cause civilian casualties disproportionate to the concrete and direct military advantage anticipated is to be considered as indiscriminate.<sup>192</sup> Such an attack may also give rise to the inference that civilians were the object of attack.<sup>193</sup>

98. The parties to a conflict have an obligation "to remove civilians, to the maximum extent feasible from the vicinity of military objectives and to avoid locating military objectives within or near densely populated areas".<sup>194</sup> However, "the failure of a party to abide by this obligation does not relieve the attacking side of its duty to abide by the principles of distinction and proportionality when launching an attack".<sup>195</sup>

99. Finally, the attack in question must have resulted in death or serious injury to body or health within the civilian population.<sup>196</sup>

## 2. *Mens Rea*

100. In order to satisfy the *mens rea* required for the crime of attacks on civilians, the Prosecution must establish that the perpetrator wilfully made the civilian population or individual civilians the

<sup>187</sup> *Strugar* Appeal Judgement, para. 271; *Galić* Appeal Judgement, para. 133.

<sup>188</sup> *Galić* Appeal Judgement, para. 130; *Kordić and Čerkez* Appeal Judgement, para. 54 (as revised by the *Kordić and Čerkez* Appeal Judgement Corrigendum of 26 January 2005); *Blaškić* Appeal Judgement, para. 109.

<sup>189</sup> *Galić* Appeal Judgement, para. 190; *Martić* Trial Judgement, para. 69. See also *Strugar* Appeal Judgement, para. 179. Military objectives that may be lawfully attacked are "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage", Article 52(2) of Additional Protocol I; *Kordić and Čerkez* Appeal Judgement, para. 53.

<sup>190</sup> *Galić* Appeal Judgement, para. 132, affirming *Galić* Trial Judgement, para. 57. See also *Threat or Use of Nuclear Weapons*, ICJ Advisory Opinion, para. 78.

<sup>191</sup> *Galić* Appeal Judgement, para. 132; *Galić* Trial Judgement, fn. 101.

<sup>192</sup> See *Galić* Trial Judgement, para. 58; Article 51(5)(b) of Additional Protocol I.

<sup>193</sup> *Galić* Appeal Judgement, para. 132, affirming *Galić* Trial Judgement, para. 60.

<sup>194</sup> *Galić* Appeal Judgement, para. 194.

<sup>195</sup> *Galić* Appeal Judgement, para. 194, affirming *Galić* Trial Judgement, para. 61.

<sup>196</sup> *Kordić and Čerkez* Appeal Judgement, paras 55-67; *D. Milošević* Trial Judgement, para. 942; *Galić* Trial Judgement, paras 43, 56; *Blaškić* Trial Judgement, para. 180; Article 85(3) of Additional Protocol I.

object of attack.<sup>197</sup> The concept of “wilfulness” encompasses both the notions of direct intent and indirect intent, that is, the concept of recklessness, excluding mere negligence.<sup>198</sup>

101. It must also be proven that the perpetrator was aware or should have been aware of the civilian status of the persons attacked.<sup>199</sup> International humanitarian law dictates that if there is doubt about a person’s status, he shall be considered a civilian.<sup>200</sup> In the context of a criminal trial, it is the Prosecution that must prove that “in the given circumstances a reasonable person could not have believed that the individual he or she attacked was a combatant”.<sup>201</sup> The intent to target civilians can be proved through inferences from direct or circumstantial evidence.<sup>202</sup> The Appeals Chamber further held that “[t]here is no requirement of the intent to attack *particular* civilians; rather it is prohibited to make the civilian population as such, as well as individual civilians, the object of an attack”.<sup>203</sup>

#### **D. Murder**

102. In addition to the general requirements of Articles 3 and 5 of the Statute set out above, the elements of the crime of murder are the following:

- i. the death of a victim;
- ii. the death was the result of an act or omission of the perpetrator; and
- iii. the perpetrator intended to kill the victim or wilfully harm or inflict serious injury with the reasonable knowledge that the attack was likely to result in death.<sup>204</sup>

103. The *actus reus* of murder requires that the victim died as a result of an act or omission of the perpetrator.<sup>205</sup> Proof beyond reasonable doubt that the person was murdered does not require

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<sup>197</sup> *Strugar* Appeal Judgement, para. 270; *Galić* Appeal Judgement, para. 140; Article 85(3)(a) of Additional Protocol I.

<sup>198</sup> *Martić* Trial Judgement, para. 72. *See also* *Strugar* Appeal Judgement, para. 270; *Galić* Appeal Judgement, para. 140, affirming to *Galić* Trial Judgement, para. 54; *D. Milošević* Trial Judgement, para. 951; ICRC Commentary on Additional Protocols, para. 3474 (with respect to Article 85(3) of Additional Protocol I).

<sup>199</sup> *Galić* Appeal Judgement, para. 140, affirming *Galić* Trial Judgement, para. 55.

<sup>200</sup> Article 50(1) of Additional Protocol I. ICRC Commentary on Additional Protocols, para. 1920 stating that the presumption of civilian status applies to “persons who have not committed hostile acts, but whose status seems doubtful because of the circumstances. They should be considered to be civilians until further information is available, and should therefore not be attacked”. *See also* *D. Milošević* Appeal Judgement, para. 60.

<sup>201</sup> *Galić* Appeal Judgement, para. 140, affirming *Galić* Trial Judgement, para. 55. *See also* *Blaškić* Appeal Judgement, para. 111; *Kordić and Čerkez* Appeal Judgement, para. 48.

<sup>202</sup> *D. Milošević* Appeal Judgement, paras 66-67; *Strugar* Appeal Judgement, para. 271.

<sup>203</sup> *Strugar* Appeal Judgement, para. 271.

<sup>204</sup> *Kvočka et al.* Appeal Judgement, para. 261. *See also* *Kordić and Čerkez* Appeal Judgement, para. 37; *Čelebići* Appeal Judgement, para. 423.

<sup>205</sup> *See* *Kvočka et al.* Appeal Judgement, para. 259.



retrieval of the victim's dead body.<sup>206</sup> The death may be established by circumstantial evidence, provided it is the only reasonable inference that can be drawn from the evidence.<sup>207</sup>

104. The *mens rea* for murder includes both direct and indirect intent. Direct intent requires the perpetrator's desire to cause the death of the victim as a result of his act or omission, whereas indirect intent comprises the perpetrator's knowledge that the death of the victim was the probable consequence of his act or omission.<sup>208</sup> Negligence and gross negligence cannot be construed as indirect intent.<sup>209</sup>

### **E. Extermination**

105. Perišić is charged with extermination, as a crime against humanity under Article 5(b) of the Statute (Count 13).

106. Extermination is the act of killing on a large scale.<sup>210</sup> The jurisprudence of the Tribunal has consistently held that, apart from the question of scale, the core elements of murder and extermination are the same.<sup>211</sup> The *actus reus* consists of "any act, omission or combination thereof that contributes directly or indirectly to the killing of a large number of individuals".<sup>212</sup> It also includes subjecting "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>213</sup>

107. The requirement of killings on a large scale does not suggest a numerical minimum,<sup>214</sup> nor a precise identification of certain named or described persons; it suffices to establish that killings occurred on a mass scale.<sup>215</sup> An assessment of whether this requirement has been met must be made

<sup>206</sup> See *Kvočka et al.* Appeal Judgement, para. 260; *Martić* Trial Judgement, para. 59; *Krnjelac* Trial Judgement, para. 326; *Tadić* Trial Judgement, para. 240.

<sup>207</sup> *Kvočka et al.* Appeal Judgement, para. 260. See also *Delić* Trial Judgement, para. 47; *Martić* Trial Judgement, para. 59; *Brdanin* Trial Judgement, paras 383-385; *Krnjelac* Trial Judgement, paras 326-327; *Tadić* Trial Judgement, para. 240; *Halilović* Trial Judgement, para. 37.

<sup>208</sup> See *Kvočka et al.* Appeal Judgement, para. 259; *Delić* Trial Judgement, para. 48; *Strugar* Trial Judgement, para. 235; *Krstić* Trial Judgement, para. 495; *Čelebići* Trial Judgement, para. 435.

<sup>209</sup> *Delić* Trial Judgement, para. 48; *Martić* Trial Judgement, para. 60; *Orić* Trial Judgement, para. 348; *Stakić* Trial Judgement, para. 587. See also *Strugar* Trial Judgement, paras 235-236; *Brdanin* Trial Judgement, para. 386.

<sup>210</sup> *Stakić* Appeal Judgement, para. 259, citing *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 516. See also *Seromba* Appeal Judgement, para. 190.

<sup>211</sup> *Krajišnik* Trial Judgement, para. 716; *Blagojević and Jokić* Trial Judgement, para. 571; *Brdanin* Trial Judgement, para. 388. See also *Martić* Trial Judgement, para. 62. For the elements of murder, see *supra* paras 102-104.

<sup>212</sup> *Seromba* Appeal Judgement, para. 189, citing *Brdanin* Trial Judgement, para. 389; *Vasiljević* Trial Judgement, para. 229.

<sup>213</sup> *Stakić* Appeal Judgement, para. 259; *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 522.

<sup>214</sup> *Brdanin* Appeal Judgement, para. 471; *Stakić* Appeal Judgement, para. 260; *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 516. By way of illustration, the Trial Chamber in *Krajišnik* found that incidents involving less than thirty killings fulfilled the element of mass scale, considering the surrounding circumstances, *Krajišnik* Trial Judgement, para. 720.

<sup>215</sup> *Stakić* Appeal Judgement, para. 260 citing *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 521; *Brdanin* Appeal Judgement, para. 471.

on the basis of a case-by-case analysis of all relevant factors.<sup>216</sup> It is not necessary that a large number of killings occurred during a single incident in a concentrated place over a short period. It may also be found “on an accumulation of separate and unrelated incidents, meaning on an aggregated basis”.<sup>217</sup> The Trial Chamber further notes that the elements of the crime of extermination neither require the existence of a “vast scheme of collective murder”.<sup>218</sup>

108. The *mens rea* 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 systematic subjection of a number of people, to conditions of living that would lead to their deaths”.<sup>219</sup>

#### F. Other Inhumane Acts

109. Perišić is charged with inhumane acts, as crimes against humanity punishable under Article 5(i) of the Statute. These include injuring and wounding civilians (Counts 3 and 7) and inflicting serious injuries, wounding and forcible transfer (Count 11).

110. “Other inhumane acts” is a category of crimes against humanity recognised as forming part of customary international law.<sup>220</sup> It functions as a residual category for serious crimes that are not otherwise enumerated in Article 5 of the Statute, but which require proof of the same *chapeau* elements.<sup>221</sup>

111. According to the Appeals Chamber, serious physical and mental injury or wounding is an “inhumane act” within the meaning of Article 5 of the Statute.<sup>222</sup> To establish the *actus reus* “the victim must have suffered serious bodily or mental harm” and the suffering must be the result of an act of the perpetrator.<sup>223</sup> The degree of severity must be assessed on a case by case basis with due regard for the individual circumstances.<sup>224</sup>

<sup>216</sup> *Martić* Trial Judgement, para. 63; *Stakić* Trial Judgement, para. 640; *Brdanin* Trial Judgement, para. 391; *Blagojević and Jokić* Trial Judgement, para. 573. The relevant factors include “the time and place of the killings, the selection of the victims, and the manner in which they were targeted”, *Krajišnik* Trial Judgement, para. 716. See also *Nahimana et al.* Trial Judgement, para. 1061.

<sup>217</sup> *Martić* Trial Judgement, para. 63; *Brdanin* Trial Judgement, para. 391. See also *Stakić* Trial Judgement, para. 640.

<sup>218</sup> *Stakić* Appeal Judgement, paras 258-259. See also *Krstić* Appeal Judgement, para. 225.

<sup>219</sup> *Stakić* Appeal Judgement, para. 259, citing *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 522.

<sup>220</sup> *Stakić* Appeal Judgement, para. 315. The crime of other inhumane acts has been included in the following international legal instruments: Article 6(c) of the Nuremberg Charter; Article 5(c) of the Tokyo Charter; Article II(c) of Control Council Law No. 10. Convictions have been entered on this ground. The Appeals Chamber also noted “that numerous human rights treaties also prohibit inhuman and degrading treatment”, including the ICCPR and the ECHR, *Stakić* Appeal Judgement, fn. 649. See also *Kordić and Čerkez* Appeal Judgement, para. 117.

<sup>221</sup> *Galić* Trial Judgement, para. 152. See also *Kordić and Čerkez* Appeal Judgement, para. 117.

<sup>222</sup> *Blaškić* Trial Judgement, para. 239. See also *Kordić and Čerkez* Appeal Judgement, para. 117.

<sup>223</sup> *Kordić and Čerkez* Appeal Judgement, para. 117.

<sup>224</sup> *Ibid.*

112. The *mens rea* for the crime of inhumane acts is satisfied if, at the time of the act or omission, the perpetrator had direct or indirect intent to inflict, by act or omission, serious physical or mental suffering or to commit a serious attack on the victim's human dignity.<sup>225</sup> Indirect intent requires that the perpetrator knew that his or her act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity and was reckless thereto.<sup>226</sup>

113. Forcible transfer is considered in the jurisprudence of the Tribunal to constitute "other inhumane acts".<sup>227</sup> Forcible transfer entails the forcible displacement of persons from the area in which they are lawfully present, without grounds permitted under international law.<sup>228</sup>

114. The *actus reus* of forcible transfer is the forced displacement of persons within national boundaries.<sup>229</sup> The element that the displacement be forced requires that the victims had no genuine choice in their displacement.<sup>230</sup> Fear of violence, duress, detention, psychological oppression, and other such circumstances may create an environment where there is no choice but to leave, thus amounting to the forced displacement of persons.<sup>231</sup> In situations where the victims have consented, or even requested, their removal, that consent "must be real in the sense that it is given voluntarily and as a result of the individual's free will, assessed in the light of surrounding circumstances".<sup>232</sup> Consequently, the trier of fact must consider the prevailing situation and atmosphere, as well as all relevant circumstances, including in particular the victims' vulnerability, when assessing whether the displaced victims had a genuine choice to remain or leave.<sup>233</sup>

115. International law recognises limited circumstances under which involuntary displacements are permitted on humanitarian grounds.<sup>234</sup> Thus, in cases where displacements are permitted on humanitarian grounds, the act of displacement cannot constitute the *actus reus* of forcible

<sup>225</sup> *Krnjelac* Trial Judgement, para. 132; *Vasiljević* Trial Judgement, para. 236; *Kayishema and Ruzindana* Trial Judgement, para. 153. See also *Kordić and Čerkez* Appeal Judgement, para. 117.

<sup>226</sup> *D. Milošević* Trial Judgement, para. 935; *Blagojević and Jokić* Trial Judgement, para. 628; *Krnjelac* Trial Judgement, para. 132; *Vasiljević* Trial Judgement, para. 236; *Galić* Trial Judgement, para. 154; *Kayishema and Ruzindana* Trial Judgement, para. 153.

<sup>227</sup> *Stakić* Appeal Judgement, para. 317; *Kupreškić et al.* Trial Judgement, para. 566; *Kordić and Čerkez* Trial Judgement, para. 270.

<sup>228</sup> *Krajišnik* Trial Judgement, para. 723.

<sup>229</sup> *Stakić* Appeal Judgement, para. 317.

<sup>230</sup> *Stakić* Appeal Judgement, para. 279; *Krnjelac* Appeal Judgement, para. 229.

<sup>231</sup> *Stakić* Appeal Judgement, para. 281.

<sup>232</sup> *Stakić* Appeal Judgement, para. 279. See also *Krnjelac* Appeal Judgement para. 229.

<sup>233</sup> *Blagojević and Jokić* Trial Judgement, para. 596.

<sup>234</sup> Article 49(2) of Geneva Convention IV, which is applicable to international armed conflict, 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". Similarly, Article 17 of Additional Protocol II, which is applicable to non-international armed conflict, provides that "[t]he displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand". See also *Martić* Trial Judgement, para. 109.

transfer.<sup>235</sup> However, displacements for humanitarian reasons are not justifiable where the humanitarian crisis that caused the displacement is itself the result of the accused's own unlawful activity.<sup>236</sup>

116. The *mens rea* of forcible transfer is that the perpetrator must intend to displace the victims within the relevant national border.<sup>237</sup> It is not necessary that the perpetrator intends the displacement to be permanent.<sup>238</sup>

### G. Persecutions

117. Perišić is charged with persecutions on political, racial or religious grounds, as a crime against humanity under Article 5(h) of the Statute (Count 12), including murder, cruel and inhumane treatment and forcible transfer.

118. The crime of persecutions consists of an act or omission which:

(a) discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law (*actus reus*); and

(b) was carried out deliberately with the intention to discriminate on political, racial or religious grounds (*mens rea*).<sup>239</sup>

119. The acts underlying the crime of persecutions can include those listed under the other sub-headings of Article 5 of the Statute or provided for elsewhere in the Statute,<sup>240</sup> as well as other acts that are not explicitly mentioned in the Statute.<sup>241</sup> The Trial Chamber notes in this respect that the underlying act itself need not constitute a crime in international law.<sup>242</sup> However, not any denial or infringement of a fundamental right, committed with the requisite discriminatory intent, is serious enough to constitute the crime of persecution as a crime against humanity.<sup>243</sup> In order to amount to persecutions, acts not enumerated as a crime under the Statute must be of equal gravity to the crimes listed in Article 5 of the Statute, whether considered in isolation or in conjunction with other

<sup>235</sup> *Stakić* Appeal Judgement, paras 286-287.

<sup>236</sup> *Stakić* Appeal Judgement, para. 287.

<sup>237</sup> *Stakić* Appeal Judgement, para. 317.

<sup>238</sup> *Stakić* Appeal Judgement, paras 278, 317.

<sup>239</sup> *Stakić* Appeal Judgement, para. 327; *Kvočka et al.* Appeal Judgement, para. 320; *Kordić and Čerkez* Appeal Judgement, para. 101; *Blaškić* Appeal Judgement, para. 131; *Vasiljević* Appeal Judgement, para. 113; *Krnojelac* Appeal Judgement, para. 185. Notwithstanding the conjunctive “and” in the text of Article 5(h) of the Statute, it is well established in the jurisprudence of the Tribunal that each of the three grounds listed (political, racial or religious) is in itself sufficient to qualify an act as persecution, *Tadić* Trial Judgement, para. 713. *See also* *Blaškić* Appeal Judgement, para. 164; *Krnojelac* Appeal Judgement, para. 184.

<sup>240</sup> *Brdanin* Appeal Judgement, para. 296; *Krnojelac* Appeal Judgement, para. 219.

<sup>241</sup> *Brdanin* Appeal Judgement, para. 296. *See also* *Kvočka et al.* Appeal Judgement, paras 321-323.

<sup>242</sup> *Brdanin* Appeal Judgement, para. 296; *Kvočka et al.* Appeal Judgement, para. 323.

<sup>243</sup> *Kordić and Čerkez* Appeal Judgement, para. 103; *Blaškić* Appeal Judgement, para. 139.

acts.<sup>244</sup> In order to apply the standard of gravity, these acts should be examined in their context and with consideration of their cumulative effect.<sup>245</sup>

120. According to the jurisprudence of the Tribunal, the act of murder, cruel and inhumane treatment as well as forcible transfer, charged by the Prosecution under Count 12 of the Indictment, may constitute underlying acts of the crime of persecution.<sup>246</sup>

121. The *mens rea* for persecutions requires a specific intent to discriminate on political, racial or religious grounds.<sup>247</sup> This intent must be aimed at a group, rather than an individual; thus, the *mens rea* “is the specific intent to cause injury to a human being because he belongs to a particular community or group”.<sup>248</sup> It is the requirement that the underlying act be committed on discriminatory grounds that distinguishes persecution from other crimes against humanity.<sup>249</sup> There is no requirement that the perpetrator possess a “persecutory intent” over and above a discriminatory intent.<sup>250</sup>

122. The discriminatory intent may, for example, be inferred from the discriminatory nature of an attack characterised as a crime against humanity, provided that the circumstances surrounding the commission of the alleged acts substantiate the existence of such a specific intent.<sup>251</sup> Circumstances that may be taken into consideration when inferring discriminatory intent include “the systematic nature of the crimes committed against a racial or religious group and the general attitude of the alleged perpetrator as demonstrated by his behaviour”.<sup>252</sup> Generally, such “specific intent in general can only be inferred from objective facts and the general conduct of an accused seen in its entirety”.<sup>253</sup>

123. The Prosecution charges Perišić with the crime of murder as a crime against humanity under Counts 1, 5 and 9, and as a violation of the laws or customs of war under Counts 2, 6 and 10

<sup>244</sup> *Brdanin* Appeal Judgement, para. 296. See also *Simić* Appeal Judgement, para. 177; *Naletilić and Martinović* Appeal Judgement, para. 574; *Kvočka et al.* Appeal Judgement, paras 321-323.

<sup>245</sup> *Naletilić and Martinović* Appeal Judgement, para. 574; *Kvočka et al.* Appeal Judgement, para. 321. For examples of acts not listed in Article 5 of the Statute which were still found to amount to sufficient gravity to constitute persecution, considering their context and cumulative effect, see *Kvočka et al.* Appeal Judgement, paras 322-325; *Krnjelac* Appeal Judgement, para. 199.

<sup>246</sup> See e.g. *Kordić and Čerkez* Appeal Judgement, para. 106; *Blaškić* Appeal Judgement, paras 143, 151-153, 155; *Vasiljević* Appeal Judgement, para. 143; *Krnjelac* Appeal Judgement, para. 188.

<sup>247</sup> *Stakić* Appeal Judgement, para. 328; *Kvočka et al.* Appeal Judgement, para. 460; *Blaškić* Appeal Judgement, para. 164; *Kordić and Čerkez* Appeal Judgement, para. 110; *Vasiljević* Appeal Judgement, para. 113; *Krnjelac* Appeal Judgement, para. 184.

<sup>248</sup> *Kordić and Čerkez* Appeal Judgement, para. 111; *Blaškić* Appeal Judgement, para. 165.

<sup>249</sup> *Martić* Trial Judgement, para. 115; *Kupreškić et al.* Trial Judgement, para. 607.

<sup>250</sup> *Kordić and Čerkez* Appeal Judgement, para. 111; *Blaškić* Appeal Judgement, para. 165.

<sup>251</sup> See *Naletilić and Martinović* Appeal Judgement, paras 131, 146; *Kvočka et al.* Appeal Judgement, para. 366; *Kordić and Čerkez* Appeal Judgement, para. 110; *Blaškić* Appeal Judgement, para. 164; *Krnjelac* Appeal Judgement, 184.

<sup>252</sup> *Kvočka et al.* Appeal Judgement, para. 460; *Krnjelac* Appeal Judgement, para. 184.

<sup>253</sup> *Kordić and Čerkez* Appeal Judgement, para. 715.

pursuant to Articles 5 and 3 of the Statute respectively.<sup>254</sup> Common Article 3(1) (a) of the Geneva Conventions provides the basis for the inclusion of murder under Article 3 of the Statute.<sup>255</sup>

## H. Individual Criminal Responsibility

### 1. Responsibility Under Article 7(1) of the Statute – Aiding and Abetting

124. The Prosecution charges Momčilo Perišić with aiding and abetting the planning, preparation or execution of the crimes alleged in Counts 1 to 4 and 9 to 13 of the Indictment pursuant to Article 7(1).<sup>256</sup>

125. Article 7(1) of the Statute provides:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

#### (a) Aiding and Abetting

##### (i) Actus Reus

126. “Aiding and abetting” consists of acts or omissions directed at providing practical assistance, encouragement or moral support to the perpetration of the crime, which have a substantial effect on the perpetration of the crime.<sup>257</sup> The Appeals Chamber expressly stated that “specific direction” is not a requisite element of the *actus reus* of aiding and abetting.<sup>258</sup> There is no requirement of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime or that such conduct served as a condition precedent to the commission of

<sup>254</sup> Indictment, pp 14, 17, 21.

<sup>255</sup> *Čelebići* Appeal Judgement, paras 136, 419-420; *Tadić* October 1995 Appeal Jurisdiction Decision, paras 87, 89; *Orić* Trial Judgement, para. 344; *Delić* Trial Judgement, para. 43; *Krnjelac* Trial Judgement, para. 52. Common Article 3: “[T]he following acts are and shall remain prohibited at any time and in any place whatsoever [...]: (a) violence to life and person, *in particular murder of all kinds, mutilation, cruel treatment and torture*; [...]” (emphasis added).

<sup>256</sup> Indictment, pp 14, 21.

<sup>257</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Karera* Appeal Judgement, para. 321; *Blagojević and Jokić* Appeal Judgement, para. 127; *Blaškić* Appeal Judgement, para. 45; *Simić* Appeal Judgement, para. 85. See also *Orić* Appeal Judgement, para. 43. For a thorough analysis of the *actus reus* of aiding and abetting, see *Furundžija* Trial Judgement, paras 192-235.

<sup>258</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 159. The Appeals Chamber in *Blagojević and Jokić* held that “specific direction” has not always been included as element of the *actus reus* of aiding and abetting and that this may be explained that “such a finding will often be implicit in the finding that the accused has provided practical assistance to the principal perpetrator which had a substantial effect on the commission of the crime” considered that “to the extent that specific direction forms an implicit part of the *actus reus* of aiding and abetting, where the accused knowingly participated in the commission of an offence and his or her participation substantially affected the commission of that offence, the fact that his or her participation amounted to no more than his or her ‘routine duties’ will not exculpate the accused”, *Blagojević and Jokić* Appeal Judgement, paras 182, 185-189.

the crime.<sup>259</sup> The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been committed<sup>260</sup> and at a location which is removed from that where the principal crime is committed.<sup>261</sup>

127. The aider and abettor is always an accessory to the crime perpetrated by another person, the principal.<sup>262</sup> For an accused to be liable for aiding and abetting, the underlying crime must ultimately be committed by the principal perpetrator. It is however not necessary that the latter be identified or tried, even in cases of crimes requiring specific intent.<sup>263</sup> It is also not necessary that the principal perpetrator be aware of the aider and abettor's contribution to the crime.<sup>264</sup>

128. The determination of whether conduct substantially assists the commission of a crime requires a fact-based inquiry.<sup>265</sup> The Appeals Chamber has determined that the *actus reus* of aiding and abetting may be satisfied by a commander permitting the use of resources under his or her control, including personnel, to facilitate the perpetration of a crime.<sup>266</sup> Furthermore, the fact that the aider and abettor's conduct amounted to no more than his "routine duties" does not exculpate him, if such conduct substantially contributed to the commission of the crime.<sup>267</sup>

(ii) *Mens Rea*

129. The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.<sup>268</sup> The aider and abettor must be aware of the "essential elements" of the crime committed by the principal perpetrator, including the state of mind of the principal perpetrator.<sup>269</sup> It is not required, however, that the aider and abettor *share* the *mens rea* required for such crime.<sup>270</sup>

130. As consistently confirmed by the Appeals Chamber:

<sup>259</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Blagojević and Jokić* Appeal Judgement, paras 127, 134; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48. See also *Nahimana et al.* Appeal Judgement, para. 482.

<sup>260</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48.

<sup>261</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Blaškić* Appeal Judgement, para. 48.

<sup>262</sup> *Tadić* Appeal Judgement, para. 229.

<sup>263</sup> *Milutinović et al.* Trial Judgement, para. 92.

<sup>264</sup> *Tadić* Appeal Judgement, para. 229; *Milutinović et al.* Trial Judgement, para. 94.

<sup>265</sup> *Blagojević and Jokić* Appeal Judgement, para. 134.

<sup>266</sup> *Blagojević and Jokić* Appeal Judgement, para. 127. *Krstić* Appeal Judgement, paras 137, 138, 144.

<sup>267</sup> *Blagojević and Jokić* Appeal Judgement, para. 189.

<sup>268</sup> *Seromba* Appeal Judgement, para. 56; *Blagojević and Jokić* Appeal Judgement, para. 127; *Ntagerura et al.* Appeal Judgement, para. 370; *Simić* Appeal Judgement, para. 86; *Blaškić* Appeal Judgement, paras 45-46; *Vasiljević* Appeal Judgement, para. 102.

<sup>269</sup> *Blagojević and Jokić* Appeal Judgement, para. 221. See also *Orić* Appeal Judgement, para. 43. It is not required that the accused knew the precise crime that was intended and committed by the principal, see *Blaškić* Appeal Judgement, para. 50.

<sup>270</sup> *Blagojević and Jokić* Appeal Judgement, para. 221 (emphasis added).

[I]t is not necessary that the aider and abettor knows either the precise crime that was intended or the one that was, in the event, committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor.<sup>271</sup>

131. In addition, the Appeals Chamber recently recalled that it rejected an elevated *mens rea* requirement for aiding and abetting, namely the proposition that the aider and abettor needs to have intended to provide assistance.<sup>272</sup>

132. In cases of specific intent crimes, the aider and abettor must know of the principal perpetrator's specific intent.<sup>273</sup>

(iii) Omission

133. As anticipated earlier, the *actus reus* may, under certain circumstances, take the form of an omission.<sup>274</sup> The Appeals Chamber has consistently indicated that an accused may incur criminal responsibility under Article 7(1) for omission where there is a legal duty to act.<sup>275</sup> The Appeals Chamber in *Mrkšić and Šljivančanin* recently found that the Trial Chamber in that case “properly considered aiding and abetting by omission as a recognised mode of liability under the International Tribunal’s jurisdiction”.<sup>276</sup>

134. The *actus reus* and *mens rea* requirements in order to enter a conviction for aiding and abetting by omission are the same as for aiding and abetting by a positive act.<sup>277</sup> It follows that the *actus reus* will be fulfilled when it is established that, given the circumstances of the case, the failure to discharge a legal duty to act was directed to assist, encourage or lend moral support to the perpetration of the crime and had a substantial effect on the realisation of that crime.<sup>278</sup> As to the *mens rea*, “the aider and abettor must know that his omission assists in the commission of the crime

<sup>271</sup> *Simić* Appeal Judgement, para. 86; *Mrkšić and Šljivančanin* Appeal Judgement, para. 49. See also *Blaškić* Appeal Judgement, para. 49, citing *Furundžija* Trial Judgement, para. 246; *Ndindabahizi* Appeal Judgement, para. 122.

<sup>272</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 159. See also *Blaškić* Appeal Judgement, para. 49, citing *Vasiljević* Appeal Judgement, para. 102; *Blagojević and Jokić* Appeal Judgement, para. 222.

<sup>273</sup> *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, para. 86. See also *Krstić* Appeal Judgement, paras 140-141.

<sup>274</sup> *Blaškić* Appeal Judgement, paras 47, 663.

<sup>275</sup> *Mrkšić and Šljivančanin* Appeal Judgement, paras 134-135; *Orić* Appeal Judgement, para. 43; *Brdanin* Appeal Judgement, para. 274; *Galić* Appeal Judgement, para. 175; *Blaškić* Appeal Judgement, paras 47, 663-664; *Nahimana et al.* Appeal Judgement, para. 482. As to the legal duty to act, the Appeals Chamber has, for instance, held that the breach of a legal duty imposed by the laws and customs of war gives rise to individual criminal responsibility, *Mrkšić and Šljivančanin* Appeal Judgement, paras 93-94, 151.

<sup>276</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 135.

<sup>277</sup> See *Mrkšić and Šljivančanin* Appeal Judgement, paras 49, 81, 93-94, 146, 156; *Orić* Appeal Judgement, para. 43; *Brdanin* Appeal Judgement, para. 274.

<sup>278</sup> *Mrkšić and Šljivančanin* Appeal Judgement, paras 49, 146.



of the principal perpetrator and must be aware of the essential elements of the crime which was ultimately committed by the principal perpetrator”.<sup>279</sup>

135. The Appeals Chamber held that this form of liability necessarily and implicitly requires that the accused had the ability to act, *i.e.* that “there were means available to the accused to fulfil [his legal] duty”.<sup>280</sup>

(iv) “Tacit Approval and Encouragement”

136. An accused may incur criminal responsibility for aiding and abetting, “when it is established that his conduct amounted to tacit approval and encouragement of the crime and that such conduct substantially contributed to the crime”.<sup>281</sup> The Appeals Chamber in *Brdanin* drew a distinction between aiding and abetting by omission where there is a legal duty to act and aiding and abetting by tacit approval and encouragement.<sup>282</sup> The criminal responsibility for “tacit approval and encouragement” is based not on a duty to act, but on “the encouragement and support that might be afforded to the principals of the crime from such an omission”.<sup>283</sup> In cases where criminal responsibility was found, the accused held a position of authority over the principal perpetrator and was present at the scene of the crime. Such combination allowed the inference that his non-intervention amounted to tacit approval and encouragement.<sup>284</sup> The contribution of the accused does not need to be tangible and his presence does not need to be a *conditio sine qua non* to the commission of the crime by the principal perpetrator, provided he is aware of the possible effect of his presence on the commission of the crime.<sup>285</sup>

2. Responsibility Under Article 7(3) of the Statute – Superior Responsibility

137. The Prosecution charges Momčilo Perišić with superior responsibility pursuant to Article 7(3) of the Statute for failing to prevent or punish his subordinates, including the military personnel of the Army of the Republika Srpska (“VRS”) and the Army of the Serbian Krajina (“SVK”), for the commission of the crimes alleged in Counts 1 to 13 of the Indictment.

<sup>279</sup> *Mrkšić and Šljivančanin* Appeal Judgement, paras 49, 146.

<sup>280</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 154.

<sup>281</sup> *Brdanin* Appeal Judgement, para. 273. *See also Kayishema and Ruzindana* Trial Judgement, paras 201-202; *Aleksovski* Trial Judgement, para. 87; *Akayesu* Trial Judgement, para. 706.

<sup>282</sup> *Brdanin* Appeal Judgement, paras 273-274; *Ntagerura et al.* Appeal Judgement, para. 338. *See also Aleksovski* Trial Judgement, para. 87; *Akayesu* Trial Judgement, para. 706.

<sup>283</sup> *Brdanin* Appeal Judgement, para. 273. *See also Kayishema and Ruzindana* Appeal Judgement, paras 201-202, affirming *Kayishema and Ruzindana* Trial Judgement, para. 202; *Akayesu* Trial Judgement, para. 705.

<sup>284</sup> *Brdanin* Appeal Judgement, para. 273; *Kayishema and Ruzindana* Trial Judgement, para. 200; *Furundžija* Trial Judgement, paras 207-209.

<sup>285</sup> *Kayishema and Ruzindana* Appeal Judgement, para. 201, affirming *Kayishema and Ruzindana* Trial Judgement, paras 200-201.

138. Article 7(3) of the Statute reads as follows:

The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

Article 7(3) of the Statute is applicable to all acts referred to in Articles 2 to 5 of the Statute and applies to both international and non-international armed conflicts.<sup>286</sup> Superior responsibility applies to every superior at every level.<sup>287</sup> This also includes responsibility, for example, for military troops who have been temporarily assigned to a military commander,<sup>288</sup> if the troops were under the effective control of that commander at the time when the acts charged in the indictment were committed.<sup>289</sup> Furthermore, “commission” by a subordinate as used in Article 7(3) must be understood in a broad sense, to encompass all modes of liability listed in Article 7(1).<sup>290</sup> The superior does not need to know the exact identity of those subordinates who committed the crimes, to be held responsible under Article 7(3) of the Statute.<sup>291</sup>

139. With regard to the nature of superior responsibility in international law, this Trial Chamber concurs with the *Halilović* Trial Chamber, which, having examined in detail the development of the notion of command responsibility with a view to determining its nature, held that “command responsibility is responsibility for [the] omission” to prevent or punish crimes committed by subordinates,<sup>292</sup> and that the gravity to be attached to the superior’s omission is to be considered in proportion to the gravity of the crime committed by the subordinate.<sup>293</sup>

(a) The Elements of Superior Responsibility

140. It is firmly established in the jurisprudence of the Tribunal that for a superior to be held responsible under Article 7(3) of the Statute, the following elements must be established:

- i. the existence of a superior-subordinate relationship;

<sup>286</sup> See e.g. *Hadžihasanović and Kubura* Appeal Jurisdiction Decision, para. 31.

<sup>287</sup> See *Kunarac et al.* Trial Judgement, para. 398.

<sup>288</sup> *Kunarac et al.* Trial Judgement, para. 399.

<sup>289</sup> *Kunarac et al.* Trial Judgement, para. 399, citing *Čelebići* Appeal Judgement, paras 197-198, 256.

<sup>290</sup> *Nahimana et al.* Appeal Judgement, paras 485-486; *Orić* Appeal Judgement, para. 21; *Blagojević and Jokić* Appeal Judgement, paras 280-282.

<sup>291</sup> *Blagojević and Jokić* Appeal Judgement, para. 287; *Delić* Trial Judgement, para. 56; *Orić* Trial Judgement, para. 305. The Appeals Chamber held that “notwithstanding the degree of specificity with which the culpable subordinates must be identified, in any event, their existence as such must be established. If not, individual criminal liability under Article 7(3) of the Statute cannot arise”, *Orić* Appeal Judgement, para. 35.

<sup>292</sup> *Halilović* Trial Judgement, para. 54; *Hadžihasanović and Kubura* Trial Judgement, paras 75, 191. See also *Orić* Trial Judgement, para. 293.

<sup>293</sup> *Halilović* Trial Judgement, para. 54. “[T]he gravity of the failure to prevent or punish is in part dependent on the gravity of the underlying subordinate crimes”, *Čelebići* Appeal Judgement, para. 741.

- ii. the superior knew or had reason to know that the criminal act was about to be or had been committed; and
- iii. the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.<sup>294</sup>

(i) Superior-Subordinate Relationship

141. The superior's position of command over the perpetrators of the crimes is the legal basis upon which rests the commander's duty to act in order to prevent or punish the crimes of his subordinates and the corollary liability for a failure to do so.<sup>295</sup>

142. The existence of a superior-subordinate relationship depends on two factors: i) whether at the time of the commission of the crimes<sup>296</sup> the perpetrators were subordinates of the superior and ii) whether the latter exercised effective control over them.<sup>297</sup>

143. The subordination does not need to be direct or formal.<sup>298</sup> A superior may be held responsible pursuant to Article 7(3) whether he was a *de jure* or *de facto* commander, as long as by virtue of his position, he was "senior in some sort of formal or informal hierarchy to the perpetrator"<sup>299</sup> and exercised effective control over such subordinate.<sup>300</sup>

144. Effective control is defined as the superior's material ability to prevent or punish criminal conduct of his subordinates. However that control is exercised, this is the threshold to be reached in establishing a superior-subordinate relationship for the purpose of Article 7(3).<sup>301</sup>

145. As a matter of law, it is immaterial whether effective control descends from the superior to the subordinate perpetrator through intermediary subordinates. Likewise, it is immaterial whether the subordinate is found to have participated in the crimes through intermediaries as long as his criminal responsibility is established beyond reasonable doubt.<sup>302</sup>

<sup>294</sup> *Blaškić* Appeal Judgement, para. 484. See also *Nahimana et al.* Appeal Judgement, para. 484; *D. Milošević* Appeal Judgement, para. 280.

<sup>295</sup> *Aleksovski* Appeal Judgement, para. 76; *Čelebići* Appeal Judgement, para. 191.

<sup>296</sup> See *Hadžihasanović and Kubura* Appeal Jurisdiction Decision, para. 51.

<sup>297</sup> See *Čelebići* Appeal Judgement, para. 303; *Halilović* Appeal Judgement, para. 59.

<sup>298</sup> *Ibid.*

<sup>299</sup> *Halilović* Appeal Judgement, para. 59. See also *Čelebići* Appeal Judgement, paras 193, 195. A superior vested with *de jure* authority who does not have effective control over his or her subordinates would therefore not incur criminal responsibility pursuant to the doctrine of superior responsibility, whereas a *de facto* superior who lacks formal letters of appointment or commission but, in reality, has effective control over the perpetrators of offences would incur criminal responsibility where he failed to prevent or punish such criminal conduct, see *Čelebići* Appeal Judgement, para. 197. See also *Strugar* Trial Judgement, para. 363; *High Command Case*, pp 543-544.

<sup>300</sup> See *Čelebići* Appeal Judgement, paras 192-198.

<sup>301</sup> *Halilović* Appeal Judgement, para. 59; *Čelebići* Appeal Judgement, para. 256.

<sup>302</sup> *Orić* Appeal Judgement, para. 20.

146. The Appeals Chamber in *Čelebići* held that a court may presume that the possession of *de jure* power over a subordinate may result in effective control unless proof of the contrary is produced. However, as clarified by the Appeals Chamber in *Hadžihasanović and Kubura*:

[T]he Appeals Chamber in *Čelebići* did not reverse the burden of proof. It simply acknowledged that the possession of *de jure* authority constitutes *prima facie* a reasonable basis for assuming that an accused has effective control over his subordinates. Thus, the burden of proving beyond reasonable doubt that the accused had effective control over his subordinates ultimately rests with the Prosecution.<sup>303</sup>

147. Cooperation in itself and/or the mere ability to exercise influence over subordinates is not sufficient to establish effective control.<sup>304</sup>

148. The indicators of effective control are more a matter of evidence than of law<sup>305</sup> and are “limited to showing that the accused had the power to prevent, punish, or initiate measures leading to proceedings against the alleged perpetrators where appropriate”.<sup>306</sup> Factors indicative of an individual’s position of authority and effective control may include: the procedure used for appointment of an accused,<sup>307</sup> his official position,<sup>308</sup> his ability to issue orders and whether these are in fact followed,<sup>309</sup> the power to order combat action and re-subordinate units,<sup>310</sup> the availability of material and human resources,<sup>311</sup> the authority to apply disciplinary measures,<sup>312</sup> the authority to promote, demote or remove particular soldiers<sup>313</sup> and the capacity to intimidate subordinates into compliance.<sup>314</sup> The Appeals Chamber in *Orić* held that the subordinate’s erratic behaviour cannot be taken into account, when it is established that the superior-subordinate relationship exists. However, if the existence of such relationship is not clear, then it may be relevant to take into

<sup>303</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 21. See also *Orić* Appeal Judgement, paras 91-92; *Blagojević and Jokić* Appeal Judgement, para. 302; *Halilović* Appeal Judgement, para. 85.

<sup>304</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 214.

<sup>305</sup> *Strugar* Appeal Judgement, para. 254; *Blaškić* Appeal Judgement, para. 69. See also *Čelebići* Appeal Judgement, para. 206; *Aleksovski* Appeal Judgement, paras 73-74.

<sup>306</sup> *Blaškić* Appeal Judgement, para. 69; See also *Aleksovski* Appeal Judgement, para. 76.

<sup>307</sup> *Halilović* Trial Judgement, para. 58.

<sup>308</sup> *Halilović* Trial Judgement, para. 58; *Kordić and Čerkez* Trial Judgement, para. 418. The Appeals Chamber recognised that the *de jure* position of a superior may be a *prima facie* indicium of effective control unless proof to the contrary is produced, see *Čelebići* Appeal Judgement, para. 197; *Hadžihasanović and Kubura* Appeal Judgement, para. 21; *Orić* Appeal Judgement, para. 91.

<sup>309</sup> *Strugar* Appeal Judgement, para. 256; *Halilović* Appeal Judgement, para. 207; *Blaškić* Appeal Judgement, para. 69, where the Appeals Chamber endorsed “the Appellant’s argument that to establish that effective control existed at the time of the commission of subordinates’ crimes, proof is required that the accused was not only able to issue orders but that the orders were actually followed”. See also *D. Milošević* Appeal Judgement, para. 280; *Hadžihasanović and Kubura* Appeal Judgement, para. 199; *Kordić and Čerkez* Trial Judgement, para. 421.

<sup>310</sup> See *Strugar* Trial Judgement, paras 393-397.

<sup>311</sup> See *Muvunyi* Trial Judgement, para. 497.

<sup>312</sup> See *Strugar* Trial Judgement, paras 406, 408; *Čelebići* Trial Judgement, para. 767.

<sup>313</sup> See *Strugar* Trial Judgement, paras 411, 413; *Čelebići* Trial Judgement, para. 767.

<sup>314</sup> *Tamba Brima et al.* Trial Judgement, para. 788.

account the erratic behaviour of the subordinate to determine whether the superior had effective control over him.<sup>315</sup>

(ii) Mental Element: “Knew or Had Reason to Know”

149. Article 7(3) of the Statute does not impose strict liability on the superior who has failed to prevent or punish the crimes committed by his subordinates.<sup>316</sup> Rather, the superior will incur individual criminal responsibility if it is proven that: (i) the superior had actual knowledge that his subordinates were committing or about to commit crimes within the jurisdiction of the Tribunal, or (ii) the superior had in his possession information which would at least put him on notice of the risk of such offences, and alert him to the need for additional investigation to determine whether such crimes were about to be, or had been, committed by his subordinates.<sup>317</sup> The Appeals Chamber recently reiterated that “it is not necessary for the accused to have had the same intent as the perpetrator of the criminal act”.<sup>318</sup> When assessing the mental element required under Article 7(3), the Trial Chamber should take into account the specific circumstances of the case.<sup>319</sup>

a. Actual Knowledge

150. A superior’s actual knowledge that his subordinates were committing or were about to commit a crime may be established by direct or circumstantial evidence, but it may not be presumed.<sup>320</sup> Factors which the Trial Chamber takes into consideration include, but are not limited to: the number, type and scope of illegal acts committed by the subordinates, the time during which the illegal acts occurred, the number and types of troops and logistics involved, the geographical location, whether the occurrence of the acts is widespread, the tactical tempo of operations, the *modus operandi* of similar illegal acts, the officers and staff involved, and the location of the

<sup>315</sup> *Orić* Appeal Judgement, para. 159.

<sup>316</sup> See *Čelebići* Appeal Judgement, para. 239.

<sup>317</sup> *Čelebići* Appeal Judgement, para. 223. It is not necessary that the accused had the same intent as the perpetrator, *Nahimana et al.* Appeal Judgement, para. 865.

<sup>318</sup> *D. Milošević* Appeal Judgement, para. 280.

<sup>319</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 28, fn. 77. The Appeals Chamber held that “an assessment of the mental element required by Article 7(3) of the Statute should be conducted in the specific circumstances of each case, taking into account the specific situation of the superior concerned at the time in question”, *Čelebići* Appeal Judgement, para. 239. See also the ILC comment on Article 6 of the ILC Draft Code of Crimes against the Peace and Security of Mankind: “Article 6 provides two criteria for determining whether a superior is to be held criminally responsible for the wrongful conduct of a subordinate. First, a superior must have known or had reason to know *in the circumstances at the time* that a subordinate was committing or was going to commit a crime. This criterion indicates that a superior may have the *mens rea* required to incur criminal responsibility in two different situations. In the first situation, a superior has actual knowledge that his subordinate is committing or is about to commit a crime [...]. In the second situation, he has *sufficient relevant information to enable him to conclude under the circumstances at the time* that his subordinates are committing or are about to commit a crime”, ILC Report, pp 37-38, quoted in *Čelebići* Appeal Judgement, para. 234.

superior at the time.<sup>321</sup> Physical proximity to, or distance from the scene of the crimes may be taken into consideration when assessing the superior's actual knowledge of those crimes.<sup>322</sup>

b. “Had Reason to Know”

151. A superior will be considered to have “had reason to know” when, in the absence of actual knowledge, sufficiently alarming information was available to him which would have put him on notice of offences that were about to, or had been, committed by his subordinates.<sup>323</sup>

152. The information needs to be available to the superior, but it is not required that he actually acquainted himself with the information.<sup>324</sup> Furthermore, it does not need to be detailed. Even general information, which would put the superior on notice of possible unlawful acts by his subordinates, is sufficient to trigger the superior's duty to act.<sup>325</sup> It is not necessary that the superior be on notice of a “strong risk” that his subordinates would commit crimes,<sup>326</sup> what is required is that he possessed information sufficiently alarming to justify further inquiry.<sup>327</sup> It should be noted that a superior cannot incur criminal responsibility for neglecting to acquire knowledge of the acts of his subordinates, unless sufficiently alarming information is available to him.<sup>328</sup>

153. The Appeals Chamber also held that the superior's actual knowledge of crimes previously committed by a group of subordinates and his failure to punish them, is not, by itself, sufficient to conclude that the commander knew that similar offences would be committed by the same perpetrators. However, depending on the circumstances of the case, such failure may be relevant to determine whether “a superior possessed information that was sufficiently alarming to put him on notice of the risk that similar crimes might subsequently be carried out by subordinates and justify

<sup>320</sup> *Strugar* Trial Judgement, para. 368; *Hadžihasanović and Kubura* Trial Judgement, para. 94; *Čelebići* Trial Judgement, para. 386. See also *Brdanin* Trial Judgement, para. 278; *Krnjelac* Trial Judgement, para. 94; *Kordić and Čerkez* Trial Judgement, para. 427.

<sup>321</sup> *Čelebići* Trial Judgement, para. 386. See also *Kordić and Čerkez* Trial Judgement, para. 427.

<sup>322</sup> See *Aleksovski* Trial Judgement, para. 80.

<sup>323</sup> See *Strugar* Appeal Judgement, paras 298-299; *Hadžihasanović and Kubura* Appeal Judgement, para. 27, citing *Čelebići* Trial Judgement, para. 383; *Blaškić* Appeal Judgement, para. 62, citing *Čelebići* Appeal Judgement, para. 241.

<sup>324</sup> *Čelebići* Appeal Judgement, para. 239.

<sup>325</sup> *Strugar* Appeal Judgement, para. 298; *Hadžihasanović and Kubura* Appeal Judgement, para. 28. The Commentary to Additional Protocol I refers to “reports addressed (to the superior), [...] the tactical situation, the level of training and instruction of subordinate officers and their troops, and their *character traits*” as potentially constituting the information referred to in Article 86(2) of Additional Protocol I, *Čelebići* Appeal Judgement, para. 238 (emphasis added), citing ICRC Commentary on Additional Protocols, para. 3545.

<sup>326</sup> See *Strugar* Appeal Judgement, para. 304.

<sup>327</sup> See *Strugar* Appeal Judgement, para. 298.

<sup>328</sup> *Čelebići* Appeal Judgement, para. 232. See also *Blaškić* Appeal Judgement, para. 406; *Hadžihasanović and Kubura* Trial Judgement, para. 96.

further inquiry”.<sup>329</sup> The Appeals Chamber further stressed that “a superior’s failure to punish a crime of which he has actual knowledge is likely to be understood by his subordinates at least as acceptance, if not encouragement, of such conduct with the effect of increasing the risk of new crimes being committed”.<sup>330</sup>

(iii) Failure to Prevent or Punish

154. Article 7(3) contains two distinct and separate legal obligations: (i) to prevent the commission of the crime, and (ii) to punish the perpetrators thereof.<sup>331</sup> The duty to prevent arises when the superior acquires actual or constructive knowledge that a crime is about to be or is being committed.<sup>332</sup> The duty to punish arises where the superior obtains the requisite knowledge only after the commission of the crime.<sup>333</sup> Failure to take the necessary and reasonable measures to prevent a crime of which a superior knew or had reason to know cannot be cured by subsequently punishing the subordinate for the crime.<sup>334</sup>

155. Although the powers and duties of civilian and military representatives of a State are established by the national law of that State, a Trial Chamber must evaluate the superior’s duty to act in view of international law.<sup>335</sup> The superior therefore cannot be relieved of his duty to act under international law by reference to domestic laws.

a. Duty to Prevent

156. The duty to prevent crimes rests on a superior at any stage before the commission of a crime by a subordinate if the superior acquires knowledge, or has reason to know, that the crime is about to be committed.<sup>336</sup>

157. What the duty to prevent will encompass will depend on the superior’s material power to intervene in a specific situation.<sup>337</sup> In establishing individual responsibility of superiors, military

<sup>329</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 30. According to the Appeals Chamber, finding that a “superior’s failure to punish a crime of which he has knowledge *automatically* constitutes sufficiently alarming information under the “had reason to know” standard, irrespective of the circumstances of the case” would amount to an error of law, *Hadžihasanović and Kubura* Appeal Judgement, para. 31.

<sup>330</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 30.

<sup>331</sup> The failure to punish and failure to prevent involve different crimes committed at different times: the failure to punish concerns past crimes committed by subordinates, whereas the failure to prevent concerns future crimes of subordinates, *Blaškić* Appeal Judgement, para. 83. See also *Hadžihasanović and Kubura* Appeal Judgement, para. 259; *Kordić and Čerkez* Appeal Judgement, paras 445-446.

<sup>332</sup> See *Blaškić* Appeal Judgement, para. 83; *Kordić and Čerkez* Trial Judgement, paras 445-446.

<sup>333</sup> *Ibid.*

<sup>334</sup> *Blaškić* Trial Judgement, para. 336. See also *Strugar* Trial Judgement, para. 373; *Hadžihasanović and Kubura* Trial Judgement, para. 126.

<sup>335</sup> *Hadžihasanović and Kubura* Trial Judgement, paras 137-138, citing ICRC Commentary on Additional Protocols, para. 3537 (with respect to Article 86 of Additional Protocol I).

tribunals set up after World War II considered a non-exhaustive list of factors such as the superior's failure to: secure reports that military actions have been carried out in accordance with international law,<sup>338</sup> issue orders aiming at bringing the relevant practices into accord with the rules of war,<sup>339</sup> take disciplinary measures to prevent the commission of atrocities by the troops under their command,<sup>340</sup> protest against or criticise criminal action,<sup>341</sup> and insist before a superior authority that immediate action be taken.<sup>342</sup> In the Tokyo Judgement, it was found that a superior's duty may not be discharged by the issuance of routine orders but that more active steps may be required.<sup>343</sup>

#### b. Duty to Punish

158. The duty to punish includes at least an obligation to investigate (or have investigated) possible crimes with the view to establishing the facts.<sup>344</sup> Once the facts are established, if the superior has no power to sanction the perpetrators himself, he has the obligation to report the crimes to the competent authorities.<sup>345</sup> The obligation on the part of the superior is to take active steps to ensure that the perpetrators are brought to justice.<sup>346</sup> The thoroughness of the investigation and whether the superior has called for a report on the incident may be relevant in this respect.<sup>347</sup>

<sup>336</sup> See *Kordić and Čerkez* Trial Judgement, para. 445; *Strugar* Trial Judgement, para. 416.

<sup>337</sup> *Strugar* Trial Judgement, para. 374.

<sup>338</sup> *Strugar* Trial Judgement, para. 374; *Hadžihasanović and Kubura* Trial Judgement, para. 153. See also *Hostage Case*, p. 1290.

<sup>339</sup> *Hadžihasanović and Kubura* Trial Judgement, para. 153; *Strugar* Trial Judgement, para. 374. See also *Hostage Case*, p. 1311.

<sup>340</sup> *Hadžihasanović and Kubura* Trial Judgement, para. 153; *Strugar* Trial Judgement, para. 374. See also *Tokyo Judgement*, p. 452.

<sup>341</sup> *Hadžihasanović and Kubura* Trial Judgement, para. 153; *Strugar* Trial Judgement, para. 374. See also *High Command Case*, p. 623.

<sup>342</sup> *Hadžihasanović and Kubura* Trial Judgement, para. 153; *Strugar* Trial Judgement, para. 374. See also *Tokyo Judgement*, pp 447-448.

<sup>343</sup> *Tokyo Judgement*, p. 452: "The duty of an Army commander in such circumstances is not discharged by the mere issue of routine orders [...]. His duty is to take such steps and issue such orders as will prevent thereafter the commission of war crimes and to satisfy himself that such orders are being carried out"; *Hadžihasanović and Kubura* Trial Judgement, para. 153; *Strugar* Trial Judgement, para. 374.

<sup>344</sup> *Boškoski and Tarčulovski* Trial Judgement, para. 418; *Mrkšić et al.* Trial Judgement, para. 568; *Strugar* Trial Judgement, para. 376; *Limaj et al.* Trial Judgement, para. 529.

<sup>345</sup> *Halilović* Appeal Judgement, para. 182, affirming *Halilović* Trial Judgement, paras 97, 100; *Mrkšić et al.* Trial Judgement, para. 568; *Limaj et al.* Trial Judgement, para. 529; *Kordić and Čerkez* Trial Judgement, para. 446. See also *Boškoski and Tarčulovski* Trial Judgement, para. 418; *Blaškić* Trial Judgement, para. 335; *Strugar* Trial Judgement, para. 376. The military commander will normally only have a duty to start an investigation, see ICRC Commentary on Additional Protocols, para. 3562 (with respect to Article 87(2) of Additional Protocol I). Furthermore, the Appeals Chamber in *Blaškić* noted that the duty of the commander to report to competent authorities is specifically provided for under Article 87(1) of Additional Protocol I, *Blaškić* Appeal Judgement, para. 69.

<sup>346</sup> See e.g. *High Command Case*, p. 623.

<sup>347</sup> *Strugar* Trial Judgement, para. 376. It is a matter of fact as to whether the efforts made by a commander to investigate crimes were sufficient to meet the standard of "necessary and reasonable measures" within the meaning of Article 7(3), see e.g. *Blaškić* Trial Judgement, paras 488-495. Further guidance as to the duty to punish is provided by Article 87(3) of Additional Protocol I, which requires a military commander, who is aware that his subordinates have committed a breach of the Geneva Conventions or the Protocol, "where appropriate, to initiate disciplinary or penal action" against them. The ICRC Commentary to Additional Protocol I suggests that



159. The superior is required to take an “important step in the disciplinary process”.<sup>348</sup> However, he does not have to be the person who dispenses the punishment and he may “discharge his duty to punish by reporting the matter to the competent authorities”.<sup>349</sup> Finally, the superior has a duty to exercise all measures possible under the circumstances.<sup>350</sup>

c. Necessary and Reasonable Measures

160. The superior’s duty to take the necessary and reasonable measures to prevent or punish, rests upon his possession of effective control. It follows that whether the superior had the “explicit legal capacity” to take such measures is immaterial if it is proven that he had the material ability to act, *i.e.* effective control.<sup>351</sup> The determination of what constitutes “necessary and reasonable measures” to prevent the commission of crimes or to punish the perpetrators thereof is not a matter of substantive law but of evidence and depends on the circumstances surrounding each particular situation.<sup>352</sup> A superior is not required to perform the impossible and will be liable for a failure to take such measures that are “within his material possibility”.<sup>353</sup> The Appeal Chamber held that necessary measures are those “appropriate for the superior to discharge his obligation (showing that he genuinely tried to prevent or punish)” and reasonable measures are those “reasonably falling within the material powers of the superior”.<sup>354</sup> Whether the measures were disciplinary, criminal, or a combination of both, cannot in and of itself be determinative of whether a superior has discharged his duty.<sup>355</sup> What is relevant is whether the superior took measures to punish the perpetrators which were “necessary and reasonable” in the circumstances of the case.<sup>356</sup>

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this action may include informing their superior officers of the situation: “drawing up a report in the case of a breach, [...] proposing a sanction to a superior who has disciplinary power, or – in the case of someone who holds such power himself – exercising it, within the limits of his competence, and finally, remitting the case to the judicial authority where necessary with such factual evidence as it was possible to find”, ICRC Commentary on Additional Protocols, para. 3562 (with respect to Article 87(2) of Additional Protocol I).

<sup>348</sup> See *Kvočka et al.* Trial Judgement, para. 316.

<sup>349</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 154.

<sup>350</sup> *Krnjelac* Trial Judgement, para. 95; *Delić* Trial Judgement, para. 76.

<sup>351</sup> *Delić* Trial Judgement, para. 76. See also *Boškoski and Tarčulovski* Trial Judgement, para. 415.

<sup>352</sup> *Hadžihasanović and Kubura* Appeal Judgement, paras 33, 142. See also *Blaškić* Appeal Judgement, paras 72, 417; *Čelebići* Trial Judgement, para. 394.

<sup>353</sup> *Blaškić* Appeal Judgement, para. 417, citing *Čelebići* Trial Judgement, para. 395.

<sup>354</sup> *Orić* Appeal Judgement, para. 177; *Halilović* Appeal Judgement, para. 63.

<sup>355</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 33.

<sup>356</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 142.

### III. GENERAL OVERVIEW OF EVENTS IN CROATIA AND BIH BETWEEN 1990 AND 1995

161. The purpose of this part of the judgement is to provide a short account of the background to the conflict in the SFRY.

162. Prior to its dissolution, the SFRY consisted of six republics - Bosnia and Herzegovina ("BiH"), Croatia, Macedonia, Montenegro, Serbia, and Slovenia - and two autonomous regions, Kosovo and Vojvodina.<sup>357</sup> With the death of Josip Broz Tito on 4 May 1980, the unity of the one-party federal state started to weaken.<sup>358</sup> By the late 1980s, the League of Communists lost its leading political role. In June 1991, the SFRY began to disintegrate. On 25 June 1991, Slovenia and Croatia declared their independence from the SFRY, which led to the outbreak of the war.<sup>359</sup> While the conflict ended in Slovenia, clashes in Croatia escalated into full war as from summer 1991. In 1992, conflict also erupted in BiH.<sup>360</sup>

#### A. Croatia

163. In April and May 1990, multi-party elections were held and, as a result, the Serbian Democratic Party ("SDS") gained power in the municipalities of Benkovac, Donji Lapac, Gratac, Glina, Korenica, Knin, Obrovac, and Vojnić.<sup>361</sup> In July 1990, a Serbian Assembly was established in Srb, north of Knin, and moved to declare the sovereignty and autonomy of the Serb people in Croatia.<sup>362</sup> The executive body of the Serbian Assembly, the Serbian National Council, called for a referendum on the autonomy of Serbs in Croatia,<sup>363</sup> which was held from 19 August 1990 to 2 September 1990, and resulted in a 97.7% vote for autonomy.<sup>364</sup> On 21 December 1990, the Serbian Autonomous District ("SAO") of Krajina was established.<sup>365</sup>

164. On 12 May 1991, SAO Krajina held a referendum on whether its people favoured the "accession of the SAO Krajina to the Republic of Serbia and remaining of Krajina in Yugoslavia

<sup>357</sup> Sarajevo Adjudicated Facts I, 1.

<sup>358</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, p. 7.

<sup>359</sup> Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 16.

<sup>360</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, p. 16; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, pp 30-32.

<sup>361</sup> Defence Agreed Facts, 123.

<sup>362</sup> Defence Agreed Facts, 124.

<sup>363</sup> *Ibid.*

<sup>364</sup> *Ibid.*

<sup>365</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, paras 33-34. *See also* Defence Agreed Facts, 125; Patrick Treanor, T. 991; Mile Novaković, T. 13037-13038; Ex. P157, Statute of the SAO Krajina, 19 December 1990.

with Serbia, [Montenegro] and others who want to preserve Yugoslavia”,<sup>366</sup> resulting in a 99.8% approval.<sup>367</sup> On 19 May 1991, a separate referendum was held in Croatia, except in predominantly Serb areas, leading 94.1% of voters to favour Croatian independence.<sup>368</sup> Ten days after the referendum, on 29 May 1991, the SAO Krajina Assembly adopted a constitutional law describing the SAO Krajina as a subject of political and territorial autonomy within federal Yugoslavia.<sup>369</sup> On 25 June 1991, Croatia declared independence.<sup>370</sup>

165. The spring of 1991 saw the beginning of several ongoing clashes between Croatian armed forces and the forces of the SAO Krajina, including in Kijevo, Drniš, Hrvatska Dubica, Saborsko and Škabrnja.<sup>371</sup> In the summer of 1991, the conflict in Vukovar was partly initiated by a JNA attempt to “deblock” its local barracks, which were being blockaded by Croatian paramilitaries.<sup>372</sup>

166. On 23 November 1991, the Vance Plan was signed by the President of Croatia, Franjo Tuđman, the President of Serbia, Slobodan Milošević and the SFRY Federal Secretary for Defence General, Veljko Kadijević.<sup>373</sup> The Vance Plan made provisions for the deployment of UNPROFOR forces in the Krajina, Western Slavonia and Eastern Slavonia, for demilitarisation, and for the eventual return of refugees.<sup>374</sup> On 21 February 1992, the United Nations Security Council (“UNSC”) adopted Resolution 743, implementing the Vance Plan and establishing the UN Protection Force (“UNPROFOR”), resulting in the deployment of forces to certain areas of Croatia designated as “United Nations Protected Areas” (“UNPAs”).<sup>375</sup> The UNPAs were areas where inter-communal tensions had previously led to armed conflict.<sup>376</sup> In April 1992, UNPROFOR troops began arriving in the UNPAs.<sup>377</sup>

167. In December 1991, the SAO Krajina was joined by two other SAOs on Croatian territory (SAO Slavonia, Baranja and Western Srem as well as the SAO Western Slavonia).<sup>378</sup> As a result, on 19 December 1991, the Republic of Serbian Krajina (“RSK”) was formed.<sup>379</sup>

<sup>366</sup> Patrick Treanor, T. 995-996, 999; Ex. P161, Decision on Calling a Referendum on the Accession of SAO Krajina to the Republic of Serbia and on Remaining in Yugoslavia, 30 April 1991, pp 2-3. *See also* Defence Agreed Facts, 129.

<sup>367</sup> Patrick Treanor, T. 995-996. *See also* Defence Agreed Facts, 129.

<sup>368</sup> Patrick Treanor, T. 1000. *See also* Defence Agreed Facts, 129.

<sup>369</sup> Patrick Treanor, T. 1000-1001; Ex. P162, Constitutional Law of the SAO Krajina, 29 May 1991.

<sup>370</sup> Patrick Treanor, T. 983-984, 1309, 1311, 1396. *See also* Defence Agreed Facts, 131; Mile Novaković, T. 13037.

<sup>371</sup> Defence Agreed Facts, 133.

<sup>372</sup> Mile Novaković, T. 13030-13031.

<sup>373</sup> Defence Agreed Facts, 133. *See also* Patrick Treanor, T. 1007; Mile Novaković, T. 13041.

<sup>374</sup> *Ibid.*

<sup>375</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, p. 39. *See also* Mile Novaković, T. 13041.

<sup>376</sup> Defence Agreed Facts, 136. *See also* Mile Novaković, T. 13042.

<sup>377</sup> Defence Agreed Facts, 137.

<sup>378</sup> Patrick Treanor, T. 1015.

168. In October 1992, RSK established its military force, the Serbian Army of Krajina (“SVK”).<sup>380</sup>

169. In January 1994, elections were held in RSK and Milan Martić was elected President.<sup>381</sup> The Zagreb Peace Agreement between Croatia and RSK was signed in March 1994.<sup>382</sup> This led to an economic agreement, signed in Knin in December 1994, and an agreement to re-open a highway from Belgrade to Zagreb that had been closed since August 1991.<sup>383</sup>

170. In January 1995, President Tudman announced that he would refuse the extension of UNPROFOR’s mandate in Croatia after the end of March 1995.<sup>384</sup> At one point, RSK authorities shut down the highway through Western Slavonia that had been opened pursuant to the December 1994 agreement.<sup>385</sup> Shortly afterwards, in the early morning hours of 1 May 1995, Croatian forces launched a military offensive known as Operation Flash.<sup>386</sup> On 2 and 3 May 1995, the SVK shelled Zagreb using Orkan rockets.<sup>387</sup> Negotiations to find a peaceful settlement led to an agreement reached on 3 May 1995.<sup>388</sup> Operation Flash ended around 4 May 1995, with RSK losing control over Western Slavonia.<sup>389</sup>

171. On 3 August 1995, negotiations were held in Geneva between Croatia and RSK.<sup>390</sup> The next day, however, Croatian forces launched Operation Storm against RSK and by 10 August 1995, seized all of the territory held by RSK, except for the area of Eastern Slavonia.<sup>391</sup> The RSK leadership fled to RS and the FRY.<sup>392</sup> In 1996, the area of Eastern Slavonia was peacefully reintegrated into Croatia.<sup>393</sup>

<sup>379</sup> Patrick Treanor, T. 1015; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 40; Ex. P166, Constitution of the RSK, 2 January 1992, Article 1. *See also* Morten Torkildsen, T. 1462-1463; Defence Agreed Facts, 135.

<sup>380</sup> *See* Ex. P1782, Decree on Appointment by RSK President, 26 October 1992. *See also* MP-16, T. 5134-5135 (closed session); Mile Novaković, T. 13063. In November 1992, Special Police Forces (“PJM”) units, which were under the command of the MUP, and the Territorial Defence (“TO”) were disbanded and incorporated in the SVK, Mile Novaković, T. 13372-13375.

<sup>381</sup> Patrick Treanor, T. 1026; Ex. P170, Press Release on Election of Milan Martić as a President of the RSK, 25 January 1994. *See also* Defence Agreed Facts, 122, 140.

<sup>382</sup> Its three essential objectives were: (i) end of hostilities, (ii) establishing of an economic relationship, and (iii) finding a political solution to the crisis between the RSK and the Republic of Croatia, MP-80, T. 8636-8637 (closed session).

<sup>383</sup> Patrick Treanor, T. 1238; MP-80, T. 8637-8639, 8644 (closed session).

<sup>384</sup> Patrick Treanor, T. 1238.

<sup>385</sup> *Ibid.*

<sup>386</sup> Defence Adjudicated Facts, 14.

<sup>387</sup> *See infra* section V.B.

<sup>388</sup> Defence Adjudicated Facts, 14.

<sup>389</sup> *Ibid.*

<sup>390</sup> Mile Novaković, T. 13292.

<sup>391</sup> Patrick Treanor, T. 1238; Mile Novaković, T. 13289, 13295; MP-80, T. 8256-8257 (closed session).

<sup>392</sup> Siniša Borović, T. 14009.

<sup>393</sup> Siniša Borović, T. 14029-14030; Mile Novaković, T. 13298.

## **B. Bosnia and Herzegovina**

172. As of 1991, the population of BiH was 43.7% Muslim, 31.3% Serb, 17.3% Croat and 7.7% Yugoslav or other.<sup>394</sup> On 21 February 1990, the Assembly of BiH adopted legislation permitting the establishment of political parties,<sup>395</sup> and scheduled multi-party elections for 18 November 1990.<sup>396</sup> Three main political parties emerged, established principally along ethnic lines: the Serb Democratic Party (“SDS”), led by Radovan Karadžić; the Party of Democratic Action (“SDA”), led by Alija Izetbegović; and the Croatian Democratic Union (“HDZ”), led by Stjepan Kljujić.<sup>397</sup>

173. The multi-party elections were held as scheduled, and resulted in sweeping victories for the SDS, SDA and HDZ.<sup>398</sup> The parties agreed that the position of President of the BiH Assembly should be allotted to Momčilo Krajišnik of the SDS.<sup>399</sup> Alija Izetbegović of the SDA was then elected President of the BiH Presidency, a post he held throughout the course of the war,<sup>400</sup> while the position of Prime Minister went to Jure Pelivan of the HDZ.<sup>401</sup>

174. It quickly became clear that the SDS, SDA and HDZ held starkly differing views, especially regarding the future of the BiH state. In particular, while the SDA advocated the independence and sovereignty of BiH, the SDS wished for BiH to remain within the federal state of Yugoslavia.

175. At a meeting of the BiH Assembly on 14-15 October 1991, SDS President Radovan Karadžić gave a speech in which he threatened that Muslims would disappear from BiH if they declared independence from the SFRY.<sup>402</sup> At the same meeting, Assembly delegates of the SDA and HDZ voted in favour of a memorandum on sovereignty proposed by the SDA; “[a] measure bitterly opposed by SDS delegates” who had departed prior to the vote.<sup>403</sup> The voting took place in

<sup>394</sup> Ex. P347, Map on Ethnic Distribution in Bosnia. *See also* Robert Donia, T. 1710-1711, 1752-1753; Patrick Treanor, T. 1035.

<sup>395</sup> Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 18.

<sup>396</sup> Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 19.

<sup>397</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 52. *See also* Sarajevo Adjudicated Facts I, 3.

<sup>398</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 52; Patrick Treanor, T. 1034-1035, 1302-1303; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, pp 20, 23; Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 2.

<sup>399</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 52; Patrick Treanor, T. 1035; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 22.

<sup>400</sup> Sarajevo Adjudicated Facts I, 4; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 52; Patrick Treanor, T. 1302-1303; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 23.

<sup>401</sup> Patrick Treanor, T. 1034-1035; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 22.

<sup>402</sup> Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 34.

<sup>403</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 59; Patrick Treanor, T. 1054; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, pp 33-34; Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 9; Robert Donia, T. 1651-1652; Sarajevo Adjudicated Facts I, 7.

the absence of SDS delegates.<sup>404</sup> Ten days later, SDS delegates responded by founding the “Assembly of the Serbian People in BiH” (renamed “Assembly of Republika Srpska” in the late summer of 1992) and electing Momčilo Krajišnik as its President.<sup>405</sup> This body then adopted a decision proclaiming the formation of the Republic of the Serbian People of BiH.<sup>406</sup>

176. On 9 and 10 November 1991, a plebiscite was held in BiH asking voters if they wished to remain in the SFRY. Voters were segregated by ethnicity and non-Serbs were given different ballots.<sup>407</sup> Few non-Serbs took part in the plebiscite, while a vast majority of Bosnian Serbs voted in favour of remaining in the SFRY.<sup>408</sup>

177. In the last months of 1991, the Arbitration Commission of the Conference on Yugoslavia (“Badinter Commission”) was established by the European Community (“EC”) to offer recommendations from a legal perspective on the independence of individual republics.<sup>409</sup> The Badinter Commission was instructed to invite and assess applications from any Yugoslav republic seeking independence.<sup>410</sup> On 20 December 1991, the BiH Presidency, over the dissent of its SDS members, voted to apply to the Badinter Commission for recognition as an independent state.<sup>411</sup>

178. On 9 January 1992, the Assembly of the Serbian People in BiH declared the formation of the Serbian Republic of BiH (“SerBiH”).<sup>412</sup> The republic aimed to include all Serbian autonomous districts in BiH, as well as any “other Serbian ethnic entities in BiH, including areas in which the

<sup>404</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 59; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, pp 33-34; Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 9; Robert Donia, T. 1651-1652.

<sup>405</sup> Ex. P179, Decision on Foundation of the Assembly of Serbian People in BiH, 24 October 1991; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 61; Patrick Treanor, T. 1060; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 34; Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 10; Robert Donia, T. 1665-1666.

<sup>406</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, paras 61, 67.

<sup>407</sup> Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 35.

<sup>408</sup> Patrick Treanor, T. 1067, 1315-1316; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 34; Robert Donia, T. 1665-1666.

<sup>409</sup> Ex. D15, Opinions of the Badinter Commission, pp 1-2; Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 17; Robert Donia, T. 1839-1845; Patrick Treanor, T. 1073-1074, 1312-1313.

<sup>410</sup> Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 17; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 35.

<sup>411</sup> Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 17; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 35. *See also* Defence Agreed Facts, 33.

<sup>412</sup> Ex. P182, Declaration on the Proclamation of the Republic of the Serbian People of BiH, 9 January 1992; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 67; Patrick Treanor, T. 1072-1073; Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, pp 17-18; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 35. *See also* Sarajevo Adjudicated Facts I, 10.

Serbian people are in a minority because of genocide...committed during World War Two".<sup>413</sup> The Assembly's declaration also stated that the republic should form part of the federal state of Yugoslavia.<sup>414</sup>

179. The conclusions of the Badinter Commission, which were released at the same time as the declaration of a SerBiH state, found that BiH had not yet fulfilled the conditions for recognition, and recommended a referendum to determine the will of its people regarding independence.<sup>415</sup> In response, the Assembly of BiH voted, over the objection of SDS delegates, to hold a referendum.<sup>416</sup>

180. On 21 February 1992, with the political situation growing increasingly tense, the UNSC passed Resolution 743, establishing UNPROFOR to "create the conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis".<sup>417</sup>

181. On 28 February 1992, hours before the referendum was set to begin, the Assembly of the Serbian People in BiH adopted a constitution for SerBiH.<sup>418</sup> The referendum then proceeded with the majority of Bosnian Serbs boycotting the proceedings while Bosnian Muslims and Croats voted overwhelmingly for independence.<sup>419</sup>

182. On 6 and 7 April 1992, the EC and the United States recognised the independence of BiH.<sup>420</sup> The Assembly of the Serbian People in BiH immediately declared the independence of SerBiH.<sup>421</sup> These events led to a surge in violence between opposite factions in Sarajevo.<sup>422</sup> Serb forces started laying siege to Sarajevo, which would persist until November 1995.<sup>423</sup>

<sup>413</sup> Ex. P182, Declaration on the Proclamation of the Republic of the Serbian People of BiH, 9 January 1992; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 67; Patrick Treanor, T. 1072-1073.

<sup>414</sup> *Ibid.*

<sup>415</sup> Ex. D15, Opinions of the Badinter Commission, pp 5-7; Patrick Treanor, T. 1074; Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 18.

<sup>416</sup> Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 18; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 35.

<sup>417</sup> Sarajevo Adjudicated Facts I, 13.

<sup>418</sup> Ex. P183, Constitution of the Serb Republic of Bosnia and Herzegovina, 28 February 1992; Patrick Treanor, T. 1076-1077; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, paras 68-69. *See also* Defence Agreed Facts, 47.

<sup>419</sup> Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 18. *See also* Sarajevo Adjudicated Facts I, 14.

<sup>420</sup> Patrick Treanor, T. 1097; Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 18.

<sup>421</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 70; Patrick Treanor, T. 1098-1099. *See also* Defence Agreed Facts, 46.

<sup>422</sup> Sarajevo Adjudicated Facts I, 25-32.

<sup>423</sup> Robert Donia, T. 1879; Sarajevo Adjudicated Facts I, 25-32; Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 38; Ex. P632, Transcript of Milan Mandilović in *Prosecutor v. Galić*, T. 1010-1011; Ex. P520, Transcript of Mesud Jusufović from *Prosecutor v. Galić*, T. 6517, 6523-6524. *See infra* para. 306.

183. The FRY, consisting of Serbia and Montenegro, was created with the proclamation of a new constitution on 27 April 1992.<sup>424</sup> The BiH Presidency ordered the JNA to withdraw from its claimed territory. When the JNA declined to do so, the special police of the BiH Ministry of Interior (“MUP”) and other units loyal to the BiH Government surrounded several JNA facilities in Sarajevo.<sup>425</sup> A number of clashes ensued, resulting in casualties.<sup>426</sup>

184. On 12 May 1992, the Assembly of the Serbian People in BiH adopted the six strategic goals of the Bosnian Serbs introduced by Radovan Karadžić.<sup>427</sup> The first goal was separating Bosnian Serbs from the other two national communities—the Bosnian Muslims and the Bosnian Croats.<sup>428</sup> The second was the establishment of a corridor between Semberija and Krajina.<sup>429</sup> The third was the establishment of a corridor in the Drina Valley.<sup>430</sup> The fourth was the establishment of external borders to the Serb entity on the Una and Neretva Rivers.<sup>431</sup> The fifth concerned the division of the city of Sarajevo into Serbian and Muslim parts, and the implementation of effective state

<sup>424</sup> Ex. P1186, Constitution of the FRY (Excerpt), 27 April 1992.

<sup>425</sup> Defence Agreed Facts, 144.

<sup>426</sup> *Ibid.*

<sup>427</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992; Ex. P339, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992; Patrick Treanor, T. 1099; Robert Donia, T. 1687; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 71; Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 24.

<sup>428</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 13; Ex. P339, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 13; Patrick Treanor, T. 1100. Momčilo Krajišnik highlighted that it was the most important and overriding goal, Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 49; Ex. P339, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 52.

<sup>429</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 13; Ex. P339, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 13; Ex. P187, Map Depicting the Six Strategic Objectives; Ex. D14, Map Marked by Robert Donia; Ex. P338, Map Marked by Robert Donia, red mark. The Krajina area comprised Serb-dominated municipalities in the west of BiH, and the area of Semberija was Bosnian Serb-controlled territory in the northeast of BiH. This corridor was vital to keeping “the two large wings [...] of Bosnian Serb-controlled territory contiguous with one another”, Robert Donia, T. 1690, 1711-1712, 1831-1835. The corridor lies along the southern bank of the Sava River, which was the northern boundary of Bosnia and was the only land route connecting the eastern part of the SerBiH with the western part of the SerBiH. The corridor therefore was important as the land route linking Serbia with many portions of RSK in Croatia, Patrick Treanor, T. 1100-1101, 1108. On cross-examination, Robert Donia agreed with the Defence that the idea of the corridor would also have protected a Serb village located on the border with Croatia that had been previously attacked by the Croatian ZNG, Robert Donia, T. 1836-1837.

<sup>430</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 13; Ex. P339, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 14; Ex. P187, Map Depicting the Six Strategic Objectives; Ex. P338, Map Marked by Robert Donia, blue mark. The Drina River has been historically the border between Serbia and BiH, in this case portions of the SerBiH. A corridor in the Drina Valley would have linked the north-eastern part of the SerBiH with its south-eastern part in BiH, Patrick Treanor, T. 1101-1102, 1108-1109; Robert Donia, T. 1691-1693, 1713.

<sup>431</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 13; Ex. P339, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 14; Ex. P187, Map Depicting the Six Strategic Objectives. This goal specifies two other portions of the SerBiH’s external border, namely, the Una River in the north-western region of BiH. Part of BiH is on the western bank of the Una, that is the left bank. The Una flowed north through BiH into the Sava River. The Neretva is in the south. It flows through Mostar down to the sea. The establishment of a border on the Neretva would have given the SerBiH control of the whole of the eastern BiH, Patrick Treanor, T. 1102-1103, 1109.



governments in each of these constituent states.<sup>432</sup> The sixth and final goal was to secure access to the sea for the Serb entity.<sup>433</sup> The Bosnian Serb army, later known as the VRS, was established on the same day.<sup>434</sup>

185. The six strategic goals were communicated to the VRS, which regarded them as “a general guideline on which [the VRS] planned the actual operations and concerted battles”.<sup>435</sup> These goals were kept secret<sup>436</sup> until November 1993, when an abbreviated version was published in the RS Official Gazette.<sup>437</sup>

186. On 15 May 1992, the UNSC passed a resolution demanding a halt to “all forms of outside interference from outside of Bosnia-Herzegovina”, as well as the complete withdrawal of all foreign forces from BiH, including the JNA and elements of the Croatian Army.<sup>438</sup>

187. Although the FRY had officially withdrawn the JNA from BiH by 19 May 1992,<sup>439</sup> the UNSC found that the situation on the ground reflected continued JNA involvement. It consequently condemned the FRY authorities for failing to take effective measures towards implementing the UNSC Resolution. On 30 May 1992, the UNSC reinforced sanctions against the FRY.<sup>440</sup>

188. On 8 June 1992, the UNSC issued Resolution 758, which broadened the mandate and strength of UNPROFOR and authorised the deployment of UN Military Observers (“UNMOs”).<sup>441</sup>

<sup>432</sup> According to Radovan Karadžić, “[t]he battle in Sarajevo and for Sarajevo, seen strategically and tactically, is as of decisive importance because it does not allow the establishment of even the illusion of a state. Alija does not have a state while we have part of Sarajevo”, Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, pp 13-14; Ex. P339, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 14; Ex. P187, Map Depicting the Six Strategic Objectives; Patrick Treanor, T. 1103-1104, 1109.

<sup>433</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 14; Ex. P339, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 14; Ex. P187, Map Depicting the Six Strategic Objectives; Patrick Treanor, T. 1105, 1109.

<sup>434</sup> Ex. P189, Amendments to the Constitution of the SerBiH, 12 May 1992, pp 1-3; Ex. P190, Decision on Formation of the Army of SerBiH, 12 May 1992; Patrick Treanor, T. 1099; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 73; Petar Škrbić, T. 11633; Stojan Malčić, T. 11188; Defence Agreed Facts, 97. *See infra* paras 262-264.

<sup>435</sup> Ex. P149, Status of Combat Readiness of the VRS for 1992, p. 159, reporting, *inter alia*, that the VRS Main Staff “translated the [strategic goals] into general and individual missions of the [VRS]”; Robert Donia, T. 1705-1706.

<sup>436</sup> Patrick Treanor, T. 1115. *See* Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 38.

<sup>437</sup> Ex. P334, Excerpt of the RS’s Official Gazette reporting the “Strategic Goals”, 26 November 1993; Robert Donia, T. 1687; Patrick Treanor, T. 1118-1119.

<sup>438</sup> Ex. P375, Expert Report of Patrick Treanor, para. 162; Patrick Treanor, T. 1164-1165, 1329; Ex. P201, UNSC Resolution 752, 15 May 1992.

<sup>439</sup> Pursuant to an order of the Presidency of the SFRY of 4 May 1992, the JNA was to withdraw from the territory of BiH and cross into the SFRY within 15 days, Stamenko Nikolić, T. 10458; Ex. P75, Đorđe Đukić, Statement of 4/29 February 1996, p. 3; MP-5, T. 2366-2367, 2435, 2493-2494, 2498. *See also infra* para. 263.

<sup>440</sup> Ex. P202, UNSC Resolution 757, 30 May 1992.

<sup>441</sup> Sarajevo Adjudicated Facts I, 36.

UNPROFOR was tasked, among other things, with protecting the Sarajevo airport and helping humanitarian aid reach the population.<sup>442</sup>

189. In August 1992, the SerBiH was constitutionally renamed Republika Srpska (“RS”).<sup>443</sup> Radovan Karadžić was elected President of RS on 17 December 1992.<sup>444</sup>

190. In March 1993, there was a surge in VRS operations in eastern Bosnia, which resulted in a flood of refugees into Srebrenica and a dire humanitarian situation.<sup>445</sup> On 16 April 1993, the UNSC adopted Resolution 819, declaring Srebrenica a “safe area” to be free from armed attack or any other hostile act.<sup>446</sup> The UNSC extended the “safe area” designation to the towns of Tuzla, Žepa, Bihać and Goražde on 6 May 1993.<sup>447</sup>

191. In the summer of 1994, international diplomats attempted to end the Bosnian war by engaging in direct negotiations with the relevant parties.<sup>448</sup> These efforts produced a peace proposal that included a map demarcating a division of Bosnian territory between the Bosnian Serbs and Bosnian Muslims.<sup>449</sup> The Bosnian Serbs rejected the peace plan.<sup>450</sup> In August 1994, the FRY opted to impose sanctions on RS due to its rejection of the plan. These sanctions included a blockade of their common border and the imposition of a trade embargo on all shipments into RS, except for food, clothes and medication.<sup>451</sup>

192. At the end of 1994, a four-month ceasefire was declared in BiH.<sup>452</sup> It expired in April 1995 after attempts to extend it failed.<sup>453</sup> Over the next few months, the safe areas of Srebrenica and Žepa were forcibly overtaken by Bosnian Serb forces.<sup>454</sup>

193. In early August 1995, Slobodan Milošević issued a public appeal for peace to Ratko Mladić and Alija Izetbegović. The United States government became involved in the peace initiative, as Richard Holbrooke, the Assistant Secretary of State for European and Eurasian Affairs, engaged in

<sup>442</sup> Sarajevo Adjudicated Facts I, 37.

<sup>443</sup> Patrick Treanor, T. 1124. *See also* Defence Agreed Facts, 46.

<sup>444</sup> Ex. P192, Decision on the Proclamation of the Election of the President of RS, 17 December 1992; Patrick Treanor, T. 1123.

<sup>445</sup> Pyers Tucker, T. 9119-9122, 9129; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 19.

<sup>446</sup> Ex. P208, UNSC Resolution 819, 16 April 1993, p. 2. *See also* Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 19; Ex. P892, (confidential); Ex. P2462, Report of the UNSC Mission Established Pursuant to Resolution 819, 30 April 1993.

<sup>447</sup> Patrick Treanor, T. 1193-1194; Ex. P212, UNSC Resolution 824, 6 May 1993.

<sup>448</sup> Carl Bildt, T. 14253-14254.

<sup>449</sup> *Ibid.*

<sup>450</sup> Carl Bildt, T. 14254.

<sup>451</sup> Miodrag Simić, T. 10182-10183; Ex. P222, Press Article Published in Borba, 5 August 1994. *See also* Petar Škrbić, T. 11938. *See also infra* paras 867, 872.

<sup>452</sup> Patrick Treanor, T. 1238.

<sup>453</sup> *Ibid.*

shuttle diplomacy between the various capitals in the region.<sup>455</sup> During this period, FRY leaders began meeting with their RS counterparts to develop a common position regarding the forthcoming peace negotiations.<sup>456</sup> They formed a joint peace negotiation delegation, composed of representatives from the FRY and RS, and agreed that Slobodan Milošević would have the deciding vote in the case of a disagreement within the delegation.<sup>457</sup>

194. These negotiations culminated in the Dayton Accords, which ended the war in BiH. The Accords were signed preliminarily at the end of November 1995, followed by an official signing in Paris in December 1995.<sup>458</sup>

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<sup>454</sup>

*Ibid.*

<sup>455</sup> Patrick Treanor, T. 1252.

<sup>456</sup>

*Ibid.*

<sup>457</sup> Patrick Treanor, T. 1258; Ex. P232, Notes of Meeting Held in Dobanovci, 30 August 1995, pp 18-19.

<sup>458</sup>

Patrick Treanor, T. 1389-1390.

## IV. POLITICAL ENTITIES AND STRUCTURE OF THE ARMIES

### A. Federal Republic of Yugoslavia

195. The FRY was established on 27 April 1992 with the approval of a new Constitution superseding the prior SFRY Constitution.<sup>459</sup> The new Constitution provided that the FRY was a sovereign federal state and consisted of Serbia and Montenegro and the provinces of Kosovo and Vojvodina.<sup>460</sup>

196. The FRY was organised on the principle of separation of powers, between the legislature, executive and judiciary. Principal federal organs of the FRY included the Federal Assembly, FRY President, Federal Government, the Supreme Defence Council (“SDC”) and the Chief of General Staff of the Yugoslav Army (“VJ”).<sup>461</sup> The federal judicial organs were the Federal Court, Federal Public Prosecutor and a Constitutional Court.<sup>462</sup>

197. In addition to the Constitution, provisions regulating the functioning and composition of these organs were laid down in the Law on the Defence and the Law on the VJ, both of which were temporarily enacted in October 1993 by the FRY Assembly, and subsequently finalised on 18 May 1994.<sup>463</sup> Based on these legal provisions, the Trial Chamber will now turn to describe the structures and functioning of the federal organs which are relevant to the case, namely, the SDC, the FRY President, the Chief of the VJ General Staff and the MOD.

### B. Organs of the FRY

#### 1. The Supreme Defence Council

198. According to the Constitution of the FRY, the SDC was formally composed of the President of the FRY and the Presidents of the Republics of Serbia and Montenegro.<sup>464</sup> In practice, the SDC

<sup>459</sup> Patrick Treanor, T. 1126, 1328; Ex. P375, Expert Report of Patrick Treanor, para. 79; Miodrag Starčević, T. 5432.

<sup>460</sup> Patrick Treanor, T. 1126, 1328; Ex. P229, FRY Constitution, 27 April 1992, Articles 133-134. On 4 July 1992, Badinter Commission stated that the SFRY no longer existed and concluded that the FRY was a new state which, however, “cannot be considered the sole successor to SFRY”, Ex. P375, Expert Report of Patrick Treanor, para. 169. Opinion n. 9 stated that the successor states to the SFRY must together settle all aspects of succession by agreement and peacefully settle all disputes relating to succession which could not be resolved by agreement, Robert Donia, T. 1857-1860; Ex. D15, Opinions of the Badinter Commission, pp 15-21.

<sup>461</sup> Ex. P375, Expert Report of Patrick Treanor, para. 79.

<sup>462</sup> *Ibid.*

<sup>463</sup> Patrick Treanor, T. 1152; Ex. P197, Law on the VJ, 18 May 1994, Article 4; Ex. P375, Expert Report of Patrick Treanor, paras 92-93. As regards the entry into force of the Law on the VJ, Miodrag Starčević explained that it was adopted by the Chamber of Citizens (the lower house of parliament) in October 1993. However, because the Chamber of Republics (the upper house of parliament) had made amendments to the draft law, a reconciled text was only passed in May 1994. Nevertheless, it had legal force already as of October 1993, Miodrag Starčević, T. 5436-5437.

<sup>464</sup> Ex. P229, FRY Constitution, 27 April 1992, Article 135; Patrick Treanor, T. 1128.

meetings were also attended by other high-level federal officials, such as the FRY Prime Minister, the FRY Minister of Defence, the Chief of the VJ General Staff and, occasionally, high-ranking military officers.<sup>465</sup>

199. The President of the FRY presided over the SDC.<sup>466</sup> The Law on Defence empowered the SDC to adopt the plan for the defence of the country, which “all subjects of the national defence”, including the VJ, should pursue.<sup>467</sup>

200. In its work, the SDC made use of reports, analyses and other materials prepared by the MOD, the VJ General Staff and other state organs.<sup>468</sup> According to the Rules of Procedure adopted by the SDC in 1992,<sup>469</sup> the SDC had to conduct its work in sessions, and adopt final decisions when the majority of SDC members were present. Decisions were approved by consensus, and the FRY President would issue the appropriate orders in his name.<sup>470</sup> The Rules of Procedure of the SDC also provided for the possibility to make decisions and reach conclusions without holding a session, “on the basis of consultations among the [SDC] members”.<sup>471</sup>

201. Minutes were kept of sessions of the SDC.<sup>472</sup> Those minutes, as well as the material for discussion and the stenographic records, constituted archival material.<sup>473</sup>

202. On 30 June 1992, the SDC held its first session presided over by Dobrica Ćosić as FRY President.<sup>474</sup> From that moment on, regular sessions of the SDC were held throughout the war. The Trial Chamber has carefully analysed the minutes and stenographic notes of the SDC sessions admitted into evidence related to the period of the Indictment. Among the topics discussed in these sessions were the military and political situation in the FRY, the logistic assistance to the VRS and SVK, military budget and military personnel issues. The details of these sessions will be discussed in subsequent parts of the Judgement addressing these relevant topics.

<sup>465</sup> Patrick Treanor, T. 1128.

<sup>466</sup> Ex. P229, FRY Constitution, 27 April 1992, Article 135.

<sup>467</sup> Miodrag Starčević, T. 6894; Ex. P1183, Decree on the Proclamation of the Law on Defence, 27 May 1994.

<sup>468</sup> Patrick Treanor, T. 1129-1130; Ex. P707, Rules of Procedure of the SDC, 23 July 1992, Article 2.

<sup>469</sup> Ex. P707, Rules of Procedure of the SDC, 23 July 1992.

<sup>470</sup> Patrick Treanor, T. 1129-1130.

<sup>471</sup> Ex. P707, Rules of Procedure of the SDC, 23 July 1992, Article 7. Sessions could be convened by the Chairman of the SDC at his own initiative or at the proposal of other members of the SDC who could also put forward agenda proposals, Ex. P707, Rules of Procedure of the SDC, 23 July 1992, Article 4.

<sup>472</sup> Ex. P707, Rules of Procedure of the SDC, 23 July 1992, Article 8.

<sup>473</sup> Patrick Treanor, T. 1129; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, paras 85-86.

<sup>474</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, paras 82-83.

## 2. The FRY President

203. According to the Law on the VJ, the FRY President commands the Army in war and peace, in conformity with the decisions of the SDC<sup>475</sup> and shall:

- 1) establish the principles of internal organisation, the development and equipping of the Army;
- 2) determine the system of command in the Army and oversee its implementations;
- 3) decide on the deployment of the Army and approve the plan for its use;
- 4) regulate and order readiness of the Army in case of an imminent threat of war, state of war, or state of emergency;
- 5) provide guide-lines for arrangements relating to mobilisation and issue orders for the mobilisation of the Army;
- 6) issue basic regulations and other acts related to the deployment of the Army;
- 7) adopt rules regulating the internal order and relations in the performance of military service; and
- 8) perform other duties relating to the command over the Army in accordance with federal law.<sup>476</sup>

204. The FRY President was also vested with the power to exceptionally promote a professional officer to the rank of general at the proposal of the Chief of the VJ General Staff,<sup>477</sup> and decided on other promotions.<sup>478</sup> According to Article 136 of the Constitution, the FRY President should “appoint, promote and dismiss from service Army officers stipulated by federal law as well as the presidents and judges of military courts and military prosecutors”.<sup>479</sup>

<sup>475</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 4; Patrick Treanor, T. 1152. As noted by Miodrag Starčević, the constitution explicitly set forth that the chain of command ran from the President down to the Chief of the VJ General Staff and then to the lower level units, Miodrag Starčević, T. 5433.

<sup>476</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 4.

<sup>477</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 46. In applying this provision, the President of the FRY, Zoran Lilić, promoted Ratko Mladić to the rank of Colonel General, Miodrag Starčević, T. 5497-5498 (private session); Ex. P1902, FRY Presidential Decree Promoting Lieutenant General Ratko Mladić to the Rank of Colonel General, 16 June 1994. As regards the procedure of personnel promotions, the Assistant Commander for Personnel Administration of the VJ General Staff would prepare orders and decrees about promotion to the ranks of generals and submit them to the head of the “Military Office” of the FRY President. The Military Office would then take those decrees to the President, Siniša Borović, T. 13922, 13973.

<sup>478</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 151.

<sup>479</sup> Ex. P229, FRY Constitution, 27 April 1992, Article 136.

### 3. Chief of the VJ General Staff

205. The Chief of the VJ General Staff was directly subordinated to the FRY President.<sup>480</sup> Since the FRY President commanded the army pursuant to decisions taken by the SDC, the Chief of the VJ General Staff was also subordinated to the SDC.<sup>481</sup>

206. The VJ General Staff was the “highest professional and staff organ” for the preparation and utilisation of the VJ in peace and war.<sup>482</sup> The Chief of the VJ General Staff could engage the VJ in combat operations only pursuant to a decision to do so from the FRY President as Supreme Commander.<sup>483</sup> He could, however, decide on the preparation and deployment of VJ units along the FRY borders.<sup>484</sup> In this regard, Mladen Mihajlović testified that the role of the Chief of the VJ General Staff was to prepare the army, including material and equipment, for combat readiness, if it was necessary to defend the country.<sup>485</sup>

207. Moreover, the Law on the VJ establishes that the Chief of the General Staff acts in “accordance with the basic principles of organisation, development and establishment of the Army and the documents issued by the President of the Republic”.<sup>486</sup> Within this framework the Chief of the General Staff shall:

- 1) determine the organisation, plan of development, and establishment of the commands, units, and institutions of the Army;
- 2) determine the plan of recruitment and maintenance of manpower levels for the Army and the numerical distribution of recruits in the Army;
- 3) issue regulations on the training of the Army;
- 4) determine plans for the education and advanced training of professional and reserve commanding officers;
- 5) perform other duties as stipulated by this Law.<sup>487</sup>

<sup>480</sup> Miodrag Starčević, T. 5441-5442. According to Miodrag Starčević, in light of the principle of unity of command in the VJ, there was a “direct relationship” in the command between the President of the FRY and the Chief of the VJ General Staff.

<sup>481</sup> Miodrag Starčević, T. 5441-5442.

<sup>482</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 5; Miodrag Starčević, T. 5439-5440.

<sup>483</sup> Miodrag Simić, T. 10123-10126. The witness testified that Ex. P2714, Order of the Chief of the VJ General Staff, 5 May 1995 was in keeping with the power of the Chief of the VJ General Staff, Miodrag Simić, T. 10125. *See also* Ex. D236 (under seal).

<sup>484</sup> Miodrag Simić, T. 10131-10132. In this regard, Simić testified about an order by the Chief of the VJ General Staff to establish and deploy VJ Combat Groups along the FRY border on security grounds, Miodrag Simić, T. 10126.

<sup>485</sup> Mladen Mihajlović, T. 3960-3961.

<sup>486</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 5.

<sup>487</sup> *Ibid.*

208. According to Article 6 of the Law on the VJ, the Chief of the VJ General Staff issued orders, rules, commands, instructions or other acts for the execution of “enactments” of the FRY President, “as well as the duties stipulated by [the Law on the VJ]”.<sup>488</sup>

209. The Chief of the VJ General Staff and the commanding officers of units or institutions designed by him had the power to appoint “officers, non-commissioned officers and soldiers” with the exception of “generals and commanding officers performing duties for which the rank of general had been determined”.<sup>489</sup> The Chief of the VJ General Staff could, however, make proposals for approval by the FRY President for the promotion of a professional officer to the rank of general.<sup>490</sup> He could also transfer officers up to and including the rank of colonel, decide on the assignment of professional members of the VJ to duties outside the VJ and decide on termination of service of officers up to and including the rank of colonel.<sup>491</sup>

210. In the first half of 1993, the Chief of the VJ General Staff was General Života Panić.<sup>492</sup> On 26 August 1993, Života Panić replaced Mile Mrškić as the Chief of the VJ Special Forces Corps and Momčilo Perišić became the Chief of the VJ General Staff.<sup>493</sup>

#### 4. Cabinet of the Chief of the VJ General Staff

211. The Chief of the VJ General Staff had a deputy and a cabinet which assisted him with his work.<sup>494</sup> The cabinet included the Chef de Cabinet, the deputy Chef de Cabinet, and various other officers and assistants including, *inter alia*, an adjutant of the Chief of the VJ General Staff, legal and finance officers, as well as an information analyst.<sup>495</sup>

212. The basic duties of the Chef de Cabinet included facilitating the work of the Chief of the VJ General Staff, which included receiving and sending out mail, processing and analysing documents, as well as all the organisational aspects related to the work of the Chief of the VJ General Staff.<sup>496</sup>

<sup>488</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 6; Miodrag Starčević, T. 5441-5442.

<sup>489</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 16.

<sup>490</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 46. *See also* Ex. P197, Law on the VJ, 18 May 1994, Article 152. As noted by Miodrag Starčević, Article 152 defines the duties of the Chief of the VJ General Staff and the commanding officers of units or institutions designated by him, Miodrag Starčević, T. 5443.

<sup>491</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 152; Miodrag Starčević, T. 5537.

<sup>492</sup> MP-11, T. 8929.

<sup>493</sup> MP-11, T. 8929-8930. *See* Ex. P351, Organisational Chart of the Special Unit Corps in December 1993, 19 November 2008. P751, Minutes from the 12<sup>th</sup> Session of the SDC held on 23 and 25 August 1993, p. 2.

<sup>494</sup> Mladen Mihajlović, T. 3877; Miodrag Simić, T. 9947.

<sup>495</sup> Siniša Borović, T. 13905-13906.

<sup>496</sup> Siniša Borović, T. 13904-13905, 13911, 14087, 14180-14181.



The cabinet of the Chief of the VJ General Staff was also often responsible for relaying orders of the Chief of the VJ General Staff.<sup>497</sup>

213. Through the so-called “managerial information system”, the office monitored various issues from the printing of the daily newsletter about the situation in the units and the reserves to monitoring resources and finances.<sup>498</sup> On average the office received between 50 and 300 documents of all kinds daily.<sup>499</sup>

#### 5. Structure of the VJ General Staff

214. The VJ General Staff was made up of sectors, departments, administrations and other units. According to an organisational chart dated 15 June 1993, the following organs were directly subordinated to the Chief of the VJ General Staff: the Sector for Operations; the Sector for Organization, Recruitment and Information; the Logistics Sector; the Personnel Administration; Information and Morale Department; the Security Administration; the Intelligence Administration; and VJ Inspection.<sup>500</sup> Each organ was commanded by an Assistant to the Chief of the VJ General Staff.<sup>501</sup> Among the functions of an Assistant was the provision of advice to the Chief of the VJ General Staff about their sector without having, however, any command over VJ units.<sup>502</sup>

215. In December 1993, due to a reorganisation of the General Staff,<sup>503</sup> the Intelligence Administration, previously an autonomous and independent organ, became the so called “2<sup>nd</sup> Administration” within the Sector for Operational and Staff Affairs.<sup>504</sup> According to the new organisation, the following organs were directly subordinated to the VJ General Staff: the Sector for Operational and Staff Affairs; the Sector for Land Forces; the Sector for Air Force and Anti-Aircraft Defence; the Navy Sector; the Sector for Communications, Information and Electronic Operations; the Sector for Manning, Mobilization and Systemic Issues; the Logistics Sector; the Administration for Information and Political and Propaganda Activities; the Security Administration and the VJ Inspectorate.<sup>505</sup>

<sup>497</sup> See Ex. P865, Dispatch of the Cabinet of the VJ Chief the General Staff, 6 May 1995; Ex. P876, Order of the VJ General Staff on the Issuance of Materiel, 10 May 1994; Ex. P951, Coded Dispatch from the Cabinet of the Chief the VJ General Staff, 7 October 1995.

<sup>498</sup> Siniša Borović, T. 13911.

<sup>499</sup> *Ibid.*

<sup>500</sup> Miodrag Simić, T. 9939; Ex. D195, First Organisational Chart of the VJ General Staff, 15 June 1993

<sup>501</sup> Mladen Mihajlović, T. 3878.

<sup>502</sup> *Ibid.*

<sup>503</sup> Miodrag Simić, 9946-9947; Ex. D196, Second Organisational Chart of the VJ General Staff, 22 December 1993.

<sup>504</sup> Miodrag Simić, T. 9946-9947, 9959; Ex. D196, Second Organisational Chart of the VJ General Staff, 22 December 1993.

<sup>505</sup> Ex. D195, First Organisational Chart of the VJ General Staff, 15 June 1993.

216. The Sector for Operational and Staff Affairs was composed of a “1<sup>st</sup> Administration” which had the basic functions, *inter alia*, of “planning the engagement and combat readiness of the VJ”; “planning the development of the VJ”; ensuring the “State border security” and maintaining a “system of command and operations duty”.<sup>506</sup> Within this administration, there was also an Operations Centre, which collected and analysed information received from lower units deployed in the FRY, and from other federal organs within the FRY.<sup>507</sup> During the time relevant to the Indictment, the Chief of the 1<sup>st</sup> Administration was Miodrag Simić.<sup>508</sup>

217. The Intelligence Administration, or the “2<sup>nd</sup> Administration”, was within the Sector for Operational and Staff Affairs.<sup>509</sup> It was on 24-hour duty and responsible for intelligence support for the VJ, gathering information with indicators of possible aggression against the FRY.<sup>510</sup> Siniša Borović testified that the Intelligence Administration was headed by General Krga.<sup>511</sup>

218. The Security Administration included a counter-intelligence office whose function was the detection, monitoring, and prevention of all the factors that could threaten the VJ, such as activities of foreign intelligence agencies, terrorism or crime.<sup>512</sup> It was also responsible for verifying the authenticity and reliability of intelligence that came through its administration.<sup>513</sup> During the time relevant to the Indictment, the Security Administration was headed by Colonel Aleksander Dimitrijević.<sup>514</sup>

219. The Logistics Sector of the VJ General Staff supplied the army with equipment and other military materials.<sup>515</sup> It comprised, *inter alia*, a technical department (“Technical Administration”), an Operations Centre, and a planning organ.<sup>516</sup> It was initially under the command of Borislav

<sup>506</sup> Miodrag Simić, T. 9962-9964; Ex. D200, Chief of the VJ General Staff Order on the Competences of Organisational Units of the VJ General Staff in Peacetime, 25 July 1994; Miodrag Simić, T. 9972-9973; Ex. D202, VJ General Staff Work Plan for 1995 by Chief of the VJ General Staff 1<sup>st</sup> Administration, 22 December 1994.

<sup>507</sup> Miodrag Simić, T. 9968, 10011. *See infra* paras 1394-1395.

<sup>508</sup> Miodrag Simić, T. 9962.

<sup>509</sup> Miodrag Simić, T. 9946-9947, 9959; Ex. D196, Second Organisational Chart of the VJ General Staff, 22 December 1993.

<sup>510</sup> Ex. D200, Chief of the VJ General Staff Order on the Competences of Organisational Units of the VJ General Staff in Peacetime, 25 July 1994; Miodrag Simić, T. 10012; Branko Gajić, T. 10791-10792. *See infra* paras 1396-1399.

<sup>511</sup> Siniša Borović, T. 13932.

<sup>512</sup> Branko Gajić, T. 10808.

<sup>513</sup> Branko Gajić, T. 10803; Ex. D89, Rules of Service of Security Organs in the JNA, 1984, para. 29. *See infra* paras 1400-1403.

<sup>514</sup> Miodrag Simić, T. 9948.

<sup>515</sup> Mladen Mihajlović, T. 3879-3880.

<sup>516</sup> *Ibid.*

Dukić. However, after the transformations which took place in the second half of 1993, Milovanović and Šljivić were at the head of the Logistics Sector in sequence.<sup>517</sup>

(a) Collegium

220. The VJ General Staff had a collegium, which was an advisory body convened from time to time to consider certain issues.<sup>518</sup> The Chief of the VJ General Staff presided over the collegium which included the heads of the various sectors and independent administrations and occasionally their closest associates.<sup>519</sup>

221. The collegium was convened generally on a weekly basis, but, if the need arose, meetings were held even more frequently.<sup>520</sup> In addition to the regular meetings of the collegium, there were also the meetings of the so-called expanded collegium of the Chief of the VJ General Staff.<sup>521</sup> Such meetings would be attended by the various army commanders.<sup>522</sup> They were held around twice a year.<sup>523</sup>

222. The collegium discussed general issues, dealing, in particular, with the military and political situation prevailing in the area, work plans and various specific problems.<sup>524</sup> At the beginning of each collegium meeting, the Chief of the VJ General Staff was informed about the tasks issued during the previous collegium meeting and how they were implemented.<sup>525</sup> Individual participants took the floor in a certain order and were given a certain time to brief the Chief of the VJ General Staff and present proposals to him.<sup>526</sup> The meeting of the collegium ended with the Chief of General Staff issuing tasks and setting out deadlines for implementing them.<sup>527</sup> The tasks were issued orally and subsequently processed in writing<sup>528</sup> and minutes were kept.

<sup>517</sup> Miodrag Simić, T. 9948.

<sup>518</sup> Mladen Mihajlović, T. 3882. As explained by Miodrag Simić, when Perišić became Chief of the VJ General Staff, the collegium replaced the "Staff of the Supreme Commander", Miodrag Simić, T. 9978-9980; Ex. P727, Order from Office of Chief of General Staff on Organisation and Method of Work of the Chief of the General Staff and VJ Supreme Command Staff, 15 October 1993.

<sup>519</sup> Mladen Mihajlović, T. 3882-3883, stating that in the absence of the Chief of the VJ General Staff, his deputy attended the collegium meetings. Siniša Borović also testified that the Chef de Cabinet attended the collegium meetings, having the right to participate in the discussion, Siniša Borović, T. 13930-13931.

<sup>520</sup> Siniša Borović, T. 13930.

<sup>521</sup> Siniša Borović, T. 13930-13931.

<sup>522</sup> *Ibid.*

<sup>523</sup> *Ibid.*

<sup>524</sup> Mladen Mihajlović, T. 3883. Siniša Borović testified that the independent administrations chiefs would submit questions to the office of the Chief of General Staff which they wished to be included on the agenda of the collegium meetings, Siniša Borović, T. 13935.

<sup>525</sup> Siniša Borović, T. 13933.

<sup>526</sup> According to Mladen Mihajlović, generally, Perišić accepted those proposals, Mladen Mihajlović, T. 3883-3884, 3957-3958; Siniša Borović, T. 13931-13932.

<sup>527</sup> Siniša Borović, T. 13932.

<sup>528</sup> Siniša Borović, T. 13933. See Ex. P2891, Record of the Collegium of the VJ General Staff, 29 December 1995; Ex. P2204, Transcript of the Collegium of the Chief of the VJ General Staff, 18 September 1995.

## 6. Ministry of Defence

### (a) Structure

223. With the adoption of the FRY Constitution the MOD replaced the Federal Secretariat for National Defence.<sup>529</sup> In the SFRY, the Federal Secretariat was superior to the General Staff.<sup>530</sup> With the establishment of the FRY, the General Staff became independent of the MOD and the relationship between the two was based on coordination rather than a superior-subordinate relationship.<sup>531</sup>

224. Several administrations or sectors were subordinated to the MOD.<sup>532</sup> Among these organs was the “Sector for System and Status Issue and Legal Affairs”, “Finance and Budget Administration” and “Material, Financial, and Market Inspection Sector”.<sup>533</sup>

225. The Sector for System and Status Issue and Legal Affairs was responsible for regulating the status of soldiers in the VJ, housing policy, the education of soldiers, salaries, allowances and other benefits in the VJ.<sup>534</sup>

226. The Finance and Budget Administration was responsible for “monitoring the implementation of the military budget and in this regard, for proposing all necessary measures to ensure financial discipline and the regular flow of funds from the federal budget”.<sup>535</sup> It reported to the FRY Defence Minister and had to comply with the laws and regulations of the FRY Ministry of Finance.<sup>536</sup>

227. The Material, Financial, and Market Inspection Sector carried out inspections regarding the storage, use, and disposition of the assets of the VJ. More specifically, it controlled the financial operations and checked the contracts involving procurement of material including food.<sup>537</sup> This

<sup>529</sup> Stamenko Nikolić, T. 10409, 10412.

<sup>530</sup> Stamenko Nikolić, T. 10411; Ex. D239, Diagram Showing the Structure of the MOD, 9 June 1992. *See also* Miodrag Simić, T. 9923, 9938.

<sup>531</sup> *Ibid.*

<sup>532</sup> Stamenko Nikolić, T. 10410-10411; Ex. D239, Diagram Showing the Structure of the MOD, 9 June 1992.

<sup>533</sup> Stamenko Nikolić, T. 10408-10409, 10411, 10416-10417; Ex. D240, Rules on the Responsibilities of the Organisational Units in the MOD, 21 September 1992.

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

<sup>535</sup> Stamenko Nikolić, T. 10420; Ex. D240, Rules on the Responsibilities of the Organisational Units in the MOD, 21 September 1992, Article 4. *See also* Borivoje Jovanić, T. 11400-11401.

<sup>536</sup> Borivoje Jovanić, T. 11400-11401.

<sup>537</sup> Stamenko Nikolić, T. 10427, 10432; Ex. D240, Rules on the Responsibilities of the Organisational Units in the MOD, 21 September 1992, Article 26.

organ was also obliged to inspect the final calculation of the salaries in the Finance and Budget Administration at the accounting centre of the MOD.<sup>538</sup>

228. The accounting centre in the MOD, directly connected to the Finance and Budget Administration, was responsible for collecting all relevant data on professional members of the army, calculating the salaries according to the specific regulations, as well as issuing salaries through GIRO accounts and settling payments to army suppliers.<sup>539</sup>

(b) Functions of the MOD

229. Under the FRY Constitution the Minister of Defence was not a formal member of the SDC.<sup>540</sup> Nevertheless, he took part in the work of the SDC when matters of exceptional importance in the domain of his ministry were discussed.<sup>541</sup>

230. The MOD was in charge of the implementation of the defence plan enacted by the SDC.<sup>542</sup> The Minister of Defence was entitled to adopt all kinds of enactments, orders and decisions related to the implementation of the defence policy.<sup>543</sup> Proposals for such enactments as well as regulations to be adopted were submitted to the Minister of Defence by the specific organisational sectors.<sup>544</sup>

231. The MOD was also obliged to implement decisions and enactments rendered by the President of FRY, the SDC, and the federal government.<sup>545</sup> The MOD was responsible for carrying out inspections to check whether the enactments and laws relating to the defence of the country were being implemented in line with the law and the decisions of the SDC.<sup>546</sup> If in the course of such inspection the MOD found out that there had been a breach of law, it would submit its report to the Minister of Defence as the person in charge of adopting certain measures as provided by the

<sup>538</sup> Stamenko Nikolić, T. 10428.

<sup>539</sup> Stamenko Nikolić, T. 10422, 10425-10427, 10763-10764; Ex. D240, Rules on the Responsibilities of the Organisational Units in the MOD, 21 September 1992, Articles 7, 10. *See* Ex. P756, Minutes from the 25<sup>th</sup> Session of the SDC held on 30 August 1994; Ex. P749, Minutes from the 36<sup>th</sup> Session of the SDC held on 12 May 1995; Stamenko Nikolić, T. 10766-10768 (private session). *See also* Ex. D504, Witness Statement of Dane Ajduković, 26 November 2009 and 11 September 2010, para. 22.

<sup>540</sup> Stamenko Nikolić, T. 10441.

<sup>541</sup> Stamenko Nikolić, T. 10441. Witness Dane Ajduković, in his position as Chief of the Finance and Budget Administration of the MOD, for instance, attended meetings of the SDC on financial matters, roughly every two months, Ex. D504, Witness Statement of Dane Ajduković, 26 November 2009 and 11 September 2010, para. 27. Ex. P1183, Decree on the Proclamation of the Law on Defence, 27 May 1994, Article 43.

<sup>543</sup> Stamenko Nikolić, T. 10436; Miodrag Starčević, T. 5433-5444.

<sup>544</sup> Stamenko Nikolić, T. 10436; Ex. P1183, Decree on the Proclamation of the Law on Defence, 27 May 1994, Article 43.

<sup>545</sup> Stamenko Nikolić, T. 10437; Ex. P1183, Decree on the Proclamation of the Law on Defence, 27 May 1994, Article 44.

<sup>546</sup> Stamenko Nikolić, T. 10438-10439; Ex. P1183, Decree on the Proclamation of the Law on Defence, 27 May 1994, Article 44.

law.<sup>547</sup> The Minister of Defence was responsible to the Prime Minister who in turn answered to the Assembly.<sup>548</sup>

(c) The Role of the MOD in the Military Budget

232. The MOD was also responsible for executing the military budget, which included funds for both the MOD and the VJ.<sup>549</sup> The military budget was a part of the federal budget prepared by the Federal Assembly.<sup>550</sup>

233. The MOD was responsible for proposing and submitting a national defence budget to the FRY Assembly.<sup>551</sup> This included a recommendation on the yearly budget for the VJ.<sup>552</sup> In preparing the national defence budget, the Minister of Defence received budget proposals from the Chief of the VJ General Staff and the offices of the MOD.<sup>553</sup> The Minister of Defence reviewed the budget proposals and, in particular with regard to the VJ budget plan, the MOD would discuss with the VJ General Staff whether the amount sought was realistic and thus would likely be approved by the FRY Assembly.<sup>554</sup>

234. Generally, the needs of the army constituted around 85-90% of this budget, whereas the rest covered the needs of the MOD.<sup>555</sup> After the Minister of Defence's endorsement of the proposed budget, it was then submitted to the federal government, which then established the final budget proposal to submit to the Federal Assembly for final approval.<sup>556</sup> The annual budget of the MOD

<sup>547</sup> Stamenko Nikolić, T. 10438-10440.

<sup>548</sup> Stamenko Nikolić, T. 10440-10441.

<sup>549</sup> Borivoje Jovanić, T. 11393-11395. The federal budget was the only source of funding for the VJ, Borivoje Jovanić, T. 11454-11456. *See also* Ex. D504, Witness Statement of Dane Ajduković, 26 November 2009 and 11 September 2010, para. 17, stating that the Law on the VJ and the Law on Defence separated the organisational structures of the VJ and the MOD, imposing a separation between command and administrative functions resulting in the MOD retaining control over the planning and financing of the VJ.

<sup>550</sup> Stamenko Nikolić, T. 10422, 10618-10619, 10624. *See also* Ex. P197, Law on the VJ, 18 May 1994, Article 337.

<sup>551</sup> Stamenko Nikolić, T. 10432.

<sup>552</sup> Stamenko Nikolić, T. 10433.

<sup>553</sup> When proposing a military budget, the VJ General Staff, at the request of the Finance and Budget Administration, would submit its requirements with regard to assets that had to be included in the budget, Stamenko Nikolić, T. 10433, 10619. *See also* Ex. D504, Witness Statement of Dane Ajduković, 26 November 2009 and 11 September 2010, p. 4, para. 20, stating that before drawing up the plan, which was to be submitted to the Federal Assembly, the General Staff would send the draft plan to the relevant administrations of the MOD which, together with the General Staff, would harmonise the proposals in order to reach an agreement on the finalisation of the plan based on the needs and priorities of the VJ, and would then send it to the Federal Government, which in turn would submit the agreed proposal to the Federal Assembly for adoption. The coordinator of all these discussions was the Finance and Budget Administration.

<sup>554</sup> Stamenko Nikolić, T. 10623-10625.

<sup>555</sup> Stamenko Nikolić, T. 10623-10624, 10763.

<sup>556</sup> Stamenko Nikolić, T. 10433, 10621-10622, 10625-10626.

approved by the Federal Assembly, detailed the amounts which were to be allocated to the VJ and the MOD.<sup>557</sup>

### C. Units of the VJ

235. The FRY Constitution provided that the FRY should have an army, composed of Yugoslav citizens and which should “defend [FRY] sovereignty, territory, independence and constitutional order”.<sup>558</sup>

236. On 20 May 1992, the FRY Presidency adopted a decision on renaming the JNA as the Army of Yugoslavia (“VJ”).<sup>559</sup> The Law on the VJ came into force in October 1993;<sup>560</sup> Article 346 provides that JNA members became VJ members as of the date the law came into force.<sup>561</sup>

237. Article 135 of the FRY Constitution provides that in peacetime and wartime the VJ was under the command of the FRY President, in accordance with decisions of the SDC.<sup>562</sup> Under the Constitution, the SDC could reach command decisions to be implemented by the FRY President.<sup>563</sup>

238. The VJ was divided into the following services: the Land Forces, the Air Forces and Anti-aircraft Defence and the Navy. These were in turn divided into “combat arms and supporting arms” and those, in turn, were divided into sections and specialist services.<sup>564</sup>

239. Within the VJ, special military formations were also established, such as the Special Units Corps (“KSJ”).<sup>565</sup> The KSJ was directly subordinated to the Chief of the VJ General Staff.<sup>566</sup> The KSJ consisted of the Guards Motorised Brigade (“Guards Brigade”),<sup>567</sup> 72<sup>nd</sup> Special Brigade, 63<sup>rd</sup> Parachute Brigade, 1<sup>st</sup> Armoured Brigade and Headquarters Support Units.<sup>568</sup>

<sup>557</sup> Stamenko Nikolić, T. 10626.

<sup>558</sup> Ex. P1186, Constitution of the FRY (Excerpt), 27 April 1992, Doc ID 0471-5722, p. 27.

<sup>559</sup> Ex. P375, Expert Report of Patrick Treanor, para. 81; Patrick Treanor, T. 1157. *See also* Miodrag Starčević, T. 6863; Ex. P199, Minutes of the 197<sup>th</sup> Session of SFRY Presidency, 4 May 1992, pp 4-5.

<sup>560</sup> Miodrag Starčević T. 5436-5437.

<sup>561</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 346; Miodrag Starčević, T. 6893-6894.

<sup>562</sup> Ex. P1186, Constitution of the FRY (Excerpt), 27 April 1992, Doc ID 0471-5722, p. 27; Miodrag Starčević, T. 6908. *See also* P197, Law on the VJ, 18 May 1994, Article 4.

<sup>563</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 4; Miodrag Starčević, T. 6913.

<sup>564</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 2.

<sup>565</sup> Borivoje Tešić, T. 1994.

<sup>566</sup> Borivoje Tešić, T. 1896-1897; Ex. P351, Organisational Chart of the Special Units Corps in December 1993, 19 November 2008; Borivoje Tešić, T. 1993; Miodrag Simić, T. 10145-10146: MP-11, T. 8928, testifying that the Chief of the General Staff in order to use such unit had to have an approval of the “[MOD] directly from the President himself”, *see* MP-11, T. 8928; Borivoje Tešić, T. 1992-1993.

<sup>567</sup> Prior to the transformation of the JNA into the VJ, the Guards Brigade was an independent unit under the MOD, *see* Borivoje Tešić, T. 1888.

<sup>568</sup> Miodrag Simić, T. 10145-10146; Ex. P351, Organisational Chart of the Special Units Corps in December 1993, 19 November 2008.

## 1. The Guards Brigade

240. The Guards Brigade consisted of six battalions (1<sup>st</sup> Guards Motorised Battalion, 2<sup>nd</sup> Guards Motorised Battalion, 25 Military Police Battalion, Anti-Aircraft Defence Light Self-Propelled Artillery Rocket Battalion, Anti-Aircraft Howitzer Battalion 122mm and Logistic Battalion), two companies (Communications Company and Engineering Company) and three platoons (Atomic Biological Chemical Defence Platoon, Military Police Special Purposes Platoon and Special Transportation Platoon).<sup>569</sup> The duties of the Guards Brigade were primarily related to security rather than to combat activities.<sup>570</sup> During peacetime, the Guards Brigade had three main duties – training, securing combat readiness and “protocol duties”, which involved providing security to installations or residencies; whereas in war time, its main duty was to provide security to the Supreme Command.<sup>571</sup>

241. In 1993, the Guards Brigade numbered about 1600 members.<sup>572</sup> Based on the selection criteria for its officers, it was considered an elite unit.<sup>573</sup> Witness Borivoje Tešić testified that in December 1993, he was an operations officer within the staff of the Guards Brigade, and also that, at one point, Major Paunović was an operations officer in the Guards Brigade.<sup>574</sup>

## 2. The 72<sup>nd</sup> Special Brigade

242. The 72<sup>nd</sup> Brigade was an elite military unit made up of “contract soldiers” to conduct special operations.<sup>575</sup> The 72<sup>nd</sup> Brigade was composed of three battalions: a military police battalion for special operations which was headquartered on Mount Avala, about 30 kilometres from Belgrade, a sabotage battalion located in Pančevo as well as an assault battalion based in Vukovine.<sup>576</sup> Each battalion had two professional companies consisting of professional soldiers, and one company of regular conscripts maintaining the compound.<sup>577</sup> Some training of the military police battalion took

<sup>569</sup> Borivoje Tešić, T. 1995-1996, 2030; Ex. P352, Organisational Chart of the Guards Motorised Brigade in December 1993, 19 November 2008.

<sup>570</sup> Borivoje Tešić, T. 1994.

<sup>571</sup> Borivoje Tešić, T. 1993-1994.

<sup>572</sup> Borivoje Tešić, T. 1995.

<sup>573</sup> Borivoje Tešić, T. 1995-1996, 2030.

<sup>574</sup> Borivoje Tešić, T. 1902, 1904.

<sup>575</sup> MP-11, T. 8927, 8929, 8934-8935, 8972. According to Tešić, two categories of soldiers existed in the VJ: regular soldiers and contract soldiers. The contract soldiers were persons who, upon finishing their military service, signed a contract for a certain period of time. They would receive a regular monthly salary, Borivoje Tešić, T. 1997.

<sup>576</sup> MP-11, T. 8931, 8973, 8995-8996. The military police battalion was under the command of Aleksandar Živković. The battalion was made up of three companies – each from 30-50 up to 120 soldiers; one commanded by Captain Vojnović and one by Lieutenant Alimpić, MP-11, T. 8975. See MP-11, T. 8987; Zlatko Danilović, T. 11027-11028.

<sup>577</sup> Zlatko Danilović, T. 11028.



place at Bubanj Potok, about 15 kilometres from Avala, as well as parachute training at Niš.<sup>578</sup> Tešić testified that, at one point, Miodrag Panić was commander of the 72<sup>nd</sup> Brigade.<sup>579</sup>

#### **D. Military Judicial System in the FRY**

##### **1. Structure and jurisdiction**

###### **(a) Military courts**

243. The dissolution of the SFRY and the establishment of the FRY brought about a reorganisation of the military judicial system.<sup>580</sup> The FRY had independent judicial organs with offices in Belgrade, Tivat and in Niš.<sup>581</sup> According to witness Radomir Gojović, those organs did not have any functional relationship with the military judiciary in RS and the RSK.<sup>582</sup>

244. The military courts had jurisdiction over military personnel for all criminal offences and over civilians or other non-military personnel for specific criminal offences listed in the Law on Military Courts.<sup>583</sup>

245. The military courts applied the SFRY Criminal Code which remained in force in the FRY as well as the “Regulations on the Application of International Laws of War in the Armed Forces of the SFRY (“Regulations”). The latter included, *inter alia*, a provision on command responsibility with respect to war crimes<sup>584</sup> and regulated committing, organising, inciting or assisting in the commission of a crime according to international humanitarian law.<sup>585</sup> The Trial Chamber also notes that a breach of the Regulations in some less serious cases was characterised as a violation of military discipline under the Law on the VJ.<sup>586</sup>

<sup>578</sup> Zlatko Danilović, T. 11031.

<sup>579</sup> Borivoje Tešić, T. 1902.

<sup>580</sup> Radomir Gojović, T. 12897-12898; Ex. P1187, Decree on Promulgation of the Law on Military Courts, 27 February 1995, Article 2.

<sup>581</sup> Radomir Gojović, T. 12897-12898; Ex. P1187, Decree on Promulgation of the Law on Military Courts, 27 February 1995, Article 8.

<sup>582</sup> Radomir Gojović, T. 12897-12898, 12931, Ex. P1187, Decree on Promulgation of the Law on Military Courts, 27 February 1995, Article 2.

<sup>583</sup> Radomir Gojović, T. 12895, 12899; Ex. P1187, Decree on Promulgation of the Law on Military Courts, 27 February 1995, Article 9.

<sup>584</sup> The Regulations stated that: “An officer shall be personally liable for violations of the laws of war if he knew or could have known that units subordinate to him or other units or individuals were planning the commission of such violations, and, at a time when it was still possible to prevent their commission, failed to take measures to prevent such violations. That officer shall also be held personally liable who, aware that violations of the laws of war have been committed, fails to institute disciplinary or criminal proceedings against the offender or if the instituting does not fall within his jurisdiction, fails to report the violation to his superior officer”, Ex. P2304, Regulations on the Application of International Laws of War in the Armed Forces of the SFRY, Article 21.

<sup>585</sup> Radomir Gojović, T. 12964-12965; Miodrag Starčević, T. 5530-5531, referring to Articles 20 and 21 of the Regulations.

<sup>586</sup> Miodrag Starčević, T. 5528-5533.

246. Military judges were appointed by decree of the FRY President, upon proposal of the Minister of Defence.<sup>587</sup>

(b) Military disciplinary courts

247. All disciplinary violations were dealt with by military disciplinary courts.<sup>588</sup> A violation of military discipline consisted of behaviour that was contrary to the obligation of performance of military duty stipulated by the law, the rules of service, and other regulations, orders and other documents of superior officers concerning service.<sup>589</sup>

248. The Law on the VJ defined disciplinary infractions and offences and the procedures applicable in addressing these disciplinary breaches. The Law on the VJ regulated, *inter alia*, the composition of the military disciplinary courts, as well as the authority and procedure for superior officers to deal with disciplinary offences.<sup>590</sup>

249. More specifically, the military disciplinary courts had jurisdictions over two types of breaches of military discipline: disciplinary infractions, which were minor violations of military discipline, and disciplinary offences which were serious violations of the law governing military discipline.<sup>591</sup> Radomir Gojović further explained that one act might constitute both a disciplinary violation and a crime.<sup>592</sup> In this case, parallel proceedings – disciplinary and criminal – could be undertaken and the military authority could pass a sentence for disciplinary offences independently of the criminal proceeding.<sup>593</sup>

250. In the case of a disciplinary infraction, the sanction that could be imposed included military detention for up to 20 days, loss of rank and decrease of pay between 5% and 10% for up to two months.<sup>594</sup> As regards disciplinary offences, the measures that could be imposed included suspension of promotion, decrease in pay between 10% and 20% for a period between one and 12 months, a prison term for up to 20 days, dismissal from duty for a military commander with a ban

<sup>587</sup> Radomir Gojović, T. 12897-12899; Ex. P1187, Decree on Promulgation of the Law on Military Courts, 27 February 1995, Article 26.

<sup>588</sup> Miodrag Starčević, T. 5540.

<sup>589</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 160.

<sup>590</sup> Ex. P197, Law on the VJ, 18 May 1994, Articles 159-206.

<sup>591</sup> Radomir Gojović, T. 12925-12926; Ex. P197, Law on the VJ, 18 May 1994, Article 159.

<sup>592</sup> Radomir Gojović, T. 12926. *See e.g.* Ex. P2417, Judgement of the Military Disciplinary Court Relating to Zoran Antić, 23 September 1995, p. 6; Ex. P2420, Judgement of the Military Disciplinary Court Relating to Nedeljko Vujić, 20 September 1995, p. 7.

<sup>593</sup> Radomir Gojović, T. 12926, testifying that this would, however, be an exception, which was to be invoked only if specific military interests existed.

<sup>594</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 163.

on reinstatement to this duty between one and three years, loss of the right to serve as a professional soldier, and loss of rank.<sup>595</sup>

251. In the case of a disciplinary infraction, the statute of limitations was three months from the day it was committed.<sup>596</sup> With regard to a disciplinary offence, the statute of limitations was six months from the day a superior learned of its commission.<sup>597</sup> In the case of a disciplinary offence that also constituted a criminal act, the statute of limitations in the Criminal Code for the criminal act was applied. The Criminal Code provided for the inapplicability of the statute of limitations where the underlying disciplinary offence was a violation of international humanitarian law.<sup>598</sup>

252. The military disciplinary courts existed at two levels: military disciplinary courts of first instance and higher military disciplinary court.<sup>599</sup> Military disciplinary courts of first instance were established at the level of the General Staff and Commands of the Army, Air Force and Anti-Aircraft Defence, and the Navy.<sup>600</sup> The higher military disciplinary court, charged with appeals, was established at the General Staff.<sup>601</sup>

253. The Chief of the VJ General Staff appointed the military disciplinary presidents, judges, prosecutors and their deputies, as well as the registrars of the military disciplinary courts for terms of two years.<sup>602</sup>

## 2. The procedure for criminal and disciplinary violations

254. In relation to war crimes, a VJ officer who learned of a violation of the laws of war, should “order that the circumstances and facts surrounding the violation be investigated and the necessary evidence collected”.<sup>603</sup> The VJ officer should also forward such information to the Military Prosecutor.<sup>604</sup> Any senior or commanding officer had to prevent further violations and was also under an obligation “to take measures to make sure that the perpetrator of a crime [...] should be taken into custody to prevent him from absconding”.<sup>605</sup>

<sup>595</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 164.

<sup>596</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 166.

<sup>597</sup> *Ibid.*

<sup>598</sup> *Ibid.*

<sup>599</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 177.

<sup>600</sup> Miodrag Starčević, T. 5553-5554; Ex. P197, Law on the VJ, 18 May 1994, Articles 177-178.

<sup>601</sup> Ex. P197, Law on the VJ, 18 May 1994, Articles 177-178, 183.

<sup>602</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 179.

<sup>603</sup> Radomir Gojović, T. 12966; Ex. P2304, Regulations on the Application of International Laws of War in the Armed Forces of the SFRY, Article 36.

<sup>604</sup> Miodrag Starčević, T. 5531-5532, 5552-5553, 6796; Ex. P2304, Regulations on the Application of International Laws of War in the Armed Forces of the SFRY, Article 36.

<sup>605</sup> Radomir Gojović, T. 12916; Miodrag Starčević, T. 5531-5532; Ex. P2304, Regulations on the Application of International Laws of War in the Armed Forces of the SFRY, Article 36.

255. Once the Military Prosecutor received information as to the commission of a crime, he or she would then assess if there were grounds to initiate further proceedings and to move the case before the investigative judge.<sup>606</sup> The Military Prosecutor could request an investigation through certain state organs including military police and security organs.<sup>607</sup>

256. The Chief of the VJ General Staff could set up a commission with the task of preparing a report on the circumstances surrounding a violation of the laws of war.<sup>608</sup> The Chief of the VJ General Staff could also vest the commission with specific tasks such as establishing individual responsibility for the violations, proposing initiatives for the prevention of future similar violations, and taking disciplinary measures against those responsible of the violations.<sup>609</sup> However, the official investigation rested within the purview of the Military Courts.<sup>610</sup>

257. Proceedings against a perpetrator of a disciplinary offence could be brought before a military disciplinary court by a senior officer holding the position of, at least, regiment commander.<sup>611</sup> In the FRY MOD, that was either the Federal Minister of Defence and commanding officers of the units directly subordinated to him; whereas in the VJ, it was at least an Army commander, naturally also including the Chief of the VJ General Staff.<sup>612</sup>

258. In this regard, witness Miodrag Starčević testified that Perišić was responsible for initiating investigations of General Staff officers directly subordinated to him without there being an intermediary superior.<sup>613</sup> Likewise, if Perišić's subordinates failed to initiate a disciplinary investigation for a known violation, he could initiate such an investigation.<sup>614</sup>

259. Depending on the outcome of the investigation, the officer who initiated the proceedings would stay the proceedings, pronounce a disciplinary sentence or forward the case to the competent officer who would file charges against the violator before the military disciplinary court.<sup>615</sup>

### 3. Jurisdiction over crimes committed abroad

260. The Trial Chamber heard evidence that the Law on the VJ was binding upon the members of the Personnel Centres ("PCs").<sup>616</sup> Furthermore, Defence witness Radomir Gojović testified that a

<sup>606</sup> Miodrag Starčević, T. 5546.

<sup>607</sup> Radomir Gojović, T. 12895, 12899; Ex. P1187, Decree on Promulgation of the Law on Military Courts, 27 February 1995; Ex. P1188, Decree on Promulgation of the Law on the Military Prosecutor, 27 February 1995.

<sup>608</sup> Radomir Gojović, T. 12966-12969, 12986-12987.

<sup>609</sup> Radomir Gojović, T. 12969-12970.

<sup>610</sup> Radomir Gojović, T. 12966, 12968-12969.

<sup>611</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 180.

<sup>612</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 181; Radomir Gojović, T. 12930, 12959-12961.

<sup>613</sup> Miodrag Starčević, T. 5545.

<sup>614</sup> *Ibid.*

<sup>615</sup> Miodrag Starčević, T. 5545-5546, 5554; Ex. P197, Law on the VJ, 18 May 1994, Article 180.

VJ superior officer was required to carry out necessary inquiries and take the necessary measures in case of war crimes being committed by a VJ unit deployed outside the FRY territory.<sup>617</sup> Once the offender was in the custody of the FRY organs, the superior officer also had a duty to report to the Military Prosecutor, who was in charge of the criminal proceedings.<sup>618</sup>

261. Perišić's ability to initiate disciplinary investigations against some VJ members serving in the VRS or the SVK through the 30<sup>th</sup> and the 40<sup>th</sup> PCs will be discussed in detail in a different part of the Judgement.<sup>619</sup>

## **E. Structure and Organisation of the Army of Republika Srpska ("VRS")**

### **1. Establishment of the VRS**

262. The VRS was formally established on 12 May 1992 at the 16<sup>th</sup> Session of the Assembly of the Serb People of BiH<sup>620</sup> and was abolished on 31 December 2001.<sup>621</sup> On 12 May 1992, the Constitution was also amended to vest the President of the Republic with the power to lead the VRS, in peace as well as in war time.<sup>622</sup>

263. The VRS was created by combining what remained of the JNA after its withdrawal from the BiH<sup>623</sup> with the various "Territorial [Defence] (TO), municipal and paramilitary units that were then fighting in Bosnia".<sup>624</sup> General Kadijević, a Chief of Staff in the JNA in 1992, commented on the role of the JNA in the creation of the VRS: "The JNA commands and units constituted the backbone of the [VRS], with its entire arsenal of weapons and military equipment".<sup>625</sup>

<sup>616</sup> See e.g. MP-5, T. 2423. See also *infra* paras 772, 774.

<sup>617</sup> Radomir Gojović, T. 12982-12983. See also Radomir Gojović, T. 12931; Dušan Kovačević, T. 12729.

<sup>618</sup> Radomir Gojović, T. 12983.

<sup>619</sup> See *infra* paras 1674-1700.

<sup>620</sup> Ex. P189, Amendments to the Constitution of the SerBiH, 12 May 1992, pp 1-3 (particularly Amendment II, amending Article 110); Ex. P190, Decision on Formation of the Army of SerBiH, 12 May 1992; Patrick Treanor, T. 1099; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 73; Petar Škrbić, T. 11633; Stojan Malčić, T. 11188; Defence Agreed Facts, 97; Sarajevo Adjudicated Facts I, 44.

<sup>621</sup> Petar Škrbić, T. 11693.

<sup>622</sup> Ex. P189, Amendments to the Constitution of the SerBiH, 12 May 1992, p. 2 (Amendment III, amending Article 111); Patrick Treanor, T. 1120, 1325.

<sup>623</sup> Pursuant to an order of the SFRY Presidency of 4 May 1992 the JNA was to withdraw from the territory of BiH and cross into the SFRY within 15 days, Stamenko Nikolić, T. 10458; Ex. P75, Đorđe Đukić, Statement of 4/29 February 1996, p. 3; MP-5, T. 2366-2367, 2435, 2493-2494, 2498; Stamenko Nikolić, T. 10458. See also Stojan Malčić, T. 11213-11214; Ex. D292, List of VRS Officers, 25 June 1992; Ex. P2249, Expert Report of Richard Butler "VRS Main Staff Command Responsibility", 9 June 2006, para. 1.12.

<sup>624</sup> Ex. P2249, Butler Report VRS Main Staff Command Responsibility Report, 9 June 2006, para. 1.0; Ex. P2244, Butler Report VRS Corps Command Responsibility Report, 5 April 2000, para. 1.0. See also Ex. P2249, Expert Report of Richard Butler "VRS Main Staff Command Responsibility", 9 June 2006, paras 1.5-1.9; Richard Butler, T. 6680, 6684.

<sup>625</sup> Ex. P343, Excerpt of the Book "My View on the Break-Up" of General Kadijević, 1993, Doc ID 0035-9426, p. 1.

264. Right after its establishment, the VRS did not have specific uniforms, but from June 1992 a decision was made whereby the insignia of a tri-colour flag were to be worn on the sleeves and the hats.<sup>626</sup>

## 2. Hierarchy in the VRS

265. On 1 June 1992, the Presidency of RS adopted the Law on the VRS.<sup>627</sup> The Law provided that the VRS operated under the principle of unity or singleness of command<sup>628</sup> and defined its objective as defending the “sovereignty, territory, independence and constitutional order” of RS.<sup>629</sup> It also stipulated that the President of RS was Commander-in-Chief of the Army and held the authority to, *inter alia*, establish a system of VRS command and to appoint, promote or discharge military officers within the VRS.<sup>630</sup> In addition, the Law on the VRS stipulated that the Commander of the Main Staff would command the Army in compliance with the authority delegated to him by the President.<sup>631</sup> Based on the principle of unity of command, the Commander of the VRS Main Staff was directly subordinated to the Commander-in-Chief.<sup>632</sup>

266. During the period relevant to the Indictment, Radovan Karadžić was the Commander-in-Chief of the VRS<sup>633</sup> and Ratko Mladić was the Commander of the Main Staff.<sup>634</sup>

### (i) RS Supreme Command

267. While the President of RS was the Commander-in-Chief of the VRS,<sup>635</sup> the broader issues related to strategic aims of war were however dealt with by the Supreme Command.<sup>636</sup> The body

<sup>626</sup> Stojan Malčić, T. 11210.

<sup>627</sup> Ex. P191, Law on the VRS, 1 June 1992; MP-5, T. 2482; Patrick Treanor, T. 1122; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 75.

<sup>628</sup> Ex. P191, Law on the VRS, 1 June 1992, Articles 1, 173. *See also* Richard Butler, T. 6701-6702; Ex. P2248, Expert Report of Richard Butler “VRS Brigade Command Responsibility”, 31 October 2002, p. 7.

<sup>629</sup> Ex. P191, Law on the VRS, 1 June 1992, Articles 1, 173; MP-5, T. 2483; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 75; Stojan Malčić, T. 11221-11222. *See also* Miodrag Starčević, T. 6887.

<sup>630</sup> Ex. P191, Law on the VRS, 1 June 1992, Article 174; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 75. *See also* Robert Donia, T. 1773; MP-5, T. 2436; Defence Agreed Facts, 2. The Trial Chamber notes that “commander-in-chief” and “supreme commander” are used interchangeably in the exhibits, reports and testimonies. The Trial Chamber decided to adopt the expression “Commander-in-Chief”.

<sup>631</sup> Ex. P191, Law on the VRS, 1 June 1992, Articles 174-175; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 75.

<sup>632</sup> Richard Butler, T. 6698-6699; Defence Adjudicated Facts II, 73.

<sup>633</sup> Ex. P2249, Expert Report of Richard Butler “VRS Main Staff Command Responsibility”, 9 June 2006, para. 2.1; Stamenko Nikolić, T. 10549. Karadžić was succeeded by Biljana Plavšić in November-December 1996, Petar Škrbić, T. 11799, 11809.

<sup>634</sup> Ex. P190, Decision on Formation of the Army of SerBiH, 12 May 1992; Aernout van Lynden, T. 526, 555-556; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 73; Patrick Treanor, T. 1110, 1121, 1324-1325; Robert Donia, T. 1688-1689; MP-433, T. 2191; MP-5, T. 2436-2437; Ex. P75, Đorđe Đukić, Statement of 4/29 February 1996, p. 1; Stamenko Nikolić, T. 10549; Defence Adjudicated Facts, 3; Aernout van Lynden, T. 526, 555-556. As of the end of April 1992, Ratko Mladić was the Chief of Staff of the 2<sup>nd</sup> JNA Military District, Patrick Treanor, T. 1121.

was created in November 1992 and consisted of the President of the RS, the Vice President, the Speaker of the Assembly, the Minister of Defence and the Minister of the Interior.<sup>637</sup>

268. Although the Minister of Defence was a member of the Supreme Command, he was not in the VRS chain of command.<sup>638</sup> The role of the MOD was to manage the “activities that were necessary to ensure the viability of the Army as an effective institution” and the administration of the Military Court System.<sup>639</sup>

(ii) Main Staff

269. The Main Staff was the highest military organ in the VRS and operated under the direction of the RS Supreme Command.<sup>640</sup>

270. The Main Staff made operational, logistical, security and administrative decisions for the VRS, as well as decisions aimed at harmonising military activities “with the ongoing political and diplomatic efforts undertaken by [other] branches of the RS government”.<sup>641</sup>

a. Organisation

271. According to Butler’s expert report, the nucleus of the Main Staff of the VRS originated from the components and personnel of the former JNA 2<sup>nd</sup> Military District.<sup>642</sup> It was “modelled to closely parallel the staff organisation of the former JNA corps”.<sup>643</sup>

<sup>635</sup> Ex. P191, Law on the VRS, 1 June 1992, Article 174; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 75; Ex. P2249, Expert Report of Richard Butler “VRS Main Staff Command Responsibility”, 9 June 2006, para. 2.1; Defence Adjudicated Facts I, 1, 89; Richard Butler, T. 6698. *See also* Robert Donia, T. 1773; MP-5, T. 2436.

<sup>636</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 2.1.

<sup>637</sup> Ex. P2249, Expert Report of Richard Butler “VRS Main Staff Command Responsibility”, 9 June 2006, para. 2.1; Petar Škrbić, T. 11737; Dušan Kovačević, T. 12588; Ex. D408, Decision on the Establishment of the Supreme Command of the VRS, 30 November 1992.

<sup>638</sup> Ex. P2249, Expert Report of Richard Butler “VRS Main Staff Command Responsibility”, 9 June 2006, para. 2.2.  
<sup>639</sup> The MOD would manage activities such as the administration and mobilisation of reserve soldiers, their pay and benefits under the law, the mobilisation of state-owned assets and resources to support the VRS requirements and management budgetary issues, Ex. P2249, Expert Report of Richard Butler “VRS Main Staff Command Responsibility”, 9 June 2006, para. 2.2. *See also* Defence Agreed Facts, 95.

<sup>640</sup> Ex. P2249, Expert Report of Richard Butler “VRS Main Staff Command Responsibility”, 9 June 2006, para. 2.0; Richard Butler, T. 6688. *See also* Ex. D395, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 2. It ceased to operate on 25 December 1996, Petar Škrbić, T. 11697. The Main Staff went under the code number 3500 in peace time and 7501 in war time, Ex. P291, Order on the Organisation, Establishment and Command of the VRS, 16 June 1992, p. 1; Stojan Malčić, T. 11199-11200, 11276.

<sup>641</sup> Ex. P2249, Expert Report of Richard Butler “VRS Main Staff Command Responsibility”, 9 June 2006, para. 2.3. *See also* Ex. D395, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 2.

<sup>642</sup> Ex. P2249, Expert Report of Richard Butler “VRS Main Staff Command Responsibility”, 9 June 2006, para. 2.4. *See also* Ex. P78, Đorđe Đukić, Supplementary Statement on Planning Offensives on the Territory of the RBiH, 4/29 February 1996, p. 1; Ex. P2244, Expert Report of Richard Butler “VRS Corps Command Responsibility”, 5 April 2000, para. 1.1.

272. The VRS Main Staff leadership was comprised of the Commander of the Main Staff, the Chief of Staff of the Main Staff, the Assistant Commander for Morale, Religious and Legal Affairs, the Assistant Commander for Logistics and the Assistant Commander for Intelligence and Security. The Chief of Staff of the Main Staff managed the work of the Main Staff and ensured that it was coordinated with the work of the other sectors.<sup>644</sup>

273. At the time relevant to the Indictment, Ratko Mladić's<sup>645</sup> subordinates were: Manojlo Milovanović as the Chief of Staff and Deputy Commander, when necessary;<sup>646</sup> Milan Gvero as Assistant Commander for Morale, Legal and Religious Affairs who also served as the principal representative of the Main Staff to the Assembly of Serbian People in BiH, once General Mladić had withdrawn from attending the sessions in 1993;<sup>647</sup> Đorđe Đukić as Assistant Commander for Logistics<sup>648</sup> and Zdravko Tolimir as Assistant Commander for Intelligence and Security.<sup>649</sup> In addition, Ljubiša Beara was the head of Security within the Intelligence and Security sector;<sup>650</sup> Mićo Grubor was Chief of Mobilisation Organisation;<sup>651</sup> and Radivoje Miletić was Chief of Administration for Operations and Staff Affairs in the Operations Sector<sup>652</sup> and later Chief of Operations and Training of the VRS Main Staff in March 1995.<sup>653</sup>

274. The Main Staff was initially located in the former JNA premises in Crna Rijeka. In December 1992, however, when the personnel level increased, a rear command post of the Main Staff was created in the Hotel Gora in Han Pijesak.<sup>654</sup> In July 1995, the Main Staff's headquarters were in Han Pijesak and the forward command post ("IKM") was in Bijeljina. As of 11 July 1995,

<sup>643</sup> Ex. P2249, Expert Report of Richard Butler "VRS Main Staff Command Responsibility", 9 June 2006, para. 2.5.

<sup>644</sup> Ex. P2249, Expert Report of Richard Butler "VRS Main Staff Command Responsibility", 9 June 2006, paras 2.0, 2.6.

<sup>645</sup> Ex. P2249, Expert Report of Richard Butler "VRS Main Staff Command Responsibility", 9 June 2006, para. 2.0. *See also* Ex. D395, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 2; Ex. P190, Decision on Formation of the Army of SerBiH, 12 May 1992; Aernout van Lynden, T. 526, 555-556; Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, para. 73; Patrick Treanor, T. 1110, 1324-1325; Robert Donia, T. 1688-1689; MP-433, T. 2191; MP-5, T. 2436-2437.

<sup>646</sup> Ex. D395, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 2; Ex. P2249, Expert Report of Richard Butler "VRS Main Staff Command Responsibility", 9 June 2006, para. 2.6.

<sup>647</sup> Robert Donia, T. 1688; Ex. D395, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 2; Ex. P2249, Expert Report of Richard Butler "VRS Main Staff Command Responsibility", 9 June 2006, para. 2.6.

<sup>648</sup> Ex. D395, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 2; Petar Škrbić, T. 11758.

<sup>649</sup> Ex. D395, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 2; Ex. P2249, Expert Report of Richard Butler "VRS Main Staff Command Responsibility", 9 June 2006, para. 4.4.

<sup>650</sup> Srebrenica Adjudicated Facts, 84, 104. *See also* Ex. P1953, Excerpt from Personnel File of Ljubiša Beara.

<sup>651</sup> Ex. D395, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 2; Ex. P2249, Expert Report of Richard Butler "VRS Main Staff Command Responsibility", 9 June 2006, para. 2.6.

<sup>652</sup> Petar Škrbić, T. 11766.

<sup>653</sup> Ex. P2249, Expert Report of Richard Butler "VRS Main Staff Command Responsibility", 9 June 2006, para. 3.10.

<sup>654</sup> Stojan Malčić, T. 11192-11193. *See also* Defence Agreed Facts, 3.



the IKM of the Main Staff was co-located with the IKM of the Drina Corps in the Bratunac Brigade command post.<sup>655</sup>

#### b. Decision Making Process

275. As a rule the meetings of the VRS Main Staff were chaired by the VRS Main Staff Commander.<sup>656</sup> Decisions were taken by Mladić and at times by Milovanović, Tolimir and Miletić. Accordingly, they were always made on the basis of General Mladić's ideas.<sup>657</sup>

276. According to the VRS Main Staff "Analysis of the combat readiness and activities of the [VRS] in 1992", decisions on the engagement of the VRS were taken at meetings of the Main Staff, with the active participation of the Chief of Staff, the Assistant Commanders, the heads of departments and the heads of combat arms, as well as a number of commanding officers.<sup>658</sup> The VRS Main Staff issued directives for the use of the armed forces, which would also allow "the creative potentials of the commanders and their bodies in the subordinate commands to come to full expression".<sup>659</sup> The evidence however shows that in fact Mladić ran the VRS on a "centralised orders-based system".<sup>660</sup> According to Rupert Smith, Mladić issued very detailed orders which gave very little latitude at the operational level.<sup>661</sup> Another witness stated that in relation to specific operations to be carried out by individual corps most of the time Mladić would issue orders directly during a visit to the relevant Corps.<sup>662</sup> On such occasions, Mladić often participated in and monitored the works of the commands, and frequently took direct command over the operations.<sup>663</sup>

### 3. VRS Units

277. The VRS consisted of five combat Corps formations, each of which consisted of about 25.000 to 50.000 soldiers. Each corps had five to seven brigades, which consisted of 3.000 to 5.000

<sup>655</sup> Defence Agreed Facts, 3; Milenko Jevđević, T. 11067.

<sup>656</sup> Ex. P149, Analysis of the Combat Readiness and Activities of the VRS in 1992, April 1993, p. 8.

<sup>657</sup> Ex. D398, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 3.

<sup>658</sup> Ex. P149, Analysis of the Combat Readiness and Activities of the VRS in 1992, April 1993, p. 8.

<sup>659</sup> Ex. P149, Analysis of the Combat Readiness and Activities of the VRS in 1992, April 1993, p. 8. *See also* Ex. P78, Đorđe Đukić Supplementary Statement on Planning Offensives on the Territory of the RBiH, pp 1-2.

<sup>660</sup> Ex. P2357, Transcript of Rupert Smith from *Prosecutor v. D. Milošević*, T. 3301.

<sup>661</sup> Rupert Smith, T. 6373; Ex. P2362, Transcript of Rupert Smith from *Prosecutor v. Popović et al.*, T. 17577-17579; Ex. P2357, Transcript of Rupert Smith from *Prosecutor v. D. Milošević*, T. 3298-3303. *See e.g.* Ex. P2358, Order of General Mladić, 23 January 1995.

<sup>662</sup> Ex. P78, Đorđe Đukić Supplementary Statement on Planning Offensives on the Territory of the RBiH, p. 4.

<sup>663</sup> For example during the operations in Goražde, Igman, Srebrenica, Žepa and Bihać, Ex. P78, Đorđe Đukić, Supplementary Statement on Planning Offensives on the Territory of the RBiH, p. 4.

soldiers; each brigade was divided into battalions of 500 to 700 soldiers and each battalion was divided into five or six companies with approximately 100 soldiers.<sup>664</sup>

278. The VRS operated in almost all respects in the same manner as the former JNA<sup>665</sup> and its five Corps were geographically based and assumed the formations as the former JNA Corps.<sup>666</sup> These Corps were formally established in June 1992<sup>667</sup> and were the 1<sup>st</sup> Krajina Corps (formerly the JNA 5<sup>th</sup> Corps), the 2<sup>nd</sup> Krajina Corps (formerly the JNA 10<sup>th</sup> Corps), the East Bosnia Corps (formerly the JNA 17<sup>th</sup> Corps), the Sarajevo-Romanija Corps (formerly the JNA 4<sup>th</sup> Corps), the Herzegovina Corps (consisting of elements of the former JNA 9<sup>th</sup> Corps).<sup>668</sup> The Drina Corps was formed at a later stage, on 1 November 1992.<sup>669</sup> The Corps were subordinated to the Main Staff.<sup>670</sup>

279. In addition, there were a few independent units,<sup>671</sup> such as the 10<sup>th</sup> Reconnaissance Sabotage Detachment<sup>672</sup> and the 65<sup>th</sup> Protection Regiment subordinate to the VRS Main Staff.<sup>673</sup>

280. The Corps had a similar structure as the Main Staff, with a Corps Commander and Corps Chief of Staff,<sup>674</sup> who also held the position of Deputy Commander,<sup>675</sup> as well as three Assistant Commanders with responsibility, respectively, for Intelligence and Security, Rear (Logistics) Services and Morale, Legal and Religious Affairs.<sup>676</sup>

281. The Chief of Staff was the “principal advisor to the Corps Commander, and the primary facilitator through which [*sic*] the Commander’s intent, orders and directives [were] organized and processed for execution by the Corps Staff and subordinate unites”.<sup>677</sup> He was the only one who, in

<sup>664</sup> Richard Butler, T. 6688-6689. *See also* Stamenko Nikolić, T. 10552, stating that the numerical strength of the VRS was between 200.000 and 250.000 troops.

<sup>665</sup> Richard Butler, T. 6531. *See also* Srebrenica Adjudicated Facts, 1.

<sup>666</sup> Ex. P2244, Expert Report of Richard Butler “VRS Corps Command Responsibility”, 5 April 2000, figure 1, p. 1; Ex. D395, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 2.

<sup>667</sup> Ex. D290, Order on the Establishment of the VRS, 16 June 1992; D291, Order on the Organisation, Establishment and Command of the VRS, 16 June 1992. *See also* Richard Butler, T. 6680.

<sup>668</sup> Ex. P2244, Expert Report of Richard Butler “VRS Corps Command Responsibility”, 5 April 2000, para. 1.0; Ex. P2249, Expert Report of Richard Butler “VRS Main Staff Command Responsibility”, 9 June 2006, para. 1.0; Ex. D290, Order on the Establishment of the VRS, 16 June 1992; Ex. D291, Order on the Organisation, Establishment and Command of the VRS, 16 June 1992; Stojan Malčić, T. 11196-11199. *See also* Stojan Malčić, T. 11198-11199, stating that the Corps retained the same structure as that described in Ex. D290 until the end of the war. *See also* Ex. D395, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 2.

<sup>669</sup> Ex. P2244, Expert Report of Richard Butler “VRS Corps Command Responsibility”, 5 April 2000, para. 1.0; Ex. D395, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 2.

<sup>670</sup> Ex. P2244, Expert Report of Richard Butler “VRS Corps Command Responsibility”, 5 April 2000, para. 1.0.

<sup>671</sup> Petar Škrbić, T. 11715; Ex. D341, Order on the Promotion of Senior Officers, 7 October 1993.

<sup>672</sup> Petar Škrbić, T. 11970.

<sup>673</sup> Richard Butler, T. 6692.

<sup>674</sup> Ex. P2244, Expert Report of Richard Butler “VRS Corps Command Responsibility”, 5 April 2000, paras 2.0-2.9.

<sup>675</sup> Ex. P2244, Expert Report of Richard Butler “VRS Corps Command Responsibility”, 5 April 2000, para. 2.10.

<sup>676</sup> Ex. P2244, Expert Report of Richard Butler “VRS Corps Command Responsibility”, 5 April 2000, para. 3.0.

<sup>677</sup> Ex. P2244, Expert Report of Richard Butler “VRS Corps Command Responsibility”, 5 April 2000, para. 2.5. As such, the Corps Staff under the Chief of Staff “is responsible for reviewing and understanding the assigned directives received by the Superior Command or the Corps Commander”, Ex. P2244, Expert Report of Richard Butler “VRS Corps Command Responsibility”, 5 April 2000, para. 2.8.

keeping with the Commander's decisions, had the right to give orders to the subordinates.<sup>678</sup> The Chief of Staff also directed the Corps Staff, dealing with all day-to-day administration of the Corps' activities.<sup>679</sup>

282. The brigade leadership included a Brigade Commander<sup>680</sup> and a Brigade Chief of Staff who also acted as Deputy Commander.<sup>681</sup> The VRS brigades' leadership also included assistant commanders for Intelligence and Security, Rear (Logistics) Services and of Morale, Legal and Religious Affairs.<sup>682</sup>

a. Drina Corps

283. The VRS Main Staff established the Drina Corps on 1 November 1992.<sup>683</sup> The personnel that formed the Drina Corps mostly came from the East Bosnia Corps and the Sarajevo-Romanija Corps, as well as from the VRS Main Staff.<sup>684</sup> Its headquarters was established in Han Pijesak and later moved to Vlasenica.<sup>685</sup> The Drina Corps' area of responsibility covered east BiH on the border with FRY along the Drina River and covered, *inter alia*, the municipalities of Zvornik, Bratunac, Vlasenica, Srebrenica, Han Pijesak and Žepa.<sup>686</sup>

284. Milenko Živanović assumed the command of the Drina Corps at the time of its formation in November 1992.<sup>687</sup> Radislav Krstić was the Chief of Staff from August 1994 and became Corps Commander in the early evening hours of 13 July 1995.<sup>688</sup> With Krstić's appointment, Svetozar Andrić was appointed as the Chief of Staff.<sup>689</sup>

<sup>678</sup> Ex. P2244, Expert Report of Richard Butler "VRS Corps Command Responsibility", 5 April 2000, para. 2.5.

<sup>679</sup> Ex. P2244, Expert Report of Richard Butler "VRS Corps Command Responsibility", 5 April 2000, para. 3.3.

<sup>680</sup> Ex. P2248, Expert Report of Richard Butler "VRS Brigade Command Responsibility", 31 October 2002, paras 2.0-2.14.

<sup>681</sup> Ex. P2248, Expert Report of Richard Butler "VRS Brigade Command Responsibility", 31 October 2002, paras 2.15-2.18.

<sup>682</sup> Ex. P2248, Expert Report of Richard Butler "VRS Brigade Command Responsibility", 31 October 2002, paras 3.9-3.23.

<sup>683</sup> Richard Butler, T. 6693; Stojan Maličić, T. 11199. *See also* Srebrenica Adjudicated Facts, 1.

<sup>684</sup> Richard Butler, T. 6693-6694. For example, before becoming the Drina Corps Commander, Živanović was the chief of artillery for the Main Staff, Richard Butler, T. 6694. *See also* Defence Agreed Facts, 100.

<sup>685</sup> Its code number was 3676, Ex. P2249, Expert Report of Richard Butler "VRS Main Staff Command Responsibility", 9 June 2006, para. 3.2; Stojan Maličić, T. 11332-11333; Srebrenica Adjudicated Facts, 1.

<sup>686</sup> Ex. P564, Map of Bosnia-Herzegovina; Ex. P2400, Map Depicting the Area of Srebrenica; MP-14, T. 3512 (closed session).

<sup>687</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, para. 2.2; Srebrenica Adjudicated Facts, 92; Richard Butler, T. 6575.

<sup>688</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, para. 2.2; Srebrenica Adjudicated Facts, 93-96. The first order which Krstić issued as the commander of the Drina Corps was on 13 July 1995 at around 20:00 hours, Richard Butler, T. 6529; Ex. P2245, Expert Report of Richard Butler "Srebrenica Military Narrative – Operation Krivaja 95", 15 May 2000, p. 16. *See also* Ex. P2407, Handover of the Drina Corps Command Duties, 13 July 1995; Richard Butler, T. 6531, 6635; Ex. P2408, Order of the Drina Corps Commander, Radislav Krstić, on Searching of the Terrain, 13 July

285. Vujadin Popović was Assistant Commander for Security; Slobodan Cerović was Assistant Commander for Morale, Legal and Religious Affairs; and Lazar Aćamović was Assistant Commander for Rear Services (Logistics).<sup>690</sup>

286. The Drina Corps consisted of the 1<sup>st</sup> Zvornik Infantry Brigade, the 1<sup>st</sup> Vlasenica Light Infantry Brigade, the 1<sup>st</sup> Sekovići (or Birač) Infantry Brigade, the 1<sup>st</sup> Milići Light Infantry Brigade, the 1<sup>st</sup> Bratunac Light Infantry Brigade, the 2<sup>nd</sup> Romanija Motorized Brigade, the 1<sup>st</sup> Podrinje Light Infantry Brigade, the 5<sup>th</sup> Podrinje Light Infantry Brigade, the 5<sup>th</sup> Mixed Artillery Regiment, the 5<sup>th</sup> Military Police Battalion, the 5<sup>th</sup> Engineer Battalion, the 5<sup>th</sup> Communications Battalion, the 1<sup>st</sup> Skelani Separate Infantry Battalion,<sup>691</sup> the Vlasenica Brigade<sup>692</sup> as well as a unit called Drina Wolves.<sup>693</sup>

287. From 12 December 1992 until November 1996, Vinko Pandurević was the Commander of the Zvornik Brigade.<sup>694</sup> Dragan Obrenović was the Chief of Staff, Dragan Jokić the Chief of Engineering and Drago Nikolić the Assistant Commander for Security.<sup>695</sup>

288. The Bratunac Light Infantry Brigade was formally organised on 14 November 1992 with Borivoje Tešić appointed as its first Commander.<sup>696</sup> On 25 May 1995, Vidoje Blagojević was appointed as the Commander of the Bratunac Brigade and retained such position until mid-1996.<sup>697</sup> Momir Nikolić was Assistant Commander for Security and Intelligence.<sup>698</sup>

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1995. Živanović was appointed to new duties within the VJ-VRS, Richard Butler, T. 6633; Ex. P2407, Handover of the Drina Corps Command Duties, 13 July 1995.

<sup>689</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, paras 2.2-2.3; Richard Butler, T. 6560.

<sup>690</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, para. 2.4; Srebrenica Adjudicated Facts, 97.

<sup>691</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, para. 2.6; Richard Butler, T. 6533.

<sup>692</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 33.

<sup>693</sup> Ex. P2387, Video, 11 July 1995, showing Captain Milan Jolović, Commander of the Drina Wolves at a road towards Srebrenica, Richard Butler, T. 6537.

<sup>694</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, para. 2.8; Srebrenica Adjudicated Facts, 98.

<sup>695</sup> Srebrenica Adjudicated Facts, 98-101; Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, para. 2.8.

<sup>696</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, para. 1.11.

<sup>697</sup> Srebrenica Adjudicated Facts, 102-103; Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, para. 5.2.8. Colonel Blagojević remained in command and control of all units of the Bratunac Brigade including those members of the security organ, as well as the Bratunac Brigade Military Police, between 11 July 1995 and 1 November 1995, Srebrenica Adjudicated Facts, 103.

<sup>698</sup> Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, p. 1; Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, para. 2.8.

289. The Drina Wolves Unit was an elite combat formation, which was formally subordinated to the Zvornik Infantry Brigade.<sup>699</sup> It was considered as the assault battalion of the Drina Corps and was known as a unit with the best-trained and fittest soldiers in the Drina Corps.<sup>700</sup>

b. Sarajevo-Romanija Corps (“SRK”)

290. The SRK was located in the greater Sarajevo area,<sup>701</sup> with its headquarters based at Lukavica.<sup>702</sup> The SRK’s main forces were positioned around the inner ring of Sarajevo, in particular in the area of Ilidža, Nedžarići and Grbavica.<sup>703</sup> Until the end of 1992, seven SRK brigades were positioned in that part of the confrontation lines constituting the “inner ring”, whose length was some 55 kilometres.<sup>704</sup> Auxiliary forces of the SRK were positioned on the so-called exterior ring of the Sarajevo front, whose length was approximately 180 kilometres.<sup>705</sup> In 1992, the SRK held the Lukavica barracks, Nedžarići, Mojnilo hill and the airport - the latter until July 1992 when it was taken over by UNPROFOR.<sup>706</sup> By late 1992, the SRK was “fully dedicated to maintaining the blockade around Sarajevo”.<sup>707</sup>

291. Stanislav Galić was the Commander of the SRK<sup>708</sup> from 10 September 1992 until 10 August 1994. He was succeeded by Dragomir Milošević, his Chief of Staff from 6 July 1993.<sup>709</sup> Milošević retained command of the SRK until on or about 21 November 1995.<sup>710</sup> As SRK Corps Commander, both Galić and Milošević were immediately subordinated to the Commander of the VRS Main Staff<sup>711</sup> and the Commander-in-Chief of the VRS.<sup>712</sup>

<sup>699</sup> Richard Butler, T. 6537.

<sup>700</sup> *Ibid.*

<sup>701</sup> Sarajevo Adjudicated Facts I, 47. The SRK was specifically responsible for the following areas: the south of Sarajevo, including Lukavica, Vraca, Grbavica, Zlatište, parts of Dobrinja and the area up to Mount Trebević, the hills south and south-west of Sarajevo, the Rajlovac area in the north-west of Sarajevo towards Mrkovići, including Špicasta Stijena, also known as Sharpstone, the north-east of Sarajevo and the area of Pale, Sarajevo Adjudicated Facts III, 9.

<sup>702</sup> Sarajevo Adjudicated Facts III, 86; Ex. P564, Map of Bosnia-Herzegovina; MP14, T. 3523 (closed session).

<sup>703</sup> Sarajevo Adjudicated Facts III, 49.

<sup>704</sup> Sarajevo Adjudicated Facts III, 50.

<sup>705</sup> Sarajevo Adjudicated Facts I, 51.

<sup>706</sup> Aernout Van Lynden, T. 473-474; Ex. P1, Photograph of Sarajevo. *See also* Ex. P115, Transcript of Azra Šišić in *Prosecutor v. D. Milošević*, T. 2833; Ex. P489, Transcript of Youssef Hajir from *Prosecutor v. Galić*, T. 1679; Azra Šišić, T. 770; Ex. P1518, Map of Sarajevo.

<sup>707</sup> Ex. P2499, Expert Report of Richard Butler “VRS Main Staff Command Responsibility”, 9 June 2006, para. 3.1. Robert Donia, T. 1702-1703.

<sup>709</sup> Sarajevo Adjudicated Facts II, 4; Sarajevo Adjudicated Facts III, 2-3.

<sup>710</sup> Sarajevo Adjudicated Facts III, 1.

<sup>711</sup> Sarajevo Adjudicated Facts II, 2; Sarajevo Adjudicated Facts III, 4.

<sup>712</sup> Sarajevo Adjudicated Fact II, 3.

#### 4. Judicial Military System

292. The Trial Chamber took judicial notice of the fact that in July 1995, a functioning judicial system existed within the VRS to address criminal or disciplinary matters related to members of the VRS.<sup>713</sup>

293. The Law on the VRS regulated the criminal and disciplinary liability of its members and the duty of VRS senior or superior officers to ensure proper military conduct through disciplinary measures and court-martials.<sup>714</sup> With specific reference to criminal offences, the Law on the VRS stipulated that provisions of the “Criminal Law and other laws” were applicable to the military personnel.<sup>715</sup> The SFRY Criminal Law, which was in force in the RS in 1995, prohibited violations of international humanitarian law. This prohibition was directed at all RS citizens, including members of the VRS. Moreover, pursuant to an order of 13 May 1992 by President Radovan Karadžić, the VRS was required to comply with the obligations under international humanitarian law.<sup>716</sup> Accordingly, if a commander in the VRS became aware of a violation of international law of war, he had a duty to report that up the chain of command. If a violation was reported to the corps commander, the commander was obliged to initiate proceedings and send a report to the military prosecutor. Information on such violations was also included in regular reports.<sup>717</sup>

### **F. STRUCTURE AND ORGANISATION OF THE SERBIAN ARMY OF KRAJINA** **(“SVK”)**

#### 1. Establishment of the SVK

294. The RSK’s armed forces known as the Serbian Army of Krajina (“SVK”), was established on 18 May 1992,<sup>718</sup> and existed, save for its 11<sup>th</sup> Corps that outlived the RSK, until 8 August 1995 when the RSK fell.<sup>719</sup>

295. On 20 April 1993, the RSK Supreme Defence Council was established, which was composed of the President of the RSK, the Prime Minister, the Minister of Defence, the Minister of

<sup>713</sup> Defence Agreed Facts, 5. *See also* Ex. D104, Decree on the Proclamation of the Law on Military Courts in RS, 30 December 1993; Ex. D105, The Law on the Implementation of the Law on Military Courts and the Law on the Military Prosecutor’s Office During a State of War, RS, 2 November 1994.

<sup>714</sup> Ex. P191, Law on the VRS, 1 June 1992, Articles 62-99; Defence Agreed Facts, 5.

<sup>715</sup> Ex. P191, Law on the VRS, 1 June 1992, Article 62.

<sup>716</sup> Defence Agreed Facts, 5.

<sup>717</sup> Defence Adjudicated Facts II, 91. The Trial Chamber is mindful that the adjudicated fact refers to the commander’s obligation in the SRK. However, the Trial Chamber is also satisfied that the obligation was not limited to the SRK, but extended to all the Corps of the VRS. *See* Ex. P191, Law on the VRS, Article 62.

<sup>718</sup> Defence Agreed Facts, 138. *See also* MP-16, T. 5134-5135 (closed session); Mile Novaković, T. 13063, 13372-13375.

<sup>719</sup> MP-80, T. 8456-8257 (closed session). *See also* Rade Orlić, T. 5754; Patrick Treanor, T. 1238.

the Interior, and the Commander of the SVK.<sup>720</sup> The President of the RSK, as Supreme Commander, led the SVK in peacetime and wartime in accordance with the RSK Constitution<sup>721</sup> and decisions adopted by the Supreme Defence Council, and presided over the Supreme Defence Council. The Supreme Defence Council was mandated to “adopt decisions on the readiness, mobilisation and deployment of the SVK and on other matters in accordance with the Constitution and the law”.<sup>722</sup>

296. The Law on the SVK was adopted on 22 April 1993 and provided that the SVK operated under the principle of unity or singleness of command and defined its objective as “defending sovereignty, territory, independence of Republic of Serbian Krajina”.<sup>723</sup>

## 2. The Main Staff

297. On 26 October 1992, Milan Novaković was appointed to the post of Commander of the Main Staff of the SVK by the President of the RSK, Goran Hadžić.<sup>724</sup> He was replaced on 22 February 1994 by Milan Čeleketić who was appointed by Milan Martić.<sup>725</sup> On 18 May 1995, the resignation of Milan Čeleketić was approved by the Assembly<sup>726</sup> and Mile Mrkšić took up the post of Commander of the Main Staff of the SVK.<sup>727</sup>

298. Directly subordinated to the Commander of the Main Staff of the SVK were departments of security,<sup>728</sup> intelligence affairs, morale, religious and legal affairs, department of mobilisation and personnel affairs, rear services, development and finance and anti-aircraft and air defence.<sup>729</sup>

299. In May 1994, Dušan Smiljanić was appointed to the post of Assistant Commander for Security and Intelligence Sector of the SVK.<sup>730</sup> On 3 July 1994, Rade Orlić became the Chief of the

<sup>720</sup> Defence Agreed Facts, 139.

<sup>721</sup> According to the RSK Constitution, under his initiative or under the government's proposal during a state of war, or imminent threat of war, the President adopted acts about issues from the Assembly's jurisdiction and was required to submit them before the Assembly as soon as the assembly was able to meet, Ex. P166, Constitution of the RSK, 2 January 1992, Article 78(7).

<sup>722</sup> Defence Agreed Facts, 139; Patrick Treanor, T. 1016-1018; Ex. P166, Constitution of the RSK, 2 January 1992, Article 78.

<sup>723</sup> Ex. D170, Law on the SVK, 22 April 1993, Articles 3, 281.

<sup>724</sup> Ex. P1782, Decree on Appointment of Novaković by SRK President, 26 October 1992. *See also* Stamenko Nikolić, T. 10549; Milan Novaković, T. 13002.

<sup>725</sup> Patrick Treanor, T. 1026-1027, 1370-1371; Ex. P171/P1972, Decree of the President of the RSK on Appointment of Milan Čeleketić as a Commander of the SVK Main Staff, 22 February 1994; Ex. P1973, Report on Milan Čeleketić's Taking on Duty, 22 February 1994; Milan Novaković, T. 13003, 13005. *See also* Rade Orlić, T. 5728, 5758; Jožef Poje, T. 3087. After that, until the fall of the RSK, Milan Novaković held a post of the deputy/assistant supreme commander for national security and international relations, Milan Novaković, T. 13007.

<sup>726</sup> MP-80, T. 8616 (closed session); Ex. P1975, Report on Milan Čeleketić Handing Over Duty as SVK Commander to Mile Mrkšić.

<sup>727</sup> Patrick Treanor, T. 1027; Rade Rašeta, T. 5906.

<sup>728</sup> Rade Rašeta, T. 5949-5951; Ex. D89, Rules of Service of Security Organs in the JNA, 1984, Articles 16-18, 30-31, 57(2).

Intelligence Department of the SVK.<sup>731</sup> On 19 December 1994, Rade Rašeta became the Chief of the Security Department of the SVK Main Staff.<sup>732</sup>

300. In 1994, Borislav Đukić was the Chief of Staff of the Main Staff of the SVK.<sup>733</sup> As of May 1995, this post was held by Dušan Lončar.<sup>734</sup>

### 3. SVK Units

301. The SVK was comprised of six Corps, namely the 7<sup>th</sup>, 11<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup>, 21<sup>st</sup> and 39<sup>th</sup> Corps.<sup>735</sup> The 7<sup>th</sup> Corps was headquartered in Knin,<sup>736</sup> had approximately 13,000 soldiers and its area of responsibility covered the area of North Dalmatia.<sup>737</sup> The zone of responsibility of the 11<sup>th</sup> Corps covered Eastern Slavonija, Western Srem and Baranja.<sup>738</sup> The 11<sup>th</sup> Corps had between 17,500 and 25,000 troops.<sup>739</sup> The 15<sup>th</sup> Corps had 10,000 soldiers and covered the area of Titova Korenica. The 18<sup>th</sup> Corps numbered 9,000 troops and covered the area of Okučani.<sup>740</sup> The 21<sup>st</sup> Corps was responsible for the area around Vojnić and had around 11,000 troops. Finally, the 39<sup>th</sup> Corps covered the area of Glina and had about 12,000 troops.<sup>741</sup> As of 5 May 1995, additionally to the aforementioned Corps, the SVK consisted of the 75<sup>th</sup> Mixed Artillery Brigade, 75<sup>th</sup> Logistic Base, 44<sup>th</sup> Rocket Brigade, 105<sup>th</sup> Aviation Brigade and 107<sup>th</sup> Training Centre.<sup>742</sup>

<sup>729</sup> MP-80, T. 8303 (closed session); Ex. P495, Various Documents Concerning SVK, p. 4.

<sup>730</sup> Ex. D88, Decision of General Milan Čeleketić on the Promotion of Dušan Smiljanić to Commander for Security and Intelligence of the SVK, 26 May 1994; Rade Orlić, T. 5770.

<sup>731</sup> Rade Orlić, T. 5737, 5759, 5761; Ex. D86, Order Appointing Rade Orlić as Chief of the Intelligence Department of the SVK, 3 July 1994. Orlić's subordinate was Lieutenant-Colonel Knežević, Chief of the Intelligence Centre, Rade Orlić, T. 5765-5766.

<sup>732</sup> Rade Rašeta, T. 5903; Ex. P2336, Correspondence from Main Staff of the SVK Relating to the Situation on the Field, 26 May 1995.

<sup>733</sup> Rade Rašeta, T. 5907.

<sup>734</sup> Rade Orlić, T. 5734; Ex. P495, Various Documents Concerning SVK. *See* MP-80, T. 8561 (closed session).

<sup>735</sup> MP-80, T. 8512-8516 (closed session); Mile Novaković, T. 13080.

<sup>736</sup> *See* Ex. D171, Minutes of RSK SDC, 1 July 1994, showing that in July 1994, Colonel Poznanović was assigned to the post of the commander of the 7<sup>th</sup> Corps.

<sup>737</sup> MP-80, T. 8512-8516 (closed session). *See also* Ex. P2625, SVK Summary for the Coordination of Tasks in the VJ General Staff, 17 February 1994.

<sup>738</sup> MP-80, T. 8513, 8522 (closed session); Ex. D165, Order to form SVK in Eastern Slavonija, Western Srem and Baranja, 8 December 1992.

<sup>739</sup> MP-80, T. 8455, 8513 (closed session).

<sup>740</sup> *See* MP-80, T. 8544 (closed session), testifying that in February 1994, Bogdan Sladojević became the commander of the 18<sup>th</sup> Corps; Ex. P1895, Order by VJ General Staff Personnel Administration, 9 February 1994.

<sup>741</sup> *See* Ex. P2336, Correspondence from Main Staff of the SVK relating to the Situation on the Field, 26 May 1995, showing that as of 1 May 1995, the Commander of the 39<sup>th</sup> Corps of the SVK was Colonel Žarko Gačić. *See also* Ex. P2816, SVK Combat Report Sent to Chief of VJ General Staff, 9 September 1994.

<sup>742</sup> MP-80, T. 8304 (closed session); Ex. D184, Report on the Situation of the SVK, 5 May 1995. *See also* Ex. P495, Various Documents Concerning SVK, pp 1, 4.



#### 4. Judicial Military System

302. The Trial Chamber heard evidence that the SVK had its own military courts functioning pursuant to the Law on Defence.<sup>743</sup> Some evidence also shows that on 7 July 1994, the RSK President issued two decrees appointing judges to the military tribunals, which were to be established in Glina, Knin and Vukovar.<sup>744</sup> However, according to witness Rade Rašeta, the military judiciary in the SVK was “non-existent”.<sup>745</sup> It follows, according to the witness, that provisions such as Article 43 of the Rules of Service of Security Organs in the Armed Forces of the SFRY, which provided for the arrest and hand over of a person to a military court or a military institution, remained only on paper.<sup>746</sup>

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<sup>743</sup> Stamenko Nikolić, T. 10786.

<sup>744</sup> MP-80, T. 8575-8577 (closed session); Ex. D168, Presidential Decree signed by Milan Martić on Establishment of Military Tribunals, 7 July 1994; Ex. D169, Presidential Decree signed by Milan Martić on Appointment of Military Prosecutors, 7 July 1994. *See also* MP-80, T. 8806-8812 (closed session); Ex. P2623, SVK Request from General Staff of VJ to Provide Legal Personnel, 13 April 1993; Ex. P2624, Letter from Hadžić to Milošević, 4 June 1993.

<sup>745</sup> Rade Rašeta, T. 6018.

<sup>746</sup> *Ibid.*

## V. FINDINGS ON THE CRIMES

### A. Sarajevo

#### 1. The City of Sarajevo

303. The city of Sarajevo lies alongside the Miljacka River and is situated in a natural valley surrounded on all sides by high hills allowing it to be overlooked with ease.<sup>747</sup> Before the conflict, it consisted of ten municipalities: Stari Grad (Old Town), Centar (Centre), Novo Sarajevo, Novi Grad, Vogošća, Ilidža, Pale, Ilijaš, Hadžići and Trnovo.<sup>748</sup> By 1992, Sarajevo had grown into an important political, cultural, industrial and commercial centre of BiH.<sup>749</sup>

304. Before the conflict, the population of the city approximated over half a million residents, with the following ethnic distribution: 49.4% Bosnian Muslims, 27.8% Bosnian Serbs and 7.1% Bosnian Croats.<sup>750</sup>

#### 2. The Siege Unfolds

##### (a) Basics of the Siege

305. One of the six strategic objectives of the Bosnian Serb leadership was to partition Sarajevo into Serbian and Muslim sectors and establish a separate state authority for each sector.<sup>751</sup> The demographics of the city, however, demonstrate that while the urban part of Sarajevo was ethnically mixed, the surrounding hills were largely inhabited by Serbs.<sup>752</sup> Therefore, any concept of partition would more likely result in the encirclement of a predominately Muslim centre surrounded by Serbian areas.<sup>753</sup> Such a reality was in fact discussed at the RS Assembly.<sup>754</sup> In addition, the Bosnian Serb leaders viewed the siege of Sarajevo as necessary to prevent the functioning of the

<sup>747</sup> Aernout van Lynden, T. 465; Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P28, Annotated Map of Sarajevo; Ex. P476, Report on Market Firing Incident Involving Mortars in the Sarajevo Area Dated 28 August 1995, 3 August 2006, p. 6.

<sup>748</sup> Sarajevo Adjudicated Facts I, 19. *See also* Ex. P2377, Witness Statement of Mirsad Kučanin, 4 September 2000, p. 2; Ex. P2378, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 27 February 2002, T. 4499-4500.

<sup>749</sup> Sarajevo Adjudicated Facts I, 18.

<sup>750</sup> Ex. P2325, Expert Report of Ewa Tabeau, Population Losses in the “Siege” of Sarajevo, 10 September 1992 to 10 August 1994, 10 May 2002, p. 26. *See also* Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 7 (presenting similar figures).

<sup>751</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, pp 13-14; Ex. P334, Excerpt of the RS’s Official Gazette Reporting the “Strategic Goals”, 26 November 1993. *See supra* paras 184-185.

<sup>752</sup> Robert Donia, T. 1742; Ex. P344, Transcript of the 17<sup>th</sup> Session of the RS Assembly, 26 July 1992, p. 15.

<sup>753</sup> Robert Donia, T. 1743; Ex. P344, Transcript of the 17<sup>th</sup> Session of the RS Assembly, 26 July 1992, p. 15.

<sup>754</sup> Ex. P344, Transcript of the 17<sup>th</sup> Session of the RS Assembly, 26 July 1992, p. 15. *See also* Robert Donia, T. 1745-1747; Ex. P345, Intercepted Telephone Conversation Between Radovan Karadžić and Slobodan Milošević, 9 September 1991; Ex. P346, Intercepted Telephone Conversation Between Radovan Karadžić and Nikola Koljević, 9 September 1991.

government of BiH, and as a “critical collective hostage”, to be used to attain significant concessions from the BiH Government and from the international community.<sup>755</sup>

(b) Chronology of the Siege

306. Tensions between Serbs and Muslims in Sarajevo mounted between February and March 1992, resulting in the establishment of barricades and checkpoints by both sides.<sup>756</sup> The EC recognition of BiH as an independent state on 7 April 1992<sup>757</sup> sparked a wave of violence within Sarajevo.<sup>758</sup> This marked the start of the siege of Sarajevo, which is estimated to have lasted from April 1992 to November 1995.<sup>759</sup>

307. As of June 1992, heavy shelling and sniping from the SRK against the whole of the city were daily events.<sup>760</sup> Between September and December 1992, Sarajevo was exposed to intense shelling.<sup>761</sup> This prompted the UNSC in December 1992 to strongly condemn the attacks on Sarajevo and demand their immediate cessation.<sup>762</sup> In August 1993, a Demilitarised Zone (“DMZ”) was established in Sarajevo based upon an agreement between UNPROFOR, the ABiH and the VRS.<sup>763</sup> Nevertheless, the violence in Sarajevo continued unabated throughout 1993 until February 1994.<sup>764</sup> This led the UNSC to again strongly condemn the violence and demand the “immediate end to attacks against Sarajevo which have resulted in a high number of civilian casualties, seriously disrupted essential services and aggravated an already severe humanitarian situation”.<sup>765</sup>

308. Following the shelling of the Markale market in February 1994,<sup>766</sup> a Total Exclusion Zone (“TEZ”) was created within a 20 kilometre radius from the city centre.<sup>767</sup> This stipulated that all weapons of a calibre higher than 12.7mm be removed from the zone, or turned over to designated

<sup>755</sup> Robert Donia, T. 1740-1741; Ex. P344, Transcript of the 17<sup>th</sup> Session of the RS Assembly, 26 July 1992, pp 15-16.

<sup>756</sup> Sarajevo Adjudicated Facts I, 16, 23.

<sup>757</sup> Patrick Treanor, T. 1097; Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 21.

<sup>758</sup> Sarajevo Adjudicated Facts I, 25-32.

<sup>759</sup> Sarajevo Adjudicated Facts I, 25-32; Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 38; Ex. P632, Transcript of Milan Mandilović in *Prosecutor v. Galić*, T. 1011-1012; Ex. P520, Transcript of Mesud Jusufović from *Prosecutor v. Galić*, T. 6517, 6523-6524.

<sup>760</sup> John Wilson, T. 857-858; Sarajevo Adjudicated Facts I, 154,155. *See also* Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, para. 202.

<sup>761</sup> Sarajevo Adjudicated Facts I, 160, 162.

<sup>762</sup> Ex. P2455, Note of the President of the UNSC, 9 December 1992.

<sup>763</sup> MP-72, T. 4282, 4354 (closed session); Ex. P1516 (under seal).

<sup>764</sup> Sarajevo Adjudicated Facts I, 159-162; MP-408, T. 6154 (closed session).

<sup>765</sup> Ex. P2475, Note of the President of the UNSC, 7 January 1994, p. 1.

<sup>766</sup> *See* Scheduled Incident A3.

<sup>767</sup> MP-72, T. 4289-90, 4351-4352, 4356 (closed session); MP-408, T. 6149-6150 (closed session).

UN Weapons Collection Points.<sup>768</sup> Despite the creation of the TEZ, there were instances of large calibre weapons being used by the VRS.<sup>769</sup>

309. In August 1994, UNPROFOR responded to more frequent instances of sniping against the population of Sarajevo by negotiating an anti-sniping agreement between the VRS and the ABiH.<sup>770</sup> A few days after the agreement was signed, D. Milošević reported to UNPROFOR that he had issued an order to the SRK troops to stop all sniping activity in the city of Sarajevo.<sup>771</sup> The sniping against civilians by the SRK, however, did not fully stop.<sup>772</sup>

310. Shelling and sniping intensified again between November and December 1994 and between April and May 1995, despite a ceasefire being in effect.<sup>773</sup> During these periods, the firing of small arms reached 3,000 rounds per day at times.<sup>774</sup> Although both sides kept weapons inside the city in violation of the TEZ, MP-72 observed that the VRS had “far more” large calibre weapons than the ABiH, even after the TEZ was established.<sup>775</sup> Witnesses also testified that the shelling and sniping against the population in Sarajevo by the SRK was often linked to events occurring elsewhere in BiH, such as an ABiH attack against the VRS outside of Sarajevo and the crisis in Goražde in April 1994.<sup>776</sup>

311. In May 1995, the situation in Sarajevo deteriorated.<sup>777</sup> TEZ violations increased and after a day marked by an intense artillery exchange, it was clear that any ceasefire was “really over”.<sup>778</sup> Per Anton Brennskag, a Sector Sarajevo UNMO, testified that in June 1995, the SRK fired up to 150 artillery and mortar rounds per day in Sarajevo, hitting both military and civilian targets.<sup>779</sup> During the same time, UNPROFOR reported that their personnel and locations were being targeted by Serb mortar fire.<sup>780</sup> On 16 June 1995, the ABiH launched an attack to break the encirclement of Sarajevo,

<sup>768</sup> MP-72, T. 4289 (closed session).

<sup>769</sup> MP-72, T. 4289-4290, 4351-4352, 4356 (closed session).

<sup>770</sup> MP-408, T. 6162-6163 (closed session); Ex. P1521, Anti-Sniping Agreement, 14 August 1994; Ex. P2342, Excerpt from SRK Order on the Implementation of the Anti-Sniping Agreement, 18 August 1994.

<sup>771</sup> Ex. P2342, Excerpt from SRK Order on the Implementation of the Anti-Sniping Agreement, 18 August 1994.

<sup>772</sup> MP-408, T. 6165 (closed session); MP-72, T. 4322-4323 (closed session).

<sup>773</sup> MP-72, T. 4298, 4303, 4306 (closed session); Hubertus J.W. Bruurmijn, T. 2632.

<sup>774</sup> MP-72, T. 4298 (closed session).

<sup>775</sup> MP-72, T. 4298-4299, 4304, 4356 (closed session).

<sup>776</sup> Ex. P2316 (under seal), para. 66; MP-408, T. 6153-6155, 6157 (closed session).

<sup>777</sup> Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 59. *See also* Ex. P2361, Transcript of Rupert Smith from *Prosecutor v. Popović et al.*, T. 17508; Hubertus J.W. Bruurmijn, T. 2633-2634.

<sup>778</sup> Hubertus J.W. Bruurmijn, T. 2633. *See also* Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 52.

<sup>779</sup> Per Anton Brennskag, T. 3346.

<sup>780</sup> *See* Ex. D24, Excerpt of UNPROFOR Report, 2 July 1995, pp 1, 3 (stating that Serb attacks on UNPROFOR have significantly increased in the past week. Serb gunners fired three shells at Sarajevo’s PTT building, the headquarters of UNPROFOR’s Sector Sarajevo. A Serb mortar also destroyed an UNPROFOR vehicle in the northern part of the city); Ex. P2316 (under seal), p. 25.

which after initial success failed, causing heavy casualties for the ABiH.<sup>781</sup> The siege ended in November 1995.<sup>782</sup>

(c) Comparison of Forces During the Siege

312. Following the initial six weeks of fighting in 1992, confrontation lines changed very little during the remainder of the conflict.<sup>783</sup> The SRK had its headquarters in Lukavica<sup>784</sup> and was positioned around the so-called inner ring of Sarajevo, which was about 55 kilometres long, while auxiliary SRK forces were positioned along the so-called exterior ring of the Sarajevo front, which was about 180 kilometres long.<sup>785</sup> In particular, along the inner ring, the SRK controlled-areas included Ilidža, Nedarići, part of Grbavica, Vraca, Mount Trebević and Špicasta Stijena.<sup>786</sup>

313. The 1<sup>st</sup> Corps of the ABiH was headquartered in the centre of Sarajevo<sup>787</sup> and had approximately 40,000 to 45,000 soldiers.<sup>788</sup> At the end of 1994, the total number fell to between 35,000 and 40,000.<sup>789</sup> The ABiH controlled part of Mount Igman,<sup>790</sup> Mount Žuč<sup>791</sup> the eastern part of the city of Sarajevo, including very densely-populated parts, such as the area of Stari Grad and Centar, part of Grbavica, and the southwestern part of the city, Hrasnica, Sokolović, Kolonija, Dobrinja and Butmir, and the hills in the north of Sarajevo.<sup>792</sup> In the Grbavica area, the Miljacka River constituted the northern confrontation line, with the ABiH positioned north of the river and the SRK south of the river.<sup>793</sup>

<sup>781</sup> Martin Bell, T. 3169, 3187; Ex. P2348, Statement of Rupert Smith, 24 August 1996, para. 68.

<sup>782</sup> Sarajevo Adjudicated Facts III, 10, 82. *See also* Ex. P348, Report of Robert Donia on the Making of the Sarajevo Siege, 1 December 2006, p. 38.

<sup>783</sup> Per Anton Brennskag, T. 3334-3335; Martin Bell, T. 3169-3170, 3176; Ex. P515, Map Marked by Martin Bell; Sarajevo Adjudicated Facts I, 156; Sarajevo Adjudicated Facts II, 10; Defence Adjudicated Facts I, 10.

<sup>784</sup> Sarajevo Adjudicated Facts III, 86.

<sup>785</sup> Sarajevo Adjudicated Facts I, 50-51.

<sup>786</sup> Sarajevo Adjudicated Facts I, 47, 49-50, 73-74, 76, 156, 157; Sarajevo Adjudicated Facts III, 9-10; Martin Bell, T. 3171-3176; Ex. P515, Map Marked by Martin Bell.

<sup>787</sup> Defence Adjudicated Facts II, 82; MP-72, T. 4312 (closed session); MP-408, T. 6192 (closed session).

<sup>788</sup> Defence Adjudicated Facts II, 83.

<sup>789</sup> Defence Adjudicated Facts II, 84. The Trial Chamber notes that there is an apparent discrepancy between the Adjudicated Facts from the *Galić* and *D. Milošević* Trial Judgements with regard to the number of 1<sup>st</sup> ABiH Corps in the city of Sarajevo. The *D. Milošević* Trial Judgement states that the 1<sup>st</sup> Corps totalled 75,000 soldiers, of which 40,000-45,000 were in Sarajevo, and that the number fell to 35,000-40,000 at the end of 1994 (Defence Adjudicated Facts II, 83-84). The *Galić* Trial Judgement, on the other hand, states that the 75,000 soldiers were all stationed around Sarajevo, with “[a]pproximately half of them were positioned in the city itself, while the other half was positioned along the confrontation lines outside the city” (Sarajevo Adjudicated Facts I, 53). Considering the context of the *Galić* Trial Judgement, particularly the footnote to said adjudicated facts, the Trial Chamber notes that this number included the part of the 1<sup>st</sup> Corps positioned on the outer ring of Sarajevo and that the number of soldiers estimated to be in the city was also between 33,000 and 50,000, which is consistent with the adjudicated facts from the *D. Milošević* Trial Judgement. *See* Defence Final Brief, para. 556.

<sup>790</sup> In 1994, the ABiH controlled 80% of Mount Igman, Defence Adjudicated Facts II, 88.

<sup>791</sup> Defence Adjudicated Facts II, 90.

<sup>792</sup> Defence Agreed Facts, 149, 151-159.

<sup>793</sup> Sarajevo Adjudicated Facts I, 75; Sarajevo Adjudicated Facts III, 23; Defence Agreed Facts, 150; Defence Adjudicated Facts II, 86. *See also* Ex. P2316 (under seal), para. 127.

314. In describing the ABiH soldiers' presence in Sarajevo, Martin Bell testified that "[t]hey were deployed obviously [...] round the edges. [...] you would sometimes find them billeted in schools, but you were not aware of a -- living in a city with [...] a standing army in it". He further stated that Sarajevo "looked like a ruined city, but [...] not a militarised one in any obvious way".<sup>794</sup>

315. The SRK was regarded as militarily superior to the ABiH in terms of artillery and quantities of heavy weaponry, such as tanks, armoured personnel carriers and rockets.<sup>795</sup> MP-72 testified that proportionately, the SRK had "far more weapons, far more sort of large calibre weapons than the [ABiH]" and that "far more weapons [were] fired by the Serbs".<sup>796</sup>

316. In terms of artillery, the SRK used almost predominantly 120mm and 150mm mortar shells, but there is evidence they also possessed 81mm or 82mm shells.<sup>797</sup> In 1995, the SRK also started using modified air-bombs.<sup>798</sup> The SRK also relied heavily on sniper units<sup>799</sup> equipped with precision rifles that could hit targets up to 800 metres away.<sup>800</sup>

317. In contrast, the ABiH was generally more lightly equipped,<sup>801</sup> though towards the end of the war it did find ways of acquiring more anti-tank weapons.<sup>802</sup> The ABiH was known to mainly use 81mm mortars,<sup>803</sup> but was not in possession of modified air-bombs.<sup>804</sup>

318. Though both sides were involved in sniping, MP-409 stated that the VRS used more snipers throughout the course of the conflict.<sup>805</sup>

<sup>794</sup> Martin Bell, T. 3189. Martin Bell also added that the ABiH soldiers were underestimated by the VRS since many of them did not have proper military equipment, e.g. were wearing sneakers, Martin Bell, T. 3222.

<sup>795</sup> Martin Bell, T. 3187. *See also* Ex. P2316 (under seal), para. 127 (SRK had 155mm guns, multiple rocket launchers, surface to air missiles, 122mm KREMA rockets).

<sup>796</sup> MP-72, T. 4356 (closed session). *See also* Pyers Tucker, T. 9111-9113.

<sup>797</sup> John Wilson, T. 859; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3561; Ex. P2316 (under seal), para. 127. The Defence also points out that both the ABiH and the SRK possessed 60mm and 105mm mortars, Defence Final Brief, para. 559, citing to Ex. D66, Memorandum from UNPROFOR, 12 October 1994; Ex. D64, UNPROFOR Letter on Exchange of Fire between BiH and Serb Forces, 17 November 1994; Ex. P2316 (under seal), para. 127. The Trial Chamber notes however that Ex. D66, shows only that the ABiH possessed a 60mm mortar, but is silent as regards the SRK.

<sup>798</sup> Martin Bell, T. 3187-3188.

<sup>799</sup> Ex. P2316 (under seal), para. 130; Aernout van Lynden, T. 523-524; Thorbjørn Øvergård, T. 2951-2957.

<sup>800</sup> Ex. P493, Report of Patrick van der Weijden: "Milošević case Sniping Incident in Sarajevo 94-95", 19 February 2007, Appendix A. *See also* Ex. P2316 (under seal), para. 90.

<sup>801</sup> Martin Bell, T. 3186-3187. *See also* Ex. P137, Witness Statement of General John Wilson, 5 June 1995 and 19 December 2002, para. 47 (stating that the ABiH possessed 81 mm mortars but had limited tanks and lacked light and heavy artillery).

<sup>802</sup> Martin Bell, T. 3187.

<sup>803</sup> Thorbjørn Øvergård, T. 2986-2987; Ex. P481, Statement of Thorbjørn Øvergård, 30 April 1996, para. 13; Ex. P137, Witness Statement of General John Wilson, 5 June 1995 and 19 December 2002, para. 47; John Wilson, T. 858.

<sup>804</sup> Sarajevo Adjudicated Facts III, 7-8. *See also* Hubertus J.W. Bruurmijn, T. 2642; Per Anton Brennskag, T. 3365; Nedžib Dozo, T. 4540.

<sup>805</sup> MP-409, T. 5703 (closed session).

### 3. Methods of Warfare

#### (a) Overview

319. The SRK subjected the city of Sarajevo to extensive gunfire and heavy shelling throughout the conflict without sparing civilian residential areas.<sup>806</sup> In addition, the city's natural topography, such as ridges and high-rise buildings, provided vantage-points for the SRK to target civilians moving around the city.<sup>807</sup> Mladić – described by a witness as the “strategist” of the siege – stated that he held “the city in his palm”.<sup>808</sup>

320. Martin Bell described the siege as if “the Great War were being refought in a modern urban environment”.<sup>809</sup> During the war, the civilian population was deliberately targeted and subjected to immense hardships that served no military purpose.<sup>810</sup> No civilian activity and no area of Sarajevo seemed to be safe from sniping or shelling attacks from SRK-held territory.<sup>811</sup> Civilians were targeted during funerals, in ambulances, in hospitals, on trams, on buses, when driving or cycling, at home, while tending gardens or fires or clearing rubbish in the city, in gathering points, such as markets, sports events or while queuing for food and water.<sup>812</sup> The Sarajevo State Hospital received more than 100 patients every day and the ratio of civilian to military patients was about 4:1.<sup>813</sup>

321. The “endless” killing of civilians and the deprivation of water, food, electricity, gas, medicines and humanitarian aid all had a devastating effect on Sarajevo's residents.<sup>814</sup> They lived under the daily threat of injury and death from shells and sniper fire.<sup>815</sup> Whenever they ventured out

<sup>806</sup> John Wilson, T. 860; Muhamed Sacirbey, T. 7179; Ex. P2343, Witness Statement of Ijaz Hussain Malik, 10 August 1996, p. 2; Ex. P2344, Transcript of Ijaz Hussain Malik from *Prosecutor v. D. Milošević*, 27 April 2007, T. 5411-5413; Ex. P1112, *Borba* Article Reproducing the Report of the UN War Crimes Commission for Former Yugoslavia, 14 July 1994, p. 60; Ex. P137, Witness Statement of General John Wilson, 5 June 1995 and 19 December 2002, para. 52; Ex. P2377, Witness Statement of Mirsad Kučanin, 4 September 2000, p. 4; Sarajevo Adjudicated Facts I, 56-57, 59, 61, 132; Sarajevo Adjudicated Facts III, 11.

<sup>807</sup> Sarajevo Adjudicated Facts I, 142, 153-155; Sarajevo Adjudicated Facts III, 27.

<sup>808</sup> Ex. P10, SkyNews Video Clip; MP-72, T. 4319-4320 (closed session).

<sup>809</sup> Martin Bell, T. 3169.

<sup>810</sup> Ex. P377, Witness Statement of Morten Hvaal, 14-15 February 2001, para. 4. *See also* Ex. P520, Transcript of Mesud Jusufović from *Prosecutor v. Galić*, T. 6527-6528; Martin Bell, T. 3169; Ex. P2377, Witness Statement of Mirsad Kučanin, 4 September 2000, p. 4; Morten Hvaal, T. 2276; Ex. P376, Witness Statement of Morten Hvaal, 28 March 1995, para. 27; Ex. P379, Transcript of Morten Hvaal in *Prosecutor v. Galić*, T. 2354; Ex. P378, Transcript of Morten Hvaal in *Prosecutor v. Galić*, T. 2276.

<sup>811</sup> Sarajevo Adjudicated Facts I, 132, 149.

<sup>812</sup> Sarajevo Adjudicated Facts I, 62, 68-72, 133-134, 136-137; Sarajevo Adjudicated Facts III, 12-19; John Wilson, T. 860; Aernout Van Lynden, T. 485-486, 497; Ex. P411, Statement of Muradif Čelik, 1 September 2000, p. 4; Ex. P377, Witness Statement of Morten Hvaal, 14-15 February 2001, para. 63.

<sup>813</sup> Ex. P631, Transcript of Milan Mandilović in *Prosecutor v. D. Milošević*, T. 571-572; Ex. P632, Transcript of Milan Mandilović in *Prosecutor v. Galić*, T. 1022.

<sup>814</sup> Ex. P645, Witness Statement of Nedžad Vejzagić, para. 63. *See also* MP-433, T. 2109-2110 (closed session); Ex. P125, Witness Statement of Anda Gotovac, 17 May 2006, para. 5; Pyers Tucker, T. 9118.

<sup>815</sup> *See* Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 2; Ex. P115, Transcript in *Prosecutor v. D. Milošević*, T. 2831; Ex. P489, Transcript of Youssef Hajir from *Prosecutor v. Galić*, T. 1684.

to get food or water, they would strive to find sheltered areas and would stay behind containers as much as possible to shield themselves from sniper fire and shells.<sup>816</sup>

322. The physical damage to Sarajevo was immense, extending from housing blocks to hospitals and religious and historical buildings.<sup>817</sup> The damage was also exacerbated by the fact that the SRK used phosphorus incendiary shells that could set an entire building on fire.<sup>818</sup> Attempts to extinguish fires caused by the shellings often proved ineffective, as the water supply was often interrupted and the fire fighters themselves were often subjected to gunfire.<sup>819</sup>

(b) Shelling

323. There is evidence that on average, the SRK fired more than 100 rounds of artillery, mortar and modified air bombs in Sarajevo on any single day.<sup>820</sup> The shelling throughout the siege involved over 2 million shells and was highly organised.<sup>821</sup> General John Wilson, Chief of UNMO until November 1992, personally observed shelling in Sarajevo and testified that as of June 1992, heavy shelling was a daily event and directed at the entire city.<sup>822</sup> A 1994 report of a UN Commission of Experts cited estimates by UNPROFOR and city officials that the daily shelling ranged from 200 to 300 impacts of a quiet day to 800 to 1,000 on an active day.<sup>823</sup>

324. Mortars were very precise, both in terms of direction and radius of impact, with a margin of error of less than 40 metres.<sup>824</sup> In contrast, modified air bombs were notoriously imprecise, as guiding systems could not be attached to these bombs. It was therefore impossible to direct them or adequately predict where they would impact.<sup>825</sup> The SRK used two types of modified air-bombs to shell Sarajevo: the FAB-100 and the FAB-250.<sup>826</sup> Defence witness Ivan Đukić, a technical engineer

<sup>816</sup> Ex. P24 (under seal), para. 10.

<sup>817</sup> Ex. P2377, Witness Statement of Mirsad Kučanin, 4 September 2000, p. 3; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28951-28952; Mesud Jusufović, T. 3235, 3237; Ex. P520, Transcript of Mesud Jusufović from *Prosecutor v. Galić*, T. 6532. *See also* Ex. P521, List of High Profile Facilities Set on Fire by Shelling During the War; Sarajevo Adjudicated Facts I, 141.

<sup>818</sup> Ex. P520, Transcript of Mesud Jusufović from *Prosecutor v. Galić*, T. 6530; Martin Bell, T. 3187-3188.

<sup>819</sup> Ex. P520, Transcript of Mesud Jusufović from *Prosecutor v. Galić*, T. 6524, 6527-6529, 6536-6537.

<sup>820</sup> Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1992-1993.

<sup>821</sup> Sarajevo Adjudicated Facts I, 32-34. *See also* Ex. P2316 (under seal), pp 17-24.

<sup>822</sup> John Wilson, T. 857-858

<sup>823</sup> Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, para. 188.

<sup>824</sup> Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, p. 2; Ex. P461 (under seal), T. 2416.

<sup>825</sup> Ex. P479, Transcript of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 643-644; Ex. P480, Transcript of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 643-644, 696; Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1990-1992; Per Anton Brennskag, T. 3355; MP-409, T. 5633 (closed session); Hubertus J.W Bruuirmijn, T. 2641-2645, 2687-2688, 2698-2699; Ekrem Suljević, T. 4736; Martin Bell, T. 3188-3189; Ex. P461 (under seal), T. 2421-2422, 2643-2645, 2687-2688, 2698-2699; MP-14, T. 3665 (closed session); Ex. D94, UNPROFOR Report Regarding BiH Mandate, 28 June 1995, p. 1.

<sup>826</sup> Sarajevo Adjudicated Facts III, 5, 7-8 (FAB is an abbreviation for a contact fuse airbomb with the numerical designation for the kilogram weight of the bomb); MP-014, T. 3653, 3666 (closed session); Ex. P479, Transcript



who was involved in the development on the modified air-bomb, testified that the use of modified air bombs in an urban environment was “totally inappropriate”.<sup>827</sup> Similarly, UNMO Thomas Knustad stated that the use of modified air bombs served no military purpose.<sup>828</sup>

325. SRK mortar positions included Mrkovići, Trebević, Zlatište, Vraca,<sup>829</sup> Gravica Brdo, Nedžarići barracks, Paljevo plateau and from within the Polinje area.<sup>830</sup> In particular, Sarajevo Old Town was targeted from the south-western side of Mount Trebević.<sup>831</sup> The Nedžarići barracks provided a strong vantage point for the shelling of the Alipašino Polje area.<sup>832</sup> Shells fired from Mrkovići would more commonly target the upper part of Sarajevo in the Stari Grad and Centar municipalities.<sup>833</sup> Hrasnica, Butmir and Skolovići were shelled primarily from SRK positions between Ilidža/Blažuj and the Lukavica barracks.<sup>834</sup> The lower part of Sarajevo was a clear target from the Paljevo plateau.<sup>835</sup> The centre of Sarajevo was a target from the Polinje area.<sup>836</sup> Lastly, the

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of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 643-644; Ex. P480, Transcript of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 696; Hubertus J.W. Bruurmijn, T. 2643-2645, 2687-2688, 2698-2699; Ex. D94, BH Mandate, 28 June 1995, p. 1.

<sup>827</sup> Ivan Đokić, T. 14489-14490, 14494.

<sup>828</sup> Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1990-1992. *See also* Hubertus J.W. Bruurmijn, T. 2643, 2687-2688.

<sup>829</sup> Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4592, 4594, 4603; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28926; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 7.

<sup>830</sup> Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4589, 4600-4601. Other SRK positions included: Burije, the Meljine church, Krivoglavci, Blagovac, Kromolj, Lukavica barracks and the Rajlovac barracks. *See also* Ex. P2383, Map Marked by Mirsad Kučanin.

<sup>831</sup> Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4591, 4602; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28926; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 7. *See also* Ex. P2380, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 1 March 2002, T. 4748.

<sup>832</sup> Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4595, 4603; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28927; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 7.

<sup>833</sup> Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4590, 4600, 4602; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28925; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 7. *See also* Ex. P2380, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 1 March 2002, T. 4747-4748.

<sup>834</sup> Thorbjørn Øvergård, T. 2954-2956; Ex. P484, Map Marked by Thorbjørn Øvergård, mark B; Ex. P481, Statement of Thorbjørn Øvergård, 30 April 1996, para. 3; Ex. P485, Map Marked by Thorbjørn Øvergård, mark LB; Ex. P479, Transcript of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 639.

<sup>835</sup> Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4594-4596, 4605; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28928; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 7.

<sup>836</sup> Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4597, 4606; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28928; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 7. *See also* Ex. P2380, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 1 March 2002, T. 4750.

entire area of Dobrinja in Sarajevo was targeted from a VRS strong-hold in Gravica Brdo and Nedžarići.<sup>837</sup>

326. The SRK shelling of Sarajevo was indiscriminate and resulted in mostly civilian victims.<sup>838</sup> Shelling targets generally had no clear military value<sup>839</sup> and included apartment blocks, schools, hospitals, food queues and historical buildings.<sup>840</sup> The Holiday Inn, for example, came under frequent shelling between the period 10 September 1992 and mid-1994.<sup>841</sup>

(c) Sniping

327. Expert witness Van der Weijden explained that conventionally, the traditional military sniper operates in a shooter/spotter team in order to maximise the accuracy of the shot. The term “sniper”, however, has evolved and is now commonly used to refer to shooters who operate alone. Particularly, since the siege of Sarajevo, the term sniper is used to indicate a shooter who fires at whoever he gets in his sight.<sup>842</sup>

328. There is evidence that between late 1994 and early 1995, VRS snipers began to utilise 12.7 calibre M87 machine guns,<sup>843</sup> instead of the conventional 7.92 calibre Zastava M76 or 7.62 calibre SVD Dragunov.<sup>844</sup> While the M87 machine gun had the capacity to cover a larger effective range, it was notorious for its indiscriminate destructiveness and lack of precision.<sup>845</sup> According to Van der Weijden, the 7.92 or 7.62 calibre guns also lacked precision when the range sought extended beyond 800 metres.<sup>846</sup> He also testified that, with regard to targets travelling in trams, it would be

<sup>837</sup> Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4594, 4603; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28926; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 7.

<sup>838</sup> Thorbjørn Øvergård, T. 2954-2956; Ex. P481, Statement of Thorbjørn Øvergård, 30 April 1996, para. 3; Ex. P479, Transcript of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 639; Ex. P2307, Witness Statement of Nefa Šljivo, 27 April 2006, p. 2. *See also* Thorbjørn Øvergård, T. 2981; Ex. P520, Transcript of Mesud Jusufović from *Prosecutor v. Galić*, T. 6524.

<sup>839</sup> John Wilson, T. 860.

<sup>840</sup> *See* Mesud Jusufović, T. 3237; Ex. P520, Transcript of Mesud Jusufović from *Prosecutor v. Galić*, T. 6532; Ex. P521, List of High Profile Facilities Set on Fire by Shelling During the War; Ex. P125, Witness Statement of Anda Gotovac, 17 May 2006, para. 6 (the apartment building of Gotovac’s brother-in-law, Trg Heroja, was destroyed and burned by shelling in 1992); Ex. P37, Witness Statement of Enes Jašarević, 10 March 1997, para. 3 (stating that in September 1993, a Serbian tank positioned in Gavrica Brdo fired a shell into his apartment, killing his 11 year-old son); Ex. P57, Witness Statement of Ramiz Hodžić, 22 November 1995, p. 3; Ex. P61, Witness Statement of Đula Leka, 25 February 1996, para. 1.

<sup>841</sup> Ex. P520, Transcript of Mesud Jusufović from *Prosecutor v. Galić*, T. 6533.

<sup>842</sup> Ex. P493, Report of Patrick van der Weijden: “Milošević case Sniping Incident in Sarajevo 94-95”, 2 February 2009, p. 3.

<sup>843</sup> Ex. P481, Statement of Thorbjørn Øvergård, 30 April 1996, para. 3. *See also* Ex. P479, Transcript of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 627-628.

<sup>844</sup> Ex. P493, Report of Patrick van der Weijden: “Milošević case Sniping Incident in Sarajevo 94-95”, dated 2 February 2009, Appendix A.

<sup>845</sup> *Ibid.*

<sup>846</sup> *Ibid.*

“almost impossible” for SRK snipers to accurately distinguish between military and civilian personnel, and furthermore, that a shot should never be taken when the target cannot be identified “because of the risk of shooting a non-combatant”.<sup>847</sup>

329. According to Derviša Selmanović, every hill around Sarajevo was used as a vantage point for Serb snipers to shoot into the city.<sup>848</sup> Areas that became known as notorious sniper positions from which civilians were targeted included Grbavica, the Jewish Cemetery, the Orthodox Church, the School for the Blind and the areas of Neđarići, Špicasta Stijena, Mount Trebević and Baba Stijena.<sup>849</sup> According to Kučanin, sniping fire frequently originated from Grdonj Brdo,<sup>850</sup> Sedrenik,<sup>851</sup> Gornji Kovačići,<sup>852</sup> the Ozrenska Street,<sup>853</sup> Zagorska Street,<sup>854</sup> Milinkladska Street,<sup>855</sup> Miroslava Krleze Street<sup>856</sup> and Kromolj.<sup>857</sup> In Kučanin’s view, the largest number of sniping attacks against the city came from the “Death Sowers” in Osmiće,<sup>858</sup> and from the Vraca area.<sup>859</sup>

<sup>847</sup> Patrick Van der Weijden, T. 3066; Ex. P493, Report of Patrick van der Weijden: “Milošević case Sniping Incident in Sarajevo 94-95”, dated 2 February 2009, p. 66.

<sup>848</sup> Ex. P111, Witness Statement of Derviša Selmanović, 20 April 2006, p. 3.

<sup>849</sup> Sarajevo Adjudicated Facts I, 120, 122, 124, 125-127, 143-144, 146, 148; MP-432, T. 5283-5284 (closed session); Ex. P129, Witness Statement of Alen Gičević, 15 November 1995, p. 3; Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4588-4635; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28923-28934; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, pp 8-9; Ex. P111, Witness Statement of Derviša Selmanović, 20 April 2006, p. 3; Derviša Selmanović, T. 718.

<sup>850</sup> Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4606-4607; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28929; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 8.

<sup>851</sup> *Ibid.*

<sup>852</sup> Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4609; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28930.

<sup>853</sup> Ex. P2383, Map Marked by Mirsad Kučanin (the line with no. 6 indicates the road); Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4622, 4630, 4631; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28932; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 9.

<sup>854</sup> Ex. P2383, Map Marked by Mirsad Kučanin (the line with no. 7 on top indicates the street); Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4630; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28932; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 9.

<sup>855</sup> Ex. P2383, Map Marked by Mirsad Kučanin (the line marked with no. 7 indicates the street); Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4630; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28932.

<sup>856</sup> Ex. P2383, Map Marked by Mirsad Kučanin (the line marked with no. 9 indicates the street); Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4632; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28933; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 9.

<sup>857</sup> Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2378, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 27 February 2002, T. 4552; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4597, 4606; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28929; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 7; Ex. P2382, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 13 November 2003, T. 28957-28958.

<sup>858</sup> Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4606-4607; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S.*

330. The Trial Chamber heard numerous witnesses regarding the frequent and indiscriminate nature of sniping in Sarajevo during the course of the conflict,<sup>860</sup> and moreover, took judicial notice of the fact that between September 1992 and August 1994, civilians were shot nearly every day as VRS gunners fired indiscriminately into the city.<sup>861</sup> Several witnesses testified that all of the intersections along the main streets of Sarajevo were well-known targets.<sup>862</sup> Marshall Tito Boulevard was known as “Sniper Alley”<sup>863</sup> and other locations, such as the areas of Zamario Street, Džemala Bijedića Street, Ivana Krndelja and Miljenka Cvitković Streets were commonly targeted.<sup>864</sup> Trams were commonly shot at on Zmaja od Bosne Street around the Holiday Inn, where they were forced to slow down by a switch in the tracks at a point in the line of sight of VRS snipers positioned on the south bank of the Miljacka river or in the Metalka building.<sup>865</sup>

331. The area from Trščanska Street, known as the “running street”, all the way up to the Bratstvo-Jedinstvo bridge was notoriously dangerous for civilians.<sup>866</sup> Another notable target was “Igman Road”, a road which ran over Mount Igman through Hrasnica into Sarajevo.<sup>867</sup> This road was used to transport supplies into Sarajevo<sup>868</sup> and according to Turković, there were no ABiH

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*Milošević*, 12 November 2003, T. 28929; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 8.

<sup>859</sup> Ex. P2383, Map Marked by Mirsad Kučanin (the cross no. 1 marks the police station); Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4609, 4612; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28930.

<sup>860</sup> See John Wilson, T. 860; MP-432, T. 5283-5284 (closed session); Ex. P631, Transcript of Milan Mandilović in *Prosecutor v. D. Milošević*, T. 575; Ex. P103, Witness Statement of Sabina Šabanić, 16 November 1995, p. 2; Ex. P104, Witness Statement of Sabina Šabanić, 22 May 1996, p. 2; MP-72, T. 4303 (closed session); Ex. P411, Statement of Muradif Čelik, 1 September 2000, p. 4.

<sup>861</sup> Sarajevo Adjudicated Facts I, 154-155. See also Ex. P1536, Letter of the UN Secretary General to the President of the UNSC, 27 May 1994, para. 202.

<sup>862</sup> Ex. P38, Witness Statement of Enes Jašarević, 19 May 2006, para. 6; Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 3004; Ex. P130, Witness Statement of Alen Gičević, 21 April 2006, p. 2 (stating that intersections in the municipalities of Novo Sarajevo, Centar and Stari Grad were notorious targets); Ex. P97, Witness Statement of Fikreta Pačariz, 24 April 2006, p. 2; Sarajevo Adjudicated Facts I, 135; Sarajevo Adjudicated Facts III, 24.

<sup>863</sup> Sarajevo Adjudicated Facts I, 145; Defence Adjudicated Facts II, 86.

<sup>864</sup> Ex. P2383, Map Marked by Mirsad Kučanin (the circle with the letter Z in the centre indicates the targeted area); Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4631; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28932-28933.

<sup>865</sup> Sarajevo Adjudicated Facts III, 20-23, 52-54. See also Ex. P32 Witness Statement of Slavica Livnjak, 24-25 April 2006, p. 2; Ex. P520, Transcript of Mesud Jusufović from *Prosecutor v. Galić*, p. 19; MP-432, T. 5329-5330 (private session); Ex. P31, Witness Statement of Slavica Livnjak, 20 November 1995, p. 2.

<sup>866</sup> Ex. P2383, Map Marked by Mirsad Kučanin; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4616; Ex. P2381, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 12 November 2003, T. 28931-28932; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 9.

<sup>867</sup> Thorbjørn Øvergård; T. 2954; Ex. P484, Map Marked by Thorbjørn Øvergård, mark IR; Ex. P479, Transcript of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 650.

<sup>868</sup> Ex. P479, Transcript of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 650; Ex. P481, Statement of Thorbjørn Øvergård, 30 April 1996, para. 14.

positions along the Igman Road.<sup>869</sup> Thorbjørn Øvergård and his team in Hrasnica observed civilians being fired upon from the SRK-held area of Ilidža as they travelled on this road.<sup>870</sup>

332. Bruurmijn testified that the majority of the sniping victims he examined were children or elderly people who were clearly non-combatants.<sup>871</sup> In an effort to protect the population, UNPROFOR eventually placed metal barriers and barricades at important intersections and crossroads around Sarajevo.<sup>872</sup>

333. Significantly, MP-72 testified that the sniping of civilians was a “permanent threat” and, as such, was part of the overall strategy of the Bosnian Serbs to terrorise the civilian population of Sarajevo.<sup>873</sup>

334. The Trial Chamber will now examine the specific Scheduled Shelling and Sniping Incidents, representative of the alleged unlawful killings, inhumane acts and attacks against the civilian population in Sarajevo.

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<sup>869</sup> Vekaz Turković, T. 3124; Ex. P504, Map Marked by Vekaz Turković.

<sup>870</sup> Thorbjørn Øvergård, T. 2954; Ex. P479, Transcript of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 651; Ex. P481, Statement of Thorbjørn Øvergård, 30 April 1996, para. 14.

<sup>871</sup> Hubertus J.W. Bruurmijn, T. 2632-2633.

<sup>872</sup> Ex. P631, Transcript of Milan Mandilović in *Prosecutor v. D. Milošević*, T. 575-576; Ex. P632, Transcript of Milan Mandilović in *Prosecutor v. Galić*, T. 1034-1035. *See also* Sarajevo Adjudicated Facts I, 146; Sarajevo Adjudicated Facts III, 28; Aernout Van Lynden, T. 499.

<sup>873</sup> MP-72, T. 4303 (closed session).

#### 4. Scheduled Shelling Incidents

##### (a) 22 January 1994 (Incident A1)

###### (i) Indictment

**22 January 1994:** Three mortar shells landed in the area of Alipašino Polje, the first in a park behind, and the second and third in front of residential apartment buildings at 3, Geteova Street (previously Centinjska Street) and at 4, Bosanka Street (previously Klara Cetkin Street), where children were playing. The second and third shells killed six children under the age of 15 years and wounded one adult and at least three such children. The origin of fire was from VRS-held territory approximately to the west.<sup>874</sup>

###### (ii) Incident

335. The Trial Chamber took judicial notice of the following facts. Around noon on 22 January 1994, three mortar shells (two 82mm and one 120mm calibre) were fired into the residential neighbourhood of Alipašino Polje in the west of Sarajevo<sup>875</sup> and six children were killed by the explosions and another three children, including Muhamed Kapetanović, and Goran Todorović, who were ten and 12 years old at the time were wounded.<sup>876</sup> One adult (Witness AI in the *Galić* case) was also seriously injured.<sup>877</sup>

336. At the time of the explosion, some of the children were playing in a parking lot near to No. 2 Centinjska Street,<sup>878</sup> others were playing in Klara Cetkin Street<sup>879</sup> and Witness AI was walking along Klara Cetkin Street in Alipašino Polje where he/she lived.<sup>880</sup>

337. The three shells were fired from VRS positions somewhere to the west of Alipašino Polje<sup>881</sup> and no military activity was underway in the neighbourhood, nor were any soldiers to be seen,<sup>882</sup> and the military facility called Kulin Ban (at a distance of at least 150 metres from the impact site) was not the intended target of this attack.<sup>883</sup>

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<sup>874</sup> Scheduled Incident A1.

<sup>875</sup> Sarajevo Adjudicated Facts I, 197. *See also* Sarajevo Adjudicated Facts I, 190-195; Ex. P540, Map of Sarajevo  
<sup>876</sup> Sarajevo Adjudicated Facts I, 182, 186, 196-197; Ex. P422, Extract from the Sarajevo Clinical Centre Reception and Triage Block for 1 June 1993, 12 July 1993, 22 January 1994 and 5 February 1994, p. 34. *See also* Ex. P419, Statement of Faris Gavrankapetanović, 11 October 2001; Ex. P420, Statement of Faris Gavrankapetanović, 13 December 2001.

<sup>877</sup> Sarajevo Adjudicated Facts I, 196-197; Ex. P422, Extract from the Sarajevo Clinical Centre Reception and Triage Block for 1 June 1993, 12 July 1993, 22 January 1994 and 5 February 1994, p. 34. *See also* Ex. P419, Statement of Faris Gavrankapetanović, 11 October 2001; Ex. P420, Statement of Faris Gavrankapetanović, 13 December 2001.

<sup>878</sup> Sarajevo Adjudicated Facts I, 183,185-186.

<sup>879</sup> Sarajevo Adjudicated Facts I, 184.

<sup>880</sup> Sarajevo Adjudicated Facts I, 188-189.

<sup>881</sup> Sarajevo Adjudicated Facts I, 205.

<sup>882</sup> Sarajevo Adjudicated Facts I, 198-199. Witness AI testified that the morning had been exceptionally peaceful, with no shooting, Sarajevo Adjudicated Facts I, 187.

<sup>883</sup> Sarajevo Adjudicated Facts I, 206.

(iii) Findings

338. Considering that such adjudicated facts have not been rebutted during the trial,<sup>884</sup> the Trial Chamber finds beyond a reasonable doubt that on 22 January 1994 at around noon, three mortar shells exploded in the residential neighbourhood of Alipašino Polje, killing six children, seriously injuring another three children and one adult. The evidence establishes that all the victims of the attack, except for one, were children. The Trial Chamber finds that the only reasonable inference to be drawn from the evidence is that all the victims were civilians not taking part in hostilities at the time the incident occurred. The shells also fell in a civilian area with no military activities in the vicinity.

339. The Trial Chamber is also satisfied beyond a reasonable doubt that the shells originated from VRS-held territory.

(b) 4 February 1994 (Incident A2)(i) Indictment

**4 February 1994:** A salvo of three 120mm mortar shells hit civilians in the Dobrinja residential area. The first landed in front of an apartment building at Oslobodilaca Sarajeva Street. The second and third landed among persons trading at a market in an open area to the rear of the apartment building at Mihajla Pupina Street and Oslobodilaca Sarajeva Street. Eight people, including 1 child under the age of 15 years, were killed and at least 18 people, including 2 such children, were wounded. The origin of fire was from VRS-held territory, approximately to the east.<sup>885</sup>

(ii) Incident

340. The Trial Chamber took judicial notice of the following facts. On 4 February 1994, at around 11:00 hours., three mortar shells struck a residential neighbourhood in Dobrinja, in the south-west of the city adjacent to the Sarajevo Airport,<sup>886</sup> exploding near the apartment buildings at Mihajla Pupina and Oslobodilaca Sarajeva Streets, next to the underground garage.<sup>887</sup> At least eight people including a child were killed by shells and at least 18 people were wounded including two children,<sup>888</sup> Eldar Hafizović who was 17 years old at the time and Sabahudin Ljusa who was

<sup>884</sup> See also Defence Final Brief, para. 525, where the Defence states that it does not contest those facts.

<sup>885</sup> Scheduled Incident A2.

<sup>886</sup> Ex. P122, Map Marked by Azra Šišić; Azra Šišić, T. 749.

<sup>887</sup> Sarajevo Adjudicated Facts I, 224; Ex. P540, Map of Sarajevo; Ex. P449 (under seal), p. 2; Ex. P447 (under seal), p. 3.

<sup>888</sup> Sarajevo Adjudicated Facts I, 224. See also Sarajevo Adjudicated Facts I, 208-220.

11 years old.<sup>889</sup> The Trial Chamber also took judicial notice of the fact that the eight victims killed by the shells were civilians.<sup>890</sup>

(iii) Investigation

341. The investigation team was comprised of ballistic experts, Zlatko Mededović and Mirza Slabjica, and two forensic technicians, including Sead Bešić.<sup>891</sup> Based on the spray of fragments on the site, the team concluded that the shells were fired from a 120mm mortar from the VRS-held positions at Lukavica.<sup>892</sup>

342. Mededović testified that between the site of the incident and the lines held by the VRS there were only one or two buildings.<sup>893</sup> The Trial Chamber further took judicial notice of the fact that Sabahudin Ljusa did not see any soldiers or military personnel,<sup>894</sup> there were no ABiH military units close to the site on that day<sup>895</sup> and that the Territorial Defence office based in a small room at no. 6 Oslobodilaca Sarajeva Street was not the target of the attack.<sup>896</sup>

(iv) Findings

343. Considering that such adjudicated facts have not been rebutted during the trial, the Trial Chamber finds beyond a reasonable doubt that on 4 February 1994 at 11:00 hours, three mortar shells struck a residential neighbourhood in Dobrinja killing at least eight people including a child and injuring at least 18 people including two children.

344. The Trial Chamber finds that the attack occurred in a civilian area with no military activities in the vicinity.<sup>897</sup> The Trial Chamber also finds that the only reasonable inference to be drawn from the evidence is that the victims of this attack were civilians not taking part in hostilities at the time the incident occurred. Furthermore, the Trial Chamber notes that many of the victims were engaged in casual civilian activities.

345. The Defence challenges the evidence of MP-228 insofar as it relates to the source of fire. It points out that MP-228's uncorroborated findings contain just conclusions and do not include any specific evidence on the angle of descent, range of fire, the charge of the shell or other criteria

<sup>889</sup> Ex. P2330, Annex to the Expert Report of Ewa Tabeau, List of Casualties of the Sarajevo Siege, 10 September 1992 – 10 October 1994, pp 386, 529.

<sup>890</sup> Sarajevo Adjudicated Facts I, 224.

<sup>891</sup> Ex. P70, Witness Statement of Zlatko Mededović, 20 November 1995, pp 1, 3; Ex. P449 (under seal), p. 2.

<sup>892</sup> Ex. P447 (under seal), p. 3. *See* Ex. P449 (under seal), p. 2.

<sup>893</sup> Ex. P70, Witness Statement of Zlatko Mededović, 20 November 1995, p. 3.

<sup>894</sup> Sarajevo Adjudicated Facts I, 221.

<sup>895</sup> Sarajevo Adjudicated Facts I, 222.

<sup>896</sup> Sarajevo Adjudicated Facts I, 223, 226.

<sup>897</sup> Sarajevo Adjudicated Facts I, 208-2011, 212-220, 224.



necessary to determine the origin of fire.<sup>898</sup> The Defence submits that the mere establishing of the direction of fire is not conclusive of the origin of fire as any position along the axis of fire could be a potential source of fire for the shell.<sup>899</sup> It further points out in this respect that the evidence of MP-238, a member of the Bosnian unit charged with the ballistics investigations, suggests that the location of the ABiH forces in the line of fire was not considered as an essential factor in establishing the origin of fire with regard to another shelling incident.<sup>900</sup>

346. The Defence also specifically challenges the credibility of MP-228. It argues that as an employee of the Bosnian Government, he had “no interest in concluding that anyone other than the SRK was responsible for firing the shells” since “it benefited the Bosnian Government to exploit the situation to obtain favourable responses from the international community”.<sup>901</sup>

347. Finally, according to the Defence, the fact that this incident was omitted in the indictment against Ratko Mladić and Radovan Karadžić may lead to the “most reasonable” inference that the Prosecution investigators were unable to reach the conclusion that Bosnian Serbs were responsible.<sup>902</sup>

348. The Chamber notes that MP-228, in concluding that the shells originated in the SRK held territory, does not give any details on how, having established the direction of fire, his team reached the conclusion as to the origin of fire. The Chamber however finds the Defence’s credibility challenge to MP-228 to be speculative and that the fact that certain elements were not taken into account in another investigation has limited weight in the present considerations.<sup>903</sup> Consequently, the Trial Chamber has no reason to doubt the conclusions reached by MP-228.

349. The Trial Chamber therefore finds beyond a reasonable doubt that the shells fired were the 120mm mortar shells fired from the VRS-held positions at Lukavica.

(c) 5 February 1994 (Incident A3)

(i) Indictment

**5 February 1994:** A 120mm mortar shell hit a crowded open air market called “Markale” situated in a civilian area of Old Town Sarajevo, killing at least 60 people and wounding over 140 people. The origin of fire was VRS-held territory approximately to the north/north east.<sup>904</sup>

<sup>898</sup> Defence Final Brief, para. 527.

<sup>899</sup> Defence Final Brief, para. 530.

<sup>900</sup> Defence Final Brief, para. 528.

<sup>901</sup> *Ibid.*

<sup>902</sup> Defence Final Brief, para. 529.

<sup>903</sup> *See also infra* para. 408.

<sup>904</sup> Scheduled Incident A3.

(ii) Incident

350. Markale market was an open air market where vendors sold their goods.<sup>905</sup> It was located in the city centre, approximately 100 metres from the City Market on Mula-Mustafe Bašeskije Street.<sup>906</sup>

351. On 5 February 1994, between 12:00-12:30 hours, a projectile exploded in Markale market.<sup>907</sup>

352. On that day, Muradif Čelik, who was retired at the time, was looking after one of the stalls on the market.<sup>908</sup> When the shell exploded, he was wounded by shrapnel, mainly in his right leg and shoulder.<sup>909</sup> He was taken to Koševo Hospital and then transferred to State Hospital where he stayed for two months and ten days. He underwent plastic surgery for his leg,<sup>910</sup> but the medical staff was unable to remove the shrapnel from of his shoulder.<sup>911</sup>

353. Ezrema Boškailo was shopping at the Markale market when the explosion of the projectile knocked her over.<sup>912</sup>

354. Documentary evidence as well as the facts adjudicated in the *Galić* case show that, overall, the shell fired on 5 February 1994 killed over 60 persons and wounded over 140.<sup>913</sup>

355. The Trial Chamber took judicial notice of the fact that the 120mm mortar was deliberately fired from SRK-controlled territory,<sup>914</sup> from the direction north-northeast of the market or at a bearing of approximately 18 degrees.<sup>915</sup> Although the Defence has not explicitly challenged these adjudicated facts,<sup>916</sup> it nevertheless led evidence that can be treated as rebuttal evidence in this respect. The Trial Chamber notes that Ex. D666, a report of the UN Investigation Team established

<sup>905</sup> Mesud Jusufović, T. 3274 (private session); Ex. P524, Transcript of Sead Bešić from *Prosecutor v. D. Milošević*, T. 2577.

<sup>906</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Redarding Scheduled Incident A9, 28 August 1995, p. 2; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 7. *See also* Sead Bešić, T. 3289-3290. *See infra* para. 437.

<sup>907</sup> Sarajevo Adjudicated Facts I, 243. *See also* MP-408, T. 6150, 6156 (closed session).

<sup>908</sup> Ex. P412, Statement of Muradif Čelik, 7 January 2002, p. 2; Ex. P417 (under seal).

<sup>909</sup> Ex. P414 (under seal), pp 6, 9, 27. *See* Ex. P423, Medical Documentation, p. 6.

<sup>910</sup> Ex. P412, Statement of Muradif Čelik, 7 January 2002, p. 2; Ex. P417 (under seal).

<sup>911</sup> Ex. P412, Statement of Muradif Čelik, 7 January 2002, p. 2; Ex. P416 (under seal), p. 4.

<sup>912</sup> Adjudicated Facts I, 229.

<sup>913</sup> Ex. P2330, Annex to the Expert Report of Ewa Tabeau, List of Casualties of the Sarajevo Siege, 10 September 1992 – 10 October 1994; Ex. P423, Medical Documentation (listing 127 wounded people admitted to hospital on 5 February 1994 (including 91 people admitted at around 12:35 hours) together with the diagnosis etc. and the names of 13 people transferred to another clinic); Ex. P424, Medical Documentation; Ex. P414 (under seal); Ex. P422, Extract from the Sarajevo Clinical Centre Reception and Triage Block for 1 June 1993, 12 July 1993, 22 January 1994 and 5 February 1994 (91 people admitted around 12:35 hours); Sarajevo Adjudicated Facts I, 231, 250.

<sup>914</sup> Sarajevo Adjudicated Facts I, 248.

<sup>915</sup> Sarajevo Adjudicated Facts I, 245-246.

to investigate this incident, stated that it could not establish the exact origin of fire and consequently which side of the conflict fired the shell.<sup>917</sup> However, these findings were taken into account by the Trial Chamber in *Galić* while reaching its conclusion that the VRS fired the shell. The Trial Chamber therefore finds that Ex. D666 cannot be seen as rebutting the adjudicated facts from the *Galić* Trial Judgement that identify the origin of fire. Similarly, the Trial Chamber finds that Ex. D566, a report sent from the commander of the SRK to the VRS Main Staff on 5 February 1994, denying responsibility for this incident, does not have sufficient weight to rebut the *Galić* adjudicated facts.

356. The Trial Chamber further took judicial notice of the fact that there was no military objective in the area of the Markale market<sup>918</sup> and that the shell was deliberately aimed at civilians.<sup>919</sup>

(iii) Findings

357. The Trial Chamber finds beyond a reasonable doubt that on 5 February 1994, a 120mm mortar shell exploded in the Markale market killing at least 60 persons and wounding over 140 others. A cross-checking of the information contained in the list of people wounded that day in the Stari Grad area of Sarajevo with the information stemming from the lists of people admitted to local hospitals, including the exact time of admission and age of patients, allows for a finding that at least 45 people killed and 82 people wounded in the 5 February 1994 incident were civilians not taking part in hostilities.<sup>920</sup> In reaching this finding, the Trial Chamber has also considered the location and the function played by the Markale market as a civilian public place.

358. The Trial Chamber is satisfied beyond a reasonable doubt that the shells originated from VRS-held territory and were deliberately aimed at civilians.

<sup>916</sup> Defence Final Brief, para. 531.

<sup>917</sup> See Ex. D666, UNPROFOR Report on the Markale Market Shelling, 5 February 1994, p. 11.

<sup>918</sup> Sarajevo Adjudicated Facts I, 239-241.

<sup>919</sup> Sarajevo Adjudicated Facts I, 250.

<sup>920</sup> The list of victims in Sarajevo lists several people killed that day either in other parts of Sarajevo or does not specify the location; several names also seem to be duplicates; some names appearing on the medical lists do not appear on the list of victims in Sarajevo, Ex. P2330, Annex to the Expert Report of Ewa Tabeau, List of Casualties of the Sarajevo Siege, 10 September 1992 – 10 October 1994; Ex. P423, Medical Documentation; Ex. P424, Medical Documentation; Ex. P414 (under seal); Ex. P422, Extract from the Sarajevo Clinical Centre Reception and Triage Block for 1 June 1993, 12 July 1993, 22 January 1994 and 5 February 1994.

(d) 22 December 1994 (Incident A4)(i) Indictment

**22 December 1994:** Two 76mm shells in quick succession hit a flea market in the old commercial quarter of Baščaršija in Old Town. Two persons were killed and seven were injured. The origin of fire was Trebević, VRS positions.<sup>921</sup>

(ii) The Flea Market in the Old Town of Sarajevo

359. The flea market is located behind the national library in the Baščaršija neighbourhood of the Old Town Sarajevo, between the Petra Kočića and the Danila Ilića Streets.<sup>922</sup> The area of the flea market is a densely populated civilian area.<sup>923</sup> In December 1994, there were no military installations in the vicinity of the market, though Witness Ekrem Suljević testified that uniformed individuals could be found at the market.<sup>924</sup>

(iii) Incident

360. On 22 December 1994, at around 9:10 hours, two shells exploded in rapid succession in the flea market.<sup>925</sup> At that time, there were between 30 and 50 people in the area.<sup>926</sup> Several eye-witnesses described the incident.<sup>927</sup> Muradif Čelik, for instance, stated that he was at the flea market that morning<sup>928</sup> and heard the explosion of the first shell before it threw him to the ground.<sup>929</sup> When he got up, he ran to a nearby building.<sup>930</sup> He also looked at the site of the explosion and saw smoke and heard screams of the wounded.<sup>931</sup> Ramiz Hodžić, wounded in the first explosion, stated that he heard a second explosion less than one minute after the first.<sup>932</sup> He then saw many people running

<sup>921</sup> Scheduled Incident A4.

<sup>922</sup> Ekrem Suljević, T. 4742-4743, 4745; Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, p. 17 B/C/S, numbers 1 and 2 and pp 59, 61, 63 (drawings of the two streets). *See also* Ex. C2 (under seal), pp 164-165.

<sup>923</sup> Ekrem Suljević, T. 4743. *See* this market marked on the map in Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, p. 18 B/C/S.

<sup>924</sup> Ekrem Suljević, T. 4744-4745; Ex. P532 (under seal), para. 6. The closest military facility to the flea market was the command post of the former JNA which was located rather far away on the other side of the river, Ex. P532 (under seal), para. 6.

<sup>925</sup> Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, pp 1, 17-29; Ex. P57, Witness Statement of Ramiz Hodžić, 22 November 1995, p. 2. *See also* Defence Adjudicated Facts, 37.

<sup>926</sup> Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, pp 1, 17-29.

<sup>927</sup> Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, pp 17-29.

<sup>928</sup> Muradif Čelik was working at that time at the flea market and was there to arrange the goods on the counter, Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, p. 27.

<sup>929</sup> *Ibid.*

<sup>930</sup> *Ibid.* Another five or six other people entered the building with Muradif Čelik. Some of them were wounded, *ibid.*

<sup>931</sup> Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, p. 27. *See also* in corroboration of Muradif Čelik's evidence the other statements of eye-witnesses reported in Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, pp 17-29.

<sup>932</sup> Ex. P57, Witness Statement of Ramiz Hodžić, 22 November 1995, p. 2.

away and heard the sound of ambulance sirens.<sup>933</sup> Shortly after, the police arrived and secured the area.<sup>934</sup>

361. After receiving first aid, the wounded were transported to the hospital as soon as possible.<sup>935</sup> The explosions resulted in the killing of Mirsad Delić and Hasan Handžić.<sup>936</sup> The following seven people were also injured, three of them seriously: Envera Sadović, Samir Mujković, Rasim Krka, Ramiz Hodžić, Salih Lukšija, Remzija Kihic and Imet Pačarić.<sup>937</sup> One of the injured, Ramiz Hodžić, provided a statement to the Prosecution that he was wounded mainly on his right thigh by a large piece of shrapnel caused by the first of the two explosions.<sup>938</sup> Ramiz Hodžić was treated at the hospital in the aftermath of the explosion. A large piece of shrapnel was removed from his thigh. Several small pieces of shrapnel however remained in his leg.<sup>939</sup> In November 1995, Ramiz Hodžić was still suffering the consequences of these injuries.<sup>940</sup>

(iv) Investigation

362. An on-site investigation was conducted by the Security Service Centre (“CSB”) in Sarajevo which compiled a report that included photographs of the scene and an analysis of the bomb fragments.<sup>941</sup> The investigation team, including a ballistic expert, calculated the azimuth as 159 degrees and established that the two shells came from the south, that is, from the direction of Mount Trebević, which was VRS-held territory at that time.<sup>942</sup> It was also established that the first shell fell

<sup>933</sup> *Ibid.*

<sup>934</sup> Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, p. 27.

<sup>935</sup> Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, p. 27. Some of the victims were transported by taxi, Ex. P57, Witness Statement of Ramiz Hodžić, 22 November 1995, p. 2.

<sup>936</sup> Mirsad Delić and Hasan Handžić were killed by shell fragments from the explosion, Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, pp 1-3 and pp 45-46 BCS (photographs of the victims).

<sup>937</sup> Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, pp 1-3, 14-15, also containing medical documentation for some of the above victims and at pp 17-29 reporting statements of the injured persons and eye-witnesses. *See also* Ex. P2227 (under seal); Ex. P2225 (under seal); Ex. P58 (under seal); Ex. P2221 (under seal); Ex. P2222 (under seal); Ex. P2226 (under seal).

<sup>938</sup> Ex. P57, Witness Statement of Ramiz Hodžić, 22 November 1995, p. 2; Ex. P58 (under seal). *See also* Ex. P2222 (under seal). Ramiz Hodžić stated that, at the moment of the explosion, he was talking with a person called “Krka”, who also was severely wounded, Ex. P57, Witness Statement of Ramiz Hodžić, 22 November 1995, p. 2.

<sup>939</sup> Ex. P57, Witness Statement of Ramiz Hodžić, 22 November 1995, p. 2; Ex. P58, Medical Documentation, 22 December 1994.

<sup>940</sup> Ex. P57, Witness Statement of Ramiz Hodžić, 22 November 1995, p. 2.

<sup>941</sup> Ex. P532 (under seal), para. 4. The on-site investigation team consisted of ten officers and included an investigating judge, officials from the homicide department and crime forensic technicians of the CSB, as well as officials from the crime prevention unit of Stari Grad, Nedžib Đozo, T. 4524, 4541-4542; Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, p. 2; Ex. P533 (under seal), para. 2; Ex. P534 (under seal).

<sup>942</sup> Ex. P532 (under seal), para. 5; Ekrem Suljević, T. 4747. Suljević clarified that the axis of symmetry was determined on the spot (with the use of the traces left, the impressions left by the fragments etc.), and these data were transferred to the map in order to be able to show the precise trajectory of the projectile. The map became an element of the report, Ekrem Suljević, T. 4746-4747, 4772-4773, 4785, 4798, 4806. *See also* Defence Adjudicated Facts, 42, 44, stating that “[t]he UNMO report concurred with the KDZ on the direction of fire, determining that the direction of fire was 160 degrees, which was south, southeast of the impact site”.

“on a curb of the D. Ilića [Street] in front of stalls while the other fell just outside the entrance door of a consignment shop at P. Kočića Street 3”.<sup>943</sup>

363. Based on the crater analysis and fragments found on the scene, the CSB investigative team concluded that two 76mm shells with UTI M68 fuses had been fired from a gun or cannon.<sup>944</sup> A parallel investigation on the incident was also conducted by UNPROFOR.<sup>945</sup> While UNPROFOR generally agreed with the findings made by the CSB, it concluded that the two projectiles were fired from an 82mm mortar.<sup>946</sup>

(v) Findings

364. The Trial Chamber finds beyond a reasonable doubt that on 22 December 1994 at about 9:10 hours, two shells exploded in rapid succession at the flea market in Baščaršija, killing two people and injuring seven. The Trial Chamber also finds that the shells were 76mm with UTI M68 fuses and not 82mm, as concluded by the UNPROFOR team. Ekrem Suljević testified that the fuses UTI M68, fragments which were found on the site, were not used in 82mm mortar shells.<sup>947</sup> Furthermore, the witness testified that mortar shells, unlike artillery shells, normally have a stabiliser or a fin attached to them to maintain the direction of the projectile. In that incident, however, no stabilisers related to 82mm mortar shells were found on the ground.<sup>948</sup>

365. The Trial Chamber also finds that the only reasonable inference to be drawn from the evidence is that all the victims were civilians not taking part in hostilities at the time the incident occurred. The Trial Chamber bases its finding on: (i) the evidence that the flea market was a very densely populated civilian area and there were no military installations or activities around; (ii) the report of the civilian police stating that the victims were “civilians”; and (iii) the statements of eye-

<sup>943</sup> Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, p. 3 and the photos included therein (pp 21-44, BCS). The places where the two projectiles impacted were marked on a drawing which was included in the CBS report, Ekrem Suljević, T. 4742, 4745; Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, p. 17 B/C/S, numbers 1-2.

<sup>944</sup> Ekrem Suljević, T. 4759, 4781, 4784, 4786-4787, 4791, 4793-4794, 4798; Ex. P2217, Report of the MUP of BiH on On-Site Investigation Concerning 22 December 1994 Shelling 22 December 1994, p. 2; Ex. D74, Picture Depicting a Fuse. The witness also testified that a similar gun (a mountain gun) was used in other incidents involving the shelling of Sarajevo, including the medical centre, Ekrem Suljević, T. 4781.

<sup>945</sup> Ekrem Suljević, T. 4795. *See also* Defence Adjudicated Facts, 38.

<sup>946</sup> Ekrem Suljević, T. 4795.

<sup>947</sup> Ekrem Suljević, T. 4751, 4793. The investigators were using a military book published by the Federal Secretariat for National Defence of the former Yugoslavia with a detailed description of the shells and what type of fuses are used for which type of shell, Ekrem Suljević, T. 4763, 4804.

<sup>948</sup> Ekrem Suljević, T. 4752-4753. The witness also noted that it could be excluded that the fin penetrated into the ground as it hit a hard surface (asphalt or concrete), Ekrem Suljević, T. 4753. *See also* Defence Adjudicated Facts, 40.

witnesses and injured referring to the civilian status of the victims and the fact that the victims were engaged, on the day of the incident, in civilian activities and had civilian clothes.<sup>949</sup>

366. As to the question whether the shells originated from VRS-held positions, the evidence shows that both VRS and ABiH forces were present in the area of Mount Trebević. In this regard, Suljević testified that the confrontation line between VRS and ABiH forces was located in the area of Mount Trebević.<sup>950</sup> Suljević was also unable to determine the origin of fire –which is essential in this specific case - but only “believed” that this came from “the region that was controlled by the Army of Republika Srpska”.<sup>951</sup> No evidence was adduced in relation to the charge of the shells, which would have provided an indication as to the distance travelled by the shells.<sup>952</sup> The Trial Chamber is therefore satisfied that the shells were launched from the direction of Mount Trebević, but cannot conclude beyond a reasonable doubt that the two shells which hit the flea market originated from VRS-held positions.

(c) 24 May 1995 (Incident A5)

(i) Indictment

**24 May 1995:** A missile projectile landed and exploded on the asphalt of Safeta Zajke Street, killing two and injuring five people. The projectile came from the south east, direction Lukavica.<sup>953</sup>

(ii) Incident

367. Safeta Zajke Street is located in the Novi Grad municipality of Sarajevo, near the railway technical school and across the railway tracks behind the television building.<sup>954</sup> In May 1995, Anda Gotovac lived at 43 Safeta Zajke Street, 100-150 metres away from the television building.<sup>955</sup> A power transformer station, the Novi Grad municipal building and a wire factory were also

<sup>949</sup> In this regard, the Trial Chamber notes that one victim, Mirsad Delić, on the day of the incident, wore an uniform which, however, belonged to the civilian police and not to the military, Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, pp 1-3 and pp 45-46 BCS (photos of the victims).

<sup>950</sup> Ekrem Suljević, T. 4747; Ex. P415, Report by CSB Sarajevo on Shelling Incident of 22 December 1994, p. 13 B/C/S, showing a map of Sarajevo with the area indicating the direction of fire. *See also* Defence Adjudicated Facts, 46 stating that “[b]oth Čolina Kapa, an ABiH-held territory, and Vidikovac, an SRK-held territory, are located at Trebević at a close proximity to the line of fire identified by the witness”; D73, Map of Sarajevo Marked by Ekrem Suljević.

<sup>951</sup> Ekrem Suljević, T. 4747-4749. *See also* Defence Adjudicated Facts, 43, stating that “[t]he KDZ investigative team did not calculate the distance from which the shell was fired or the angle of dissent”.

<sup>952</sup> *See* Defence Adjudicated Facts, 47-48, the latter stating that “[t]he charge [of a mortar shell] determines the speed, and thus, the distance travelled by the shell. The best evidence for that comes from the depth of the crater and the composition of the ground”. *See also* Defence Adjudicated Facts, 50.

<sup>953</sup> Scheduled Incident A5.

<sup>954</sup> Ex. P125, Witness Statement of Anda Gotovac, 17 May 2006, para. 2; Ex. C2 (under seal), pp 193-194.

<sup>955</sup> Ex. P126, Transcript of Anda Gotovac in *Prosecutor v. D. Milošević*, T. 4465; Anda Gotovac, T. 786.

nearby.<sup>956</sup> This area was not normally targeted by sniper fire, although it was constantly shelled.<sup>957</sup> ABiH units were positioned on Mount Žuč approximately two kilometres from Safeta Zajke Street.<sup>958</sup> Anda Gotovac testified that she never saw any military activities in her street or neighbourhood.<sup>959</sup>

368. On 24 May 1995, at about 10:00 hours, Anda Gotovac was outside her house sitting at a table in front of her garage.<sup>960</sup> She heard a noise, first quite soft and then louder, that sounded like a low-flying plane.<sup>961</sup> Before she had a chance to look, there was an explosion.<sup>962</sup> She grabbed the table, but the force of the explosion pulled it out of her hands, knocked her over,<sup>963</sup> and utterly destroyed the roof of her house.<sup>964</sup> Gotovac then heard screams after the explosion.<sup>965</sup>

369. Anda Gotovac was wounded by a piece of shrapnel which penetrated her left shoulder and lodged near her eighth rib.<sup>966</sup> Taken to the State Hospital by a neighbour, she underwent surgery to remove the shrapnel.<sup>967</sup> After the surgery, she was discharged but needed daily after-care for two months.<sup>968</sup> Gotovac also testified that another individual lost his legs, and a neighbour was wounded in the same incident.<sup>969</sup>

370. Anda Gotovac does not know where the projectile came from, however, she was told that the projectile came from Hresa, or possibly Trebević.<sup>970</sup> She believes that the television building was hit by another projectile that same day.<sup>971</sup>

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<sup>956</sup> Anda Gotovac, T. 786.

<sup>957</sup> Anda Gotovac, T. 784-785; Ex. P125, Witness Statement of Anda Gotovac, 17 May 2006, para. 3. Before the incident of 24 May 1995, her house had not been directly hit; however throughout the war, shells were constantly exploding nearby, Ex. P125, Witness Statement of Anda Gotovac, 17 May 2006, para. 5.

<sup>958</sup> Transcript of MP-228, 19 January 2009, T. 2727; Ex. P458, CSB Official Report, 26 May 1995, p. 3; Ex. P451, Transcript of MP-228 in *Prosecutor v. D. Milošević*, 18 April 2007, T. 4683.

<sup>959</sup> Ex. P125, Witness Statement of Anda Gotovac, 17 May 2006, para. 4; Ex. P126, Transcript of Anda Gotovac in *Prosecutor v. D. Milošević*, T. 4455.

<sup>960</sup> Ex. P124, Witness Statement of Anda Gotovac, 12 March 1997, para. 3.

<sup>961</sup> Ex. P124, Witness Statement of Anda Gotovac, 12 March 1997, para. 3; Anda Gotovac, T. 784.

<sup>962</sup> Ex. P124, Witness Statement of Anda Gotovac, 12 March 1997, para. 3. *See also* Ex. P37, Witness Statement of Enes Jašarević, 10 March 1997, para. 4; Ex. P38, Witness Statement of Enes Jašarević, 19 May 2006, para. 3; Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2994-2995.

<sup>963</sup> Ex. P124, Witness Statement of Anda Gotovac, 12 March 1997, para. 3.

<sup>964</sup> Ex. P126, Transcript of Anda Gotovac in *Prosecutor v. D. Milošević*, T. 4454; Ex. P124, Witness Statement of Anda Gotovac, 12 March 1997, para. 3. Gotovac's husband was still in the house, and was shouting because he was unable to get out, Ex. P124, Witness Statement of Anda Gotovac, 12 March 1997, para. 3.

<sup>965</sup> Ex. P124, Witness Statement of Anda Gotovac, 12 March 1997, para. 3.

<sup>966</sup> Ex. P124, Witness Statement of Anda Gotovac, 12 March 1997, para. 3; Ex. P126, Transcript of Anda Gotovac in *Prosecutor v. D. Milošević*, T. 4454-4455.

<sup>967</sup> *Ibid.*

<sup>968</sup> Ex. P124, Witness Statement of Anda Gotovac, 12 March 1997, para. 3; Ex. P127 (under seal).

<sup>969</sup> Ex. P124, Witness Statement of Anda Gotovac, 12 March 1997, para. 3.

<sup>970</sup> Ex. P124, Witness Statement of Anda Gotovac, 12 March 1997, para. 4; Anda Gotovac, T. 782.

<sup>971</sup> Ex. P125, Witness Statement of Anda Gotovac, 17 May 2006, para. 2. *See infra* paras 378-385.



371. The explosion in Safeta Zajke Street killed Aiša Hrustan and Ivo Miletić<sup>972</sup> and wounded Franjo Tolić, Džemal Kukuljac, Igor Vučićević, Anda Gotovac and Dražen Gelo.<sup>973</sup> Witness MP-228, a member of the CSB, testified that all the victims were civilians.<sup>974</sup> He inferred the status of victims, *inter alia*, from their age and clothing.<sup>975</sup>

(iii) Investigation

372. In the early afternoon of 24 May 1995, the CSB and members of the Department for Forensic and Anti-Terrorism (“KSZ”) conducted an investigation on the incident.<sup>976</sup> Upon his arrival at the scene, a member of the CSB took photographs, marked pieces of evidence with numbers and prepared a sketch of the site.<sup>977</sup> Fragments and other material collected were transmitted to the Crime Prevention and Detection Unit of the MUP for expert analysis.<sup>978</sup>

373. According to the report prepared by the CSB, the team concluded that the projectile was fired from the south-east, the Lukavica area held by the VRS.<sup>979</sup> Such conclusion was based on the fact that fragments of the projectile were embedded in the asphalt at a certain angle and the projectile had made a funnel-shaped crater in a south-easterly direction.<sup>980</sup>

374. The CSB report also concluded that the extensive damage caused by the explosion could not have been caused by a mortar shell, tank shell or by a shell fired from a gun.<sup>981</sup> The expert report of the Crime Prevention and Detection Unit of the MUP reached the conclusion that the bomb used was most likely a *Fugasno Avio Bombes 250* (“FAB 250”),<sup>982</sup> propelled by four 122mm rocket

<sup>972</sup> Ex. P2234 (under seal). *See also* Sarajevo Adjudicated Facts III, 30.

<sup>973</sup> Ex. P458, CSB Official Report, 26 May 1995; Ex. P448 (under seal), para. 12. *See* Ex. P2230 (under seal); Ex. P2231 (under seal). *See also* Sarajevo Adjudicated Facts III, 30.

<sup>974</sup> Ex. P451, Transcript of MP-228 in *Prosecutor v. D. Milošević*, 18 April 2007, T. 4626.

<sup>975</sup> Ex. P451, Transcript of MP-228 in *Prosecutor v. D. Milošević*, 18 April 2007, T. 4657-4658.

<sup>976</sup> Ex. P451, Transcript of MP-228 in *Prosecutor v. D. Milošević*, 18 April 2007, T. 4626; Ex. P448 (under seal), p. 3; Ex. P454, Sketch of Location of Shelling Incident at Safeta Zajke Street, 24 May 1995; Ex. P455, CSB Report on Forensic on-site Investigation, 26 May 1995, p. 2.

<sup>977</sup> Ex. P451, Transcript of MP-228 in *Prosecutor v. D. Milošević*, 18 April 2007, T. 4624; Ex. P448 (under seal), p. 3; Ex. P454, Sketch of Location of Shelling Incident at Safeta Zajke Street, 24 May 1995; Ex. P455, CSB Report on Forensic on-site Investigation, 26 May 1995, p. 2.

<sup>978</sup> Ex. P461 (under seal), T. 2471, 2473. *See also* Ex. P452, Forensic Report, 5 June 1995. A short description of the event as well as of each single piece found on the scene accompanied the transmission of the material, Ex. P461 (under seal), T. 2474-2475. *See also* Ex. P452, Forensic Report, 5 June 1995, p. 1.

<sup>979</sup> Ex. P455, CSB Report on Forensic on-site Investigation, 26 May 1995, p. 1; Ex. P458, CSB Official Report, 26 May 1995; Ex. P451, Transcript of MP-228 from *Prosecutor v. D. Milošević*, 18 April 2007, T. 4628-4631; Thorbjorn Overgard, T. 2950-2951; Ex. P37, Witness Statement of Enes Jašarević, 10 March 1997, para. 4. *See also* Ex. P448 (under seal), p. 4; Ex. P38, Witness Statement of Enes Jašarević, 19 May 2006, para. 3; Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2994; Sarajevo Adjudicated Facts III, 31-32.

<sup>980</sup> Ex. P451, Transcript of MP-228 in *Prosecutor v. D. Milošević*, 18 April 2007, T. 4629. MP-228 testified that while the investigation team of the CBS would normally include ballistic experts, whose task would be to give the final opinion regarding the line of fire, there were none present for that incident, Ex. P451, Transcript of MP-228 in *Prosecutor v. D. Milošević*, 18 April 2007, T. 4629.

<sup>981</sup> Ex. P451, Transcript of MP-228 in *Prosecutor v. D. Milošević*, 18 April 2007, T. 4683.

<sup>982</sup> MP-238, T-2736; Ex. P461 (under seal), T. 2473. *See also* Ex. P452, Forensic Report, 5 June 1995, p. 2; Sarajevo Adjudicated Facts III, 29.

motors attached to the air-bomb by a metal sheath.<sup>983</sup> This was supported by the fact that the items that were collected at the scene included large pipes and pieces of tin, which are usually found where a modified air bomb explodes.<sup>984</sup>

375. MP-238, a member of the KSZ, testified that the Bosnian government forces did not possess modified air bombs.<sup>985</sup> Furthermore, the witness testified that the ABiH did not have the rocket engines which were necessary to launch modified air bombs.<sup>986</sup>

(iv) Findings

376. The Trial Chamber finds beyond a reasonable doubt that on 24 May 1995, at about 10:00 hours, a modified air bomb, model FAB 250, landed and exploded in Safeta Zajke Street, Novi Grad municipality, killing two and injuring five. The Trial Chamber also finds that the only reasonable inference to be drawn from the evidence is that all the victims were civilians and not taking part in hostilities at the time the incident occurred. The Trial Chamber also notes the testimony of MP-228, according to which the victims were civilians and the shell fell in a residential area with only family houses, killing and injuring people inside.

377. The Trial Chamber also finds beyond a reasonable doubt that the shells originated from VRS-held territory.

(f) 24 May 1995 (Incident A6)

(i) Indictment

**24 May 1995:** A modified air-bomb landed at Majdanska Street. Two civilians were killed and at least six were wounded. The origin of fire was determined as coming from the south-east, the VRS territory of Pavlovac.<sup>987</sup>

(ii) Incident

378. On 24 May 1995, Enes Jašarević, an electrician, was working at the Otoka transformer station, located behind the municipality building of Novi Grad in Sarajevo and 100-150 metres

<sup>983</sup> This bomb, which was intended to be dropped from planes, had been modified with the addition of rocket motors known as *Grad* which allowed the launching of those bombs from the ground, Ex. P461 (under seal), T. 2473; Ex. P452, Forensic Report, 5 June 1995, p. 2.

<sup>984</sup> Ex. P452, Forensic Report, 5 June 1995, p. 1. The investigation team found “parts of the detonator of the aerial bomb, the tin-plate connecting the VBR rockets to the aerial bomb, also a large number of other parts and shrapnel from the aerial bomb and the VBR rocket”, Ex. P458, CSB Official Report, 26 May 1995. *See also* Ex. P448 (under seal), para. 14; Ex. P453, Photographs, 24 May 1995.

<sup>985</sup> Ex. P461 (under seal), T. 2477, testifying that the majority of the weapons were handed over by the JNA to the VRS when they withdrew from Bosnia.

<sup>986</sup> Ex. P461 (under seal), T. 2476-2477.

<sup>987</sup> Scheduled Incident A6.

away from the TV building, which is across Majdanska Street.<sup>988</sup> A primary school and the Opacno residential buildings were located nearby.<sup>989</sup> There were no military positions anywhere near the transformer station,<sup>990</sup> nor had Jašarević noticed any military personnel or military activity in the vicinity on that day.<sup>991</sup>

379. At around 10:00 hours, an air bomb fell. Jašarević heard an unusual sound of something flying over from the direction of Lukavica and a subsequent explosion “somewhere behind the TV building”.<sup>992</sup> After 14:00 hours, a second air bomb exploded when Jašarević had just left the transformer building with his foreman, Sulejman Praško, and a colleague, Salko Slató.<sup>993</sup> The foreman had remained behind while the two other men were some 10 metres from the gate.<sup>994</sup> The bomb exploded behind them, inside the transformer fence, hitting the bottom of a pylon, which collapsed.<sup>995</sup> The explosion threw the men to the middle of the street.<sup>996</sup> Jašarević saw the air bomb flying from the direction of Mojmiilo Hill, although he could not say exactly from where it originated.<sup>997</sup>

380. As a result of the explosion, Sulejman Praško, who had remained behind,<sup>998</sup> died instantly, although Jašarević could not see any apparent injuries from a quick look at him.<sup>999</sup> Salko Slató was

<sup>988</sup> Ex. P37, Witness Statement of Enes Jašarević, 10 March 1997, para. 4; Ex. P38, Witness Statement of Enes Jašarević, 19 May 2006, para. 4; Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2988; Ex. P43, Photographs (Scheduled Incident A6 - Majdanska Street, 24 May 1995). The buildings were marked by Jašarević in an aerial image of the area, Ex. P52, Aerial View of Sarajevo Marked by Enes Jašarević; Enes Jašarević, T. 662-663.

<sup>989</sup> Ex. P52, Aerial View of Sarajevo Marked by Enes Jašarević; Enes Jašarević, T. 662-663.

<sup>990</sup> Ex. P38, Witness Statement of Enes Jašarević, 19 May 2006, para. 4; Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2991-2992.

<sup>991</sup> Enes Jašarević, T. 663.

<sup>992</sup> Ex. P37, Witness Statement of Enes Jašarević, 10 March 1997, para. 4; Ex. P38, Witness Statement of Enes Jašarević, 19 May 2006, para. 3. Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2994. The Trial Chamber has already found that this bomb fell in Safeta Zajke Street, *see supra* para. 376.

<sup>993</sup> Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2990, 2995; Ex. P37, Witness Statement of Enes Jašarević, 10 March 1997, para. 4; Sarajevo Adjudicated Facts III, 33.

<sup>994</sup> Ex. P37, Witness Statement of Enes Jašarević, 10 March 1997, para. 4; Ex. P38, Witness Statement of Enes Jašarević, 19 May 2006, para. 5; Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2996.

<sup>995</sup> Ex. P38, Witness Statement of Enes Jašarević, 19 May 2006, para. 3; Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2997-2998. The bomb also damaged the office building but without destroying it completely.

<sup>996</sup> Ex. P37, Witness Statement of Enes Jašarević, 10 March 1997, para. 5. *See also* Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2996; Ex. P44, Photographs (Scheduled Incident A6 - Majdanska Street, 24 May 1995).

<sup>997</sup> Ex. P37, Witness Statement of Enes Jašarević, 10 March 1997, para. 4; Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2999; Ex. P44, Photographs (Scheduled Incident A6 - Majdanska Street, 24 May 1995).

<sup>998</sup> Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2996.

<sup>999</sup> Ex. P37, Witness Statement of Enes Jašarević, 10 March 1997, para. 7; Ex. P38, Witness Statement of Enes Jašarević, 19 May 2006, para. 5. Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2998. Ex. P2233 (under seal). *See also* Ex. P49, Photographs (Scheduled Incident A6 - Majdanska Street, 24 May 1995).

hit in the back and Jašarević was injured in his legs and right arm. Jašarević was eventually brought to the State Hospital in Marin Dvor.<sup>1000</sup>

381. A report prepared by the CSB indicated that, in addition to Sulejman Praško, another person, Nezir Huseinović, was killed.<sup>1001</sup> Six people were injured, namely, Salko Slato, Enes Jašarević, Fatima Konaković, Goran Jeličić, Lucija Jurišić and Mira Lovrić.<sup>1002</sup>

(iii) Investigation

382. According to a CSB report on the incident, the second bomb made a crater which was about five metres long, 1.5 metres wide and 1.5 metres deep. Based on the analysis of the crater, which was facing south, it was concluded that the second bomb had been fired from the same place as the bomb which fell in Safeta Zajke Street, that is, Lukavica.<sup>1003</sup> Witness MP-228, a crime technician who participated in the investigation, stated that the projectile came from the south-east, a hill named Pavlovac.<sup>1004</sup>

383. The CSB report also concluded that the projectile consisted of a modified aerial bomb with multiple rocket-launchers (“VBR rockets”), similar to the one which exploded in Safeta Zajke Street.<sup>1005</sup> Witness MP-228 testified that he assumed that it was a modified air-bomb in light of the devastation caused by the explosion, which included a large hole in the ground and vast damage to surrounding buildings.<sup>1006</sup> The forensic section of the MUP which conducted an expert analysis on the traces of the explosion confirmed that the pieces found on the site of the explosion “probably” belong to a FAB-250 aircraft bomb propelled by five 122mm GRAD type rockets.<sup>1007</sup>

(iv) Findings

384. The Trial Chamber finds beyond a reasonable doubt that on 24 May 1995 at about 14:00 hours, a modified air bomb, FAB-250, exploded at Majdanska Street, killing two individuals and

<sup>1000</sup> Ex. P37, Witness Statement of Enes Jašarević, 10 March 1997, paras 6-7; Ex. P38, Witness Statement of Enes Jašarević, 19 May 2006, para. 6; Ex. P39, Transcript of Enes Jašarević from *Prosecutor v. D. Milošević*, T. 2997-2998.

<sup>1001</sup> Ex. P50, Photographs (Scheduled Incident A6 - Majdanska Street, 24 May 1995).

<sup>1002</sup> Ex. P458, CSB Official Report, 26 May 1995, p. 3.

<sup>1003</sup> Ex. P458, CSB Official Report, 26 May 1995, pp 2-3. *See also* Ex. P44, Photographs (Scheduled Incident A6 - Majdanska Street, 24 May 1995).

<sup>1004</sup> Ex. P451, Transcript of MP-228 in *Prosecutor v. D. Milošević*, 18 April 2007, T. 4637, 4689; Ex. P448 (under seal), p. 4.

<sup>1005</sup> Ex. P458, CSB Official Report, 26 May 1995, p. 2.

<sup>1006</sup> Ex. P451, Transcript of MP-228 from *Prosecutor v. D. Milošević*, 18 April 2007, T. 4638; Ex. P458, CSB Official Report, 26 May 1995, p. 2; Ex. P44, Photographs (Scheduled Incident A6 - Majdanska Street, 24 May 1995).

<sup>1007</sup> Ex. P457, Criminal Investigation File Relating to the Shelling of Majdanska Street, 6 June 1995.

injuring six others.<sup>1008</sup> The Trial Chamber also finds that the only reasonable inference to be drawn from the evidence is that all the victims were civilians not taking part in hostilities at the time the incident occurred. The bomb fell inside the area of the transformer building, which is a civilian object, with no military personnel or military activity inside or in the proximity of that building. Furthermore, the victims were employees at the transformer building and/or engaged in civilian activities.<sup>1009</sup>

385. The Trial Chamber also finds beyond a reasonable doubt that the shell was launched from south or south-east, where the VRS held their positions.<sup>1010</sup>

(g) 18 June 1995 (Incident A7)

(i) Indictment

**18 June 1995:** A 120mm mortar shell struck civilians at a water distribution centre in Marka Oreškovića Street, Dobrinja. Seven persons were killed and twelve injured. The origin of the fire was Nedžarići, VRS territory.<sup>1011</sup>

(ii) The Water Distribution Pump at the Simon Bolivar Elementary School in Dobrinja

386. The Simon Bolivar Elementary School is located on Marka Oreškovića Street<sup>1012</sup> in Dobrinja.<sup>1013</sup> Sometime in May 1992, it was shelled and burned down.<sup>1014</sup> Thereafter a water-pump was installed in a hall within the ruins of the school building, which provided some shelter for people to queue in safety for water distribution.<sup>1015</sup> The water-pump was actually in open air.<sup>1016</sup>

<sup>1008</sup> See Sarajevo Adjudicated Facts III, 33, stating that “a FAB-250 modified air bomb exploded on Majdanska Street in the afternoon of 24 May 1995”.

<sup>1009</sup> Sarajevo Adjudicated Facts III, 34, stating that “two civilians were killed, and six civilians were injured, five of them seriously, as a result of the explosion on Majdanska Street”.

<sup>1010</sup> Sarajevo Adjudicated Facts III, 35-36, stating that “Lukavica and Pavlovac were both controlled by the SRK” and that “the modified air bomb that exploded in Majdanska Street originated from SRK-held territory”.

<sup>1011</sup> Scheduled Incident A7.

<sup>1012</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 1. See also Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2830.

<sup>1013</sup> Ex. P122, Map Marked by Azra Šišić; Azra Šišić, T. 749.

<sup>1014</sup> Ex. P461 (under seal), T. 2460; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2832-2833; Ex. P489, Transcript of Youssef Hajir from *Prosecutor v. Galić*, T. 1681; Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 1.

<sup>1015</sup> Ex. P461 (under seal), T. 2459-2460; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2837.

<sup>1016</sup> Azra Šišić, T. 768; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2837, 2844; Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 4; Ex. P461 (under seal), T. 2459. See also Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 1. On both sides of the hall there were concrete walls and on the left side, when looking northwards from the entrance, there was a 4 metre high wall which separated the hall from the gym, Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, pp 1-2.

According to Azra Šišić, the Simon Bolivar Elementary School water-pump was the safest in Dobrinja.<sup>1017</sup>

387. According to Azra Šišić, Muharem, a man who lived in the neighbourhood, was put in charge of the water-pump by the civil protection unit.<sup>1018</sup>

(iii) Incident

388. A few days before 18 June 1995, the people from the neighbourhood heard that water would be distributed, so they reserved their place in the line by placing their jerry-cans in line at the school.<sup>1019</sup> On 17 June 1995, there was too much shelling on Dobrinja to open the water distribution.<sup>1020</sup> The following morning, however, was quiet<sup>1021</sup> and Šišić heard that water would be distributed that day, so she decided to go to the school.<sup>1022</sup>

389. On 18 June 1995, a clear day, the police were present at the school in the morning, advising people to avoid gathering all around the water pump, but rather to go there one at a time.<sup>1023</sup> There were about 50 to 70 people present at the water-line in the Simon Bolivar School.<sup>1024</sup> Amongst them were mostly women and children, but also some men.<sup>1025</sup> At about 11:40 hours,<sup>1026</sup> a mortar shell hit the Simon Bolivar School<sup>1027</sup> and exploded above people's heads.<sup>1028</sup>

<sup>1017</sup> Azra Šišić, T. 768; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2837, 2840, 2844. According to Šišić the Simon Bolivar School was never shelled between May 1992 and 18 June 1995, Azra Šišić, T. 768-769.

<sup>1018</sup> According to Azra Šišić, Muharem had been put in charge of the water-pump by the civil protection unit, Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 7; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2836, 2849.

<sup>1019</sup> Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 6; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2834.

<sup>1020</sup> *Ibid.*

<sup>1021</sup> Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2840.

<sup>1022</sup> Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2834; Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, paras 6-7.

<sup>1023</sup> Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 10; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2835, 2854. The witness was not absolutely sure whether it was the police or civilian protection who warned them, Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2854.

<sup>1024</sup> Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2835. *See also* Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 10.

<sup>1025</sup> *Ibid.*

<sup>1026</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2; Ex. P543, UNMO HQ Daily Situation Report, 19 June 1995, p. 8; Ex. P468, Report on Simon Bolivar Elementary School Incident, 29 June 1995, p. 1. *See also* Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2839.

<sup>1027</sup> Defence Adjudicated Facts, 52; Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 10; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2836; Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, pp 1-2; Ex. P460 (under seal), para. 12; Ex. P461 (under seal), T. 2460, 2464. *See also* MP-238, T. 2768, 2770; Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, pp 11, 13.

<sup>1028</sup> Ex. P461 (under seal), T. 2459 [about 10 cm above people's heads], 2464 [2.5-3 meters above the ground]; Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2 [4 meters from the ground]; Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006,

390. People were thrown on the ground by the explosion and were screaming.<sup>1029</sup> Šišić was wounded on her right thigh and heel,<sup>1030</sup> but she managed to reach her apartment building. From there, she was brought to the near-by Dobrinja Hospital, where she was treated.<sup>1031</sup>

391. Other wounded persons were taken to the Dobrinja Hospital.<sup>1032</sup> At least one person, Rešad Imamović, died in the blast<sup>1033</sup> and others died at the hospital,<sup>1034</sup> including Azra Šišić's 19 year old neighbour, Kenan Čizmić.<sup>1035</sup>

392. The following persons died as a result of the explosion: Bahrija Sijerčić, Kenan Čizmić, Izet Kadić, Rešad Imamović, Sulejman Mehmedović, Safet Lončar and Nura Lončar.<sup>1036</sup>

393. The persons who were injured as a result of the explosion were: Emira Nović, Edin Smajić, Mutimir Miušković, Afan Kalabić, Azra Šišić, Omer Mušanović, Hasnija Begić, Suada Sinanović, Muharem Mistrić, Bosa Šučur, Muniba Alić and Vladimir Milojević.<sup>1037</sup>

394. According to one of the witnesses, all the victims were civilians.<sup>1038</sup> There were neither military facilities near the school,<sup>1039</sup> nor combat positions or activities at the time the incident occurred.<sup>1040</sup> However, the command post of the Dobrinska Brigade of the ABiH was located at about 150 metres from the Dobrinja Hospital, on the same street as the hospital.<sup>1041</sup>

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<sup>1029</sup> pp 11, 13 [3.2 meters from the ground on top of a wall]. *See also* Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2836; Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 10. Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, paras 11-13; Azra Šišić, T. 772: Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2856.

<sup>1030</sup> Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 15; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2838-2839; Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2.

<sup>1031</sup> Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, paras 15-17; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2838-2839. Šišić's apartment building and the Dobrinja Hospital were close to the Simon Bolivar School, Ex. P115, Transcript of Azra Šišić in *Prosecutor v. D. Milošević*, T. 2842-2843; Ex. P117, Photograph marked by Azra Šišić in *Prosecutor v. D. Milošević*.

<sup>1032</sup> Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 17; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2842; Ex. P488 (under seal), pp 17-19. *See also* Ex. P487, Statement of Youssef Hajir 17 June 2008, para. 3; MP-238, T. 2769-2770.

<sup>1033</sup> Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 19; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2839.

<sup>1034</sup> Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 17; Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2839; Ex. P488 (under seal), pp 21-34.

<sup>1035</sup> Ex. P115, Transcript of Azra Šišić from *Prosecutor v. D. Milošević*, T. 2839, 2841; Ex. P121, Witness Statement of Azra Šišić, 23 February 1996, para. 17.

<sup>1036</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2; Ex. P488 (under seal), pp 21-34.

<sup>1037</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, pp 2-3; Ex. P488 (under seal), pp 17-19.

<sup>1038</sup> Ex. P461 (under seal), T. 2460; Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2

<sup>1039</sup> Ex. P461 (under seal), T. 2460.

<sup>1040</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 3.

<sup>1041</sup> Youssef Hajir, T. 2994; Ex. P117, Photograph Marked by Azra Šišić in *Prosecutor v. D. Milošević*. For the position of the confrontation lines, *see* Ex. P1518, Map of Sarajevo.

(iv) Investigation

395. On 18 June 1995, at 14:00 hours, a team consisting of seven Bosnian officials conducted the on-site investigation at the Simon Bolivar School. It included members of the local police, the CSB, Anti-Bomb-Squad (“KDZ”) and forensic officials, and a judge of the High Court of Sarajevo.<sup>1042</sup> According to the official report of the CSB, the site was secured by the local police.<sup>1043</sup> The team found that the shell had exploded on the west wall of the Simon Bolivar School at about four meters from the ground.<sup>1044</sup> Traces of shrapnel could be seen on the surrounding walls, and pools of blood, tissue, brain parts, fragments of human skulls were found around the water-pump.<sup>1045</sup>

396. The team collected material from the scene, including the tail fin and several pieces of shell shrapnel.<sup>1046</sup> The tail fin of the projectile was found on the other side of the wall from where the shell impacted.<sup>1047</sup> It belonged to a 120mm mortar shell<sup>1048</sup> and bore the markings “MK, M74 KV9307” in Cyrillic, indicating that this shell had been manufactured in July 1993 in the Krušik factory,<sup>1049</sup> a military production complex in Valjevo, Serbia.<sup>1050</sup>

397. Because the shell hit the wall rather than a flat surface, it was impossible to determine the angle of descent of the projectile.<sup>1051</sup> However, based on the impact point on the west wall<sup>1052</sup> and

<sup>1042</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 1; MP-238, T. 2767-2768.

<sup>1043</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 1.

<sup>1044</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2. *See also* MP-238, T. 2768-2769; Ex. P461 (under seal), T. 2459, 2464; Defence Adjudicated Facts, 52.

<sup>1045</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2; Ex. P461 (under seal), T. 2459, 2465; MP-238, T. 2769. The victims sustained most of their injuries to the upper bodies, because the explosion occurred at 3 to 4 meters above the ground, causing the shrapnel to “[blow] off peoples’ heads”, Ex. P461 (under seal), T. 2465. *See also* Ex. P461 (under seal), T. 2459, 2464; MP-238, T. 2769. The death certificates of the victims, show that most died as a result of head injuries, Ex. P488 (under seal), pp 21-34.

<sup>1046</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2; Ex. P460 (under seal), para. 12(a); Ex. P468, Report on Simon Bolivar Elementary School Incident, 29 June 1995, p. 1; MP-238, T. 2769.

<sup>1047</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2; Ex. P461 (under seal), T. 2461, 2464; Ex. P460 (under seal), para. 12(a). MP-238 explained that, as the shell ignited at the level of the gym window, the vacuum caused by the explosion drew the tail fin inside the gym, MP-238, T. 2749.

<sup>1048</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2; Ex. P468, Report on Simon Bolivar Elementary School Incident, 29 June 1995, p. 2; Ex. P460 (under seal), para. 12.b; Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, p. 8.

<sup>1049</sup> Ex. P460 (under seal), para. 12(b); Ex. P468, Report on Simon Bolivar Elementary School Incident, 29 June 1995, p. 2. *See also* Ekrem Suljević, T. 4759-4760; Ex. P656, Report of MUP Sarajevo, KDZ Regarding Explosions which Occurred on 22 May 1995, p. 2.

<sup>1050</sup> MP-238, T. 2785-2786.

<sup>1051</sup> Ex. P461 (under seal), T. 2460. *See also* Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, pp 9-11.

<sup>1052</sup> Ex. P460 (under seal), paras 12(a), 12(f); Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 4; Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2. In describing the incident site, the Official Report of the MUP, reads that “[o]n the left side when looking from the entrance northwards, there is a 4 m high wall which separates [the pump] area from the gym”. The crater where the shell exploded was observed “on the left wall 4 m above the ground”, Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, pp 1-2 (emphasis added). MP-238 testified that the impact point was close to the window edge on the outside of the gym wall on the side facing Nedžarići, Ex. P460 (under seal), para. 12; Ex. P461 (under seal), T. 2460, 2464.



on the explosion traces on the walls,<sup>1053</sup> the team established that the shell had been fired from a north-westerly direction at 320 degrees.<sup>1054</sup> MP-238 stated that the range of a 120mm mortar shell was about “a couple of kilometres”.<sup>1055</sup> On the axis of the azimuth, at a distance of about 1500 meters,<sup>1056</sup> was the Serbian held area of Nedžarići, which the team identified as the origin of the fire.<sup>1057</sup>

398. A team of UNMOs arrived at the Simon Bolivar School about one and half hours after the impact, when the Bosnian police had already left the site.<sup>1058</sup> As the tail fin had been removed and the victims taken to the Dobrinja Hospital,<sup>1059</sup> they could not conduct a “proper investigation” or confirm the findings of the Bosnian police as to the origin of fire.<sup>1060</sup> Captain Hansen, one of the UNMOs, however, stated that judging by the impact marks on the wall the shell was fired from the north-west.<sup>1061</sup> The UNMOs were also taken to the Dobrinja Hospital, where a Bosnian official showed them the tail fin of the shell. Captain Hansen confirmed it was “definitely” the tail fin of a 120mm shell. Although he had no way of verifying whether it was the same tail fin removed from the scene, he could see “no reason to lie about this”.<sup>1062</sup>

399. During cross-examination, MP-238 was confronted with Captain Hansen’s statement that given the location of the confrontation line, the mortar shell could have been fired by either the ABiH or SRK.<sup>1063</sup> The witness excluded the possibility that the shell could have been fired from ABiH positions, as these were too close to the school.<sup>1064</sup>

400. On the evening of 18 June 1995, a news report on the BiH television reported that the shell had been fired from the Lukavica Barracks, which was to the east of the impact area and also held

<sup>1053</sup> Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2; Ex. P461 (under seal), T. 2460; MP-238, T. 2781.

<sup>1054</sup> Ex. P461 (under seal), T. 2460-2461; Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 4; Ex. P468, Report on Simon Bolivar Elementary School Incident, 29 June 1995, p. 2; Ex. P460 (under seal), para. 12; MP-238, T. 2770. *See also* Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, pp 11-12.

<sup>1055</sup> MP-238, T. 2773. *See also* Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, p. 11, stating that the range of the 120 mm mortar shell goes from about 300 meters to 6200 meters.

<sup>1056</sup> Ex. P468, Report on Simon Bolivar Elementary School Incident, 29 June 1995, p. 2. *But see* MP-238, T. 2773-2774. On this occasion the witness states that Nedžarići was at a couple of hundred metres from the Simon Bolivar School. He however clarified that he did not mean 200 meters, but “a bit more than that” and referred back to a map he had used during his investigation, MP-238, T. 2774.

<sup>1057</sup> Ex. P468, Report on Simon Bolivar Elementary School Incident, 29 June 1995, p. 2; Ex. P460 (under seal), para. 12(f); Ex. P120, Official Report of the Ministry of the Interior, 22 June 1995, p. 2; Ex. P461 (under seal), T. 2461.

<sup>1058</sup> MP-238, T. 2767. The UNMOs were accompanied there by a “Bosnian official”, MP-238 T. 2768; Ex. D512, Witness Statement of Thomas Hansen, p. 5.

<sup>1059</sup> MP-238, T. 2769; Ex D512, Witness Statement of Thomas Hansen, p. 5.

<sup>1060</sup> Ex D512, Statement of Witness Thomas Hansen, pp 5-6; MP-238, T. 2770-2771.

<sup>1061</sup> Ex D512, Statement of Witness Thomas Hansen, pp 5-6; MP-238, T. 2769-2770, 2773.

<sup>1062</sup> Ex D512, Statement of Witness Thomas Hansen, p. 6; MP-238, T. 2771.

<sup>1063</sup> MP-238, T. 2767-2770, 2773; Ex D512, Statement of Witness Thomas Hansen, pp 5-6.

by the VRS at the time.<sup>1065</sup> Having heard such news, on the following day, two of the Bosnian investigators returned to the incident site to re-examine the scene.<sup>1066</sup> They confirmed the finding made the previous day and unequivocally excluded the possibility that the shell could have been fired from the Lukavica barracks,<sup>1067</sup> as the shell would have had to turn around in the air to cause impact on the west side of the wall.<sup>1068</sup>

401. A UNMO situation report dated 19 June 1995 stated that on 18 June 1995, at 11:46 hours,<sup>1069</sup> the UNMO team OP4 stationed on the hillside at Vitkovac,<sup>1070</sup> observed one explosion in Dobrinja with the origin of fire in the Bosnian Serb held area.<sup>1071</sup> The situation report did not identify the exact location where the fire originated. Yet, it included the information that the UNMO team could observe that the round was fired from the Bosnian Serb held area.<sup>1072</sup>

402. The expert report of Richard Higgs, which is based on the official report of the Bosnian authorities, as well as on two witness statements,<sup>1073</sup> confirmed that the round came from a westerly direction.<sup>1074</sup> Based on the pictures and sketches of the scene, Higgs noted that the buildings around the school eliminate certain options and that “the enclosed nature of the incident scene and the position of the strike on the wall only leaves [*sic*] one direction that the round could have been fired from”.<sup>1075</sup> The expert found the investigation methodology used by the Bosnian authorities to be correct, but stressed that the bearing of 320 should be considered an approximation and that given the absence of the angle of descent, the issue of the range is much more difficult to calculate. According to the expert, Nedžarići was therefore the “most likely firing position”, the fire would have been more accurate from there and the school can be seen from that position. The expert, however, did not exclude that the fire could have come from further away.<sup>1076</sup>

<sup>1064</sup> MP-238, T. 2773.

<sup>1065</sup> Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 4; MP-238, T. 2750, 2766; Ex. P460 (under seal), para. 12(d).

<sup>1066</sup> MP-238, T. 2750; Ex. P460 (under seal), paras 12(d)-12(f); Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 4.

<sup>1067</sup> MP-238, T. 2750; Ex. P460 (under seal), paras 12(f)-12(g); Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 4.

<sup>1068</sup> MP-238, T. 2750; Ex. P460 (under seal), paras 12(f)-12(g).

<sup>1069</sup> Ex. P543, UNMO HQ Daily Situation Report, 19 June 1995, p. 8.

<sup>1070</sup> Per Anton Brennskag, T. 3333-3334.

<sup>1071</sup> Ex. P543, UNMO HQ Daily Situation Report, 19 June 1995, p. 8; Per Anton Brennskag, T. 3353.

<sup>1072</sup> Per Anton Brennskag, T. 3353; Ex. P543, UNMO HQ Daily Situation Report, 19 June 1995, p. 8.

<sup>1073</sup> Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, p. 7.

<sup>1074</sup> Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, p. 8.

<sup>1075</sup> Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, pp 8-9.

<sup>1076</sup> Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, p. 10.

(v) Findings

403. The Trial Chamber finds beyond a reasonable doubt that on 18 June 1995 at about 11:40 hours, a 120mm mortar shell exploded at the Simon Bolivar School in Dobrinja, killing 7 and injuring 12 individuals.

404. The Trial Chamber also finds that the only reasonable inference that can be drawn from the evidence is that all the victims were civilians not taking part in hostilities at the time. The mortar shell hit the Simon Bolivar School, a civilian building used solely as a water distribution point for the inhabitants of Dobrinja and the victims were all neighbours engaged in a civilian activity, *i.e.* standing in line for their turn to fetch water. Furthermore, the Trial Chamber notes the testimony of MP-238 and the findings of the CSB report, according to which the victims were civilians.

405. Regarding the origin of the fire, the Defence submits that it cannot be reached beyond a reasonable doubt that the VRS fired the shell.<sup>1077</sup> The Defence also argues that the provenance of the manufacture of the shell from Valjevo, Serbia, cannot support the CSB investigators' conclusion, as the ABiH recovered and fired VRS 120mm mortar shells.<sup>1078</sup> In addition, the Defence argues that it is equally plausible that the ABiH fired the shell "in the midst of the campaign to break-out of Sarajevo", but that the CSB investigating team had no interest in concluding that anyone other than the SRK was responsible for firing the shells", rather they reached an "unproved assumption that the SRK was responsible".<sup>1079</sup>

406. The Trial Chamber finds that these arguments – individually or collectively – do not raise any reasonable doubt as to the origin of the fire.

407. MP-238 testified that it was impossible for the mortar to have been fired by ABiH as its position was too close to the impact site.<sup>1080</sup> This is supported by the expert opinion of Higgs that Nedžarići was the most likely firing position, but that the shell "could have still come from *further away*"<sup>1081</sup>

408. The Defence asserts that MP-238 did not take into account the proximity of the confrontation line during the investigation "as it was not an essential factor". The Trial Chamber notes that the witness testified that he used a map which shows exactly the confrontation line, so he

<sup>1077</sup> Defence Final Brief, para. 540, citing to the testimony of Hansen and Higgs. *See supra* paras 398, 402.

<sup>1078</sup> Defence Final Brief, para. 541 citing to the testimony of MP-238.

<sup>1079</sup> Defence Final Brief, para. 544.

<sup>1080</sup> MP-238, T. 2773.

<sup>1081</sup> Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, p. 12 (emphasis added).

was aware of its distance to the impact site. The Trial Chamber is satisfied therefore that MP-238 took into consideration the confrontation line in making his determination as to the origin of fire.<sup>1082</sup>

409. By the same token, the Trial Chamber is also not persuaded that the CSB failed to perform a professionally objective investigation. To the contrary, the evidence shows that the methodology used by the Bosnian investigators was correct.<sup>1083</sup>

410. Finally, The Trial Chamber is mindful of having taken judicial notice of the *Dragomir Milošević* Trial Judgement finding that “[o]n the basis of the evidence in its totality [as admitted in the *Milošević* case] the [*Milošević*] Trial Chamber is not satisfied that the mortar was launched from SRK-held territory”. However, this Trial Chamber notes that the evidence led in this case partially differs from that led in the *Milošević* case.<sup>1084</sup> In particular, the differing evidence before this Trial Chamber includes the testimony of Per Anton Brennskag of the OP4 in relation to the UNMO Situation Report of 19 June 1995 identifying the origin of the fire in the SRK-held territory and the additional investigative evidence of Mirsad Kučanin.<sup>1085</sup>

411. In conclusion, the Trial Chamber finds beyond a reasonable doubt that the shell which exploded at the Simon Bolivar School in Dobrinja was fired from the SRK-held area of Nedžarići.

412. The Defence also avers – as an alternative argument – that the Prosecution failed to prove that the intent was to target civilians.<sup>1086</sup> The Defence argues that the shell was fired amid an ongoing battle with a major ABiH offensive unfolding for the “break-out” of Sarajevo. The Defence also refers to the vicinity of the confrontation lines and an ABiH command post.<sup>1087</sup>

413. The Trial Chamber finds beyond a reasonable doubt that the VRS deliberately fired the shell on the Simon Bolivar School in Dobrinja and rejects the Defence argument based on the following considerations.

414. The evidence shows that the ABiH launched an attack in Sarajevo on 16 June 1995 and that on 18 June 1995 ingoing and outgoing firing was recorded around Sarajevo before and after the time of the incident.<sup>1088</sup> The evidence also generally shows that Sarajevo was constantly shelled

<sup>1082</sup> MP-238, T. 2774, specifically saying that the map was used in a previous case, where he drew the exact location of the confrontation lines.

<sup>1083</sup> *See supra* paras 395-397, 402.

<sup>1084</sup> Decision on Motion for Reconsideration of the Trial Chamber’s Decision of 4 May 2010 Concerning Adjudicated Facts, 15 October 2010.

<sup>1085</sup> *See supra* para. 401.

<sup>1086</sup> Defence Final Brief, para. 543.

<sup>1087</sup> *Ibid.*

<sup>1088</sup> Ex. D24, UNPROFOR Weekly Situation Report, 2 July 1995; P2348, Statement of Rupert Smith, 14 August 1996, para. 68.

through the conflict.<sup>1089</sup> On that day, however, the situation in Dobrinja was quiet and that's why – according to witnesses' testimony – the water was distributed.<sup>1090</sup> The UNMO's Situation Report also recorded the impact of one shell in Dobrinja on 18 June 1995 as the only firing activity of that day.<sup>1091</sup> In addition, as noted by the expert witness, the school was visible from the SRK position.<sup>1092</sup>

415. Finally, the Trial Chamber has received evidence that mortars are very accurate weapons, with an accuracy margin of less than 40 metres.<sup>1093</sup> Evidence also shows that the confrontation lines and the ABiH command post were at about 200 and 150 metres respectively from the school.<sup>1094</sup> Since there was no ongoing combat in that area at the time of the incident, the Trial Chamber is not satisfied that the Defence argument raises a reasonable doubt as to the intent of the attack.

(h) 1 July 1995 (Incident A8)

(i) Indictment

**1 July 1995:** At about 2130 hours, a rocket projectile with a concussion warhead exploded in Bunički Potok street. Thirteen people were injured. The projectile came from Ilidža.<sup>1095</sup>

(ii) Hrasnica

416. Hrasnica is a neighbourhood on the outskirts of Sarajevo, located at the foot of Mt. Igman, south-west of the airport.<sup>1096</sup> In July 1995, Hrasnica and Mt. Igman were held by the ABiH, whereas the areas to the north-west and to the south-east of Hrasnica were held by the VRS.<sup>1097</sup> The so-called "Igman Road" or "Blue Road" ran across Mt. Igman, descending down to Hrasnica and

<sup>1089</sup> See *supra* paras 319-326.

<sup>1090</sup> See *supra* para. 388.

<sup>1091</sup> See also Prosecution Final Brief, para. 355.

<sup>1092</sup> Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, p. 10.

<sup>1093</sup> See *supra* para. 324; Ex. P478, Report on Firing Incident Involving Mortars in the Sarajevo Area Dated 18 June 1995, 21 December 2006, p. 2.

<sup>1094</sup> See *supra* para. 394. The HQ were at 150 meters from the hospital on the same street, as can be seen from the photo of the area, the hospital is the first building on that street, Ex. P117, Photograph Marked by Azra Šišić in *Prosecutor v. D. Milošević*.

<sup>1095</sup> Scheduled Incident A8.

<sup>1096</sup> Ex. P444, Map of Sarajevo Marked by Hubertus J.W. Bruurmijn; Ex. P503, Map marked by Vekaz Turković; Ex. P500, Investigation Report, 4 July 1995, p. 1; Ex. P95, Statement of Fikreta Pačarić to the BiH Authorities, 27 July 1995; Ex. P98, Witness Statement of Zejna Šljivo, 27 July 1995. See also Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8).

<sup>1097</sup> Ex. P1518, Map of Sarajevo; Vekaz Turković, T. 3121; Hubertus J.W. Bruurmijn, T. 2648; Ex. P2307, Witness Statement of Nefa Šljivo, 27 April 2006, p. 2.

continuing to Sarajevo. It connected the city to the rest of the ABiH held territory beyond Mt. Igman and was used to transport supplies to Hrasnica and Sarajevo.<sup>1098</sup>

(iii) Incident

417. On the evening of 1 July 1995 at about 21:30 hours, Zejna Šljivo, a 65-year old housewife, was in the kitchen of her house on Bunički Potok Street 233 in Hrasnica, together with her daughters Nefa<sup>1099</sup> and Jasmina, her son-in-law Nedžad and her four-year old granddaughter Emira.<sup>1100</sup> Suddenly, they heard a loud hissing sound,<sup>1101</sup> which Nefa Šljivo recognised as that of a missile being launched.<sup>1102</sup> As they all ran to the kitchen door there was a loud explosion<sup>1103</sup> which shattered the windows and collapsed parts of the house.<sup>1104</sup> Zejna Šljivo, Jasmina and Emira were injured on their heads, Nedžad broke his wrist or fingers, and Nefa suffered some light injuries on her back.<sup>1105</sup> They all managed to get out of the debris of the house and reach the Hrasnica hospital, where their wounds were treated.<sup>1106</sup> Upon returning to the house, they found a large crater in front of the house, where the garage used to stand.<sup>1107</sup> The house was no longer habitable due to the damage.<sup>1108</sup> The neighbouring houses also sustained heavy damage<sup>1109</sup> and about 50 houses in the surrounding area showed signs of the explosion.<sup>1110</sup>

<sup>1098</sup> Thorbjørn Øvergård; T. 2954, 2966; Ex. P484, Map Marked by Thorbjørn Øvergård, mark "IR"; Ex. P479, Transcript of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 650; Ex. P1518, Map of Sarajevo.

<sup>1099</sup> At the time of the incident she was a university student, Nefa Šljivo, T. 5593.

<sup>1100</sup> Ex. P99, Witness Statement of Zejna Šljivo, 8 March 1997, p. 2; Ex. P2306, Witness Statement of Nefa Šljivo, 8 March 1997, pp 2, 6; Ex. P2307, Witness Statement of Nefa Šljivo, 27 April 2006, p. 2.

<sup>1101</sup> Ex. P98, Witness Statement of Zejna Šljivo, 27 July 1995; Ex. P99, Witness Statement of Zejna Šljivo, 8 March 1997, p. 2; Ex. P2306, Witness Statement of Nefa Šljivo, 8 March 1997, pp 2, 6.

<sup>1102</sup> Ex. P2306, Witness Statement of Nefa Šljivo, 8 March 1997, p. 2.

<sup>1103</sup> Ex. P98, Witness Statement of Zejna Šljivo, 27 July 1995; Ex. P99, Witness Statement of Zejna Šljivo, 8 March 1997, p. 2; Ex. P2306, Witness Statement of Nefa Šljivo, 8 March 1997, pp 2, 6; Ex. P2307, Witness Statement of Nefa Šljivo, 27 April 2006, p. 2. *See also* Ex. P96, Witness Statement of Fikreta Pačarić, 8 March 1997, p. 2; Ex. P95, Statement of Fikreta Pačarić to the BiH Authorities, 27 July 1995.

<sup>1104</sup> Ex. P99, Witness Statement of Zejna Šljivo, 8 March 1997, p. 2; Ex. P2306, Witness Statement of Nefa Šljivo, 8 March 1997, p. 2; Ex. P441, Photograph Marked by Hubertus J.W. Bruurmijn, photograph of 1 July Attack (Scheduled Incident A8). *See also* Sarajevo Adjudicated Facts III, 38.

<sup>1105</sup> Ex. P98, Witness Statement of Zejna Šljivo, 27 July 1995; Ex. P99, Witness Statement of Zejna Šljivo, 8 March 1997, p. 2; Ex. P2306, Witness Statement of Nefa Šljivo, 8 March 1997, p. 2.

<sup>1106</sup> Ex. P98, Witness Statement of Zejna Šljivo, 27 July 1995; Ex. P99, Witness Statement of Zejna Šljivo, 8 March 1997, pp 2, 6.

<sup>1107</sup> Ex. P2306, Witness Statement of Nefa Šljivo, 8 March 1997, pp 2, 6; Ex. P98, Witness Statement of Zejna Šljivo, 27 July 1995, p. 1; Ex. P99, Witness Statement of Zejna Šljivo, 8 March 1997, p. 2; Ex. P95, Statement of Fikreta Pačarić to the BiH Authorities, 27 July 1995, p. 1; Hubertus J.W. Bruurmijn, T. 2648-2650; Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8); Ex. P442, Photographs, 1 July 1995 Attack (Scheduled Incident A8).

<sup>1108</sup> Ex. P2306, Witness Statement of Nefa Šljivo, 8 March 1997, pp 2, 6; Ex. P99, Witness Statement of Zejna Šljivo, 8 March 1997, p. 2; Ex. P95, Statement of Fikreta Pačarić to the BiH Authorities, 27 July 1995, p. 1.

<sup>1109</sup> Ex. P98, Witness Statement of Zejna Šljivo, 27 July 1995; Ex. P99, Witness Statement of Zejna Šljivo, 8 March 1997, p. 2; Ex. P2306, Witness Statement of Nefa Šljivo, 8 March 1997, pp 3, 6. *See also* Ex. P2343, Witness Statement of Ijaz Husasin Malik, 10 August 1996, p. 3.

<sup>1110</sup> Ex. P2306, Witness Statement of Nefa Šljivo, 8 March 1997, pp 3, 6.

418. At the time of the explosion, Fikreta Pačariž, a 37-year old saleswoman, was on the ground floor of her house on Bunički Potok Street 26 with her husband, Hamo Pačariž, and their two children.<sup>1111</sup> They also heard a loud approaching sound of “something flying through the air”.<sup>1112</sup> After a few seconds of silence, there was a “horrifying” explosion<sup>1113</sup> and they were hit by careering pieces of glass, ceiling and furniture.<sup>1114</sup> Fikreta Pačariž was wounded on her face and head by hurtling pieces of glass,<sup>1115</sup> while her husband was thrown against the wall.<sup>1116</sup> Hamo’s father, Duran Pačariž, who was on the upper floor of the house with his wife, was injured to the head, leg, arm and buttocks.<sup>1117</sup> His wife was in shock, but unharmed.<sup>1118</sup> Hamo brought Duran and Fikreta to Hrasnica hospital, where they were treated.<sup>1119</sup> When they returned home, they assessed that the house was uninhabitable and also noted that many of the surrounding houses had also been extensively damaged.<sup>1120</sup> Many of the neighbours were injured in the explosion and two weeks later, Duran Pačariž succumbed to his injuries.<sup>1121</sup>

419. Adjacent to Zejna Šljivo’s house, five members of an UNMO team were accommodated on the first floor of a residential building.<sup>1122</sup> The team members were: Captain Frank Melum from Norway, Major Ijaz Hussain Malik from Pakistan, Squadron Leader Kamal Mortuza from Bangladesh, Captain Francisco Silva from Brazil and Captain Mark Hache from Canada.<sup>1123</sup>

<sup>1111</sup> Ex. P95, Statement of Fikreta Pačariž to the BiH Authorities, 27 July 1995; Ex. P97, Witness Statement of Fikreta Pačariž, 24 April 2006, p. 2.

<sup>1112</sup> Ex. P96, Witness Statement of Fikreta Pačariž, 8 March 1997, p. 2; Ex. P97, Witness Statement of Fikreta Pačariž, 24 April 2006, p. 2. According to Fikreta Pačariž, it was clear that it came from the direction of Ilidža, a VRS held territory. *See also* Sarajevo Adjudicated Facts III, 38.

<sup>1113</sup> Ex. P95, Statement of Fikreta Pačariž to the BiH Authorities, 27 July 1995; Ex. P96, Witness Statement of Fikreta Pačariž, 8 March 1997, p. 2; Ex. P97, Witness Statement of Fikreta Pačariž, 24 April 2006, p. 2.

<sup>1114</sup> Ex. P95, Statement of Fikreta Pačariž to the BiH Authorities, 27 July 1995; Ex. P97, Witness Statement of Fikreta Pačariž, 24 April 2006, p. 2.

<sup>1115</sup> Ex. P96, Witness Statement of Fikreta Pačariž, 8 March 1997, p. 2; Ex. P95, Statement of Fikreta Pačariž to the BiH Authorities, 27 July 1995; Ex. P97, Witness Statement of Fikreta Pačariž, 24 April 2006, p. 2.

<sup>1116</sup> Ex. P97, Witness Statement of Fikreta Pačariž, 24 April 2006, p. 2.

<sup>1117</sup> Ex. P95, Statement of Fikreta Pačariž to the BiH Authorities, 27 July 1995; Ex. P96, Witness Statement of Fikreta Pačariž, 8 March 1997, p. 2; Ex. P97, Witness Statement of Fikreta Pačariž, 24 April 2006, p. 2.

<sup>1118</sup> Ex. P95, Statement of Fikreta Pačariž to the BiH Authorities, 27 July 1995.

<sup>1119</sup> Ex. P95, Statement of Fikreta Pačariž to the BiH Authorities, 27 July 1995; Ex. P97, Witness Statement of Fikreta Pačariž, 24 April 2006, p. 3.

<sup>1120</sup> Ex. P95, Statement of Fikreta Pačariž to the BiH Authorities, 27 July 1995; P97, Witness Statement of Fikreta Pačariž, 24 April 2006, p. 3.

<sup>1121</sup> Ex. P96, Witness Statement of Fikreta Pačariž, 8 March 1997, p. 2.

<sup>1122</sup> Hubertus J.W. Bruurmijn, T. 2651; Ex. P442, Photographs, 1 July 1995 Attack (Scheduled Incident A8); Ex. P500, Investigation Report, 4 July 1995, p. 3; Ex. P99, Witness Statement of Zejna Šljivo, 8 March 1997, p. 2; Ex. P2307, Witness Statement of Nefa Šljivo, 27 April 2006, p. 2; Ex. P2308, Transcript of Nefa Šljivo from *Prosecutor v. D. Milošević*, T. 4509; Ex. P2344, Transcript of Ijaz Hussain Malik from *Prosecutor v. D. Milošević*, 27 April 2007, T. 5413.

<sup>1123</sup> Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 1. *See also* Ex. P2344, Transcript of Ijaz Hussain Malik from *Prosecutor v. D. Milošević*, 27 April 2007, T. 5413-5418; Ex. P2343, Witness Statement of Ijaz Husasin Malik, 10 August 1996, p. 3.

420. Malik described that he heard a whistling sound of something “big” approaching.<sup>1124</sup> After a few seconds of silence, there was a loud explosion outside the house.<sup>1125</sup> The blast shattered the windows and caused some of the doors to fly off their hinges.<sup>1126</sup> Malik was hit by a window thrown off its frame, injuring his right arm, eye and forehead. As he fell, he also wounded his left leg.<sup>1127</sup>

421. Kamal Mortuza was also injured in the incident.<sup>1128</sup> He and Malik both received first aid from the other UNMOs and were then taken to Hrasnica hospital.<sup>1129</sup> The following morning they were both transferred to the French hospital in Sarajevo and from there they were eventually discharged.<sup>1130</sup>

422. Documentary evidence shows that between 21:40 hours and 21:50 hours on that evening, the Hrasnica hospital admitted and subsequently treated the following 13 persons for wounds suffered in the explosion on Bunički Potok Street: Enes Kadić, Nedžad Bostandžić, Emira Kadić, Jasmina Bostandžić, Emira Bostandžić, Nefa Šljivo, Zejna Šljivo, Duran Pačariz, Fikreta Pačariz, Hata Mulaosmanović, Naza Pamuk, Kemal Mortuza and “Husein Ijaz”.<sup>1131</sup>

(iv) Investigation

423. Later on the same evening, the Hrasnica local police arrived at the scene and secured the impact site in front of Zejna Šljivo’s house.<sup>1132</sup> The local police also found damage to the house and property of Alija Kustur, on Alekse Šantića Street no. 50, at about 150 metres from where the explosion occurred.<sup>1133</sup>

<sup>1124</sup> Ex. P2343, Witness Statement of Ijaz Husasin Malik, 10 August 1996, p. 3; Ex. P2344, Transcript of Ijaz Hussain Malik from *Prosecutor v. D. Milošević*, 27 April 2007, T. 5414.

<sup>1125</sup> Ex. P2343, Witness Statement of Ijaz Husasin Malik, 10 August 1996, p. 3; Ex. P2344, Transcript of Ijaz Hussain Malik from *Prosecutor v. D. Milošević*, 27 April 2007, T. 5414; Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 1.

<sup>1126</sup> Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 1.

<sup>1127</sup> Ex. P2343, Witness Statement of Ijaz Husasin Malik, 10 August 1996, p. 3; Ex. P2344, Transcript of Ijaz Hussain Malik from *Prosecutor v. D. Milošević*, 27 April 2007, T. 5414-5415.

<sup>1128</sup> Ex. P2343, Witness Statement of Ijaz Husasin Malik, 10 August 1996, p. 3; Ex. P2344, Transcript of Ijaz Hussain Malik from *Prosecutor v. D. Milošević*, 27 April 2007, T. 5415; Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 1.

<sup>1129</sup> Ex. P2343, Witness Statement of Ijaz Husasin Malik, 10 August 1996, p. 3; P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 1. *See also* Hubertus J.W. Bruurmijn, T. 2652.

<sup>1130</sup> Ex. P2343, Witness Statement of Ijaz Husasin Malik, 10 August 1996, p. 3. *See also* Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 1.

<sup>1131</sup> Ex. P500, Investigation Report, 4 July 1995, pp 1-3. *See also* Sarajevo Adjudicated Facts III, 39.

<sup>1132</sup> Hubertus J.W. Bruurmijn, T. 2653; Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), pp 2-3; Ex. P500, Investigation Report, 4 July 1995, p. 3.

<sup>1133</sup> Ex. P500, Investigation Report, 4 July 1995, pp 1, 4; Vekaz Turković, T. 3142-3144; Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 3. *See also* Ex. P499, Transcript of Vekaz Turković from *Prosecutor v. D. Milošević*, T. 5207.



424. The following morning, on 2 July 1995, at about 8:00 hours, an investigating team composed of one investigative judge, three CSB forensic inspectors and two members of the KDZ, arrived at the scene on Bunički Potok Street.<sup>1134</sup> The investigators, including Vekaz Turković, examined the crater, measured all the traces and took photographs of the site.<sup>1135</sup>

425. The investigating team established that the crater was located in front of Zejna Šljivo's house at Bunički Potok Street no. 233, where the garage used to be, at a distance of 4.90 metres from the front of the house.<sup>1136</sup> The investigators noted that the house, which was built of "solid materials", was completely destroyed<sup>1137</sup> and that the surrounding houses were heavily damaged, including those of Fikreta Pačariz<sup>1138</sup> and Enes Kadić. In the latter, the UNMOs were accommodated.<sup>1139</sup> According to the report on the investigations, it was concluded that the explosion was caused by a "concussion warhead rocket projectile" fired from the north, from the surrounding VRS-held area of Ilidža.<sup>1140</sup>

426. The investigating team then moved to the impact site on Alekse Šantića Street no. 50, which is about 150 metres from the impact site at Bunički Potok Street.<sup>1141</sup> There, they found another crater and rocket motor parts.<sup>1142</sup> According to the report, on 1 July 1995 at 21:30 hours, a projectile fired from the VRS positions in Ilidža<sup>1143</sup> had hit the northern top part of the house underneath the roof before it landed in the garden, on the south eastern side of the house.<sup>1144</sup>

427. Vekaz Turković, one of the investigators, testified that initially the team believed that there had been two modified air bombs, one that had exploded in Bunički Potok Street and the other that had landed at Alekse Šantića Street without exploding.<sup>1145</sup> However, the investigators did not find a second warhead when investigating the site at Alekse Šantića Street. As a consequence, they concluded that the damage at both locations had been caused by one modified air bomb, which

<sup>1134</sup> Ex. P500, Investigation Report, 4 July 1995, p. 3; Hubertus J.W. Bruurmijn, T. 2654.

<sup>1135</sup> Ex. P500, Investigation Report, 4 July 1995, p. 4; Ex. P501, Report of Vekaz Turković, 13 July 1995; Ex. P502, Photographs of Site Investigation, 2 July 1995, pp 3-4; Ex. P442, Photographs, 1 July 1995 Attack (Scheduled Incident A8).

<sup>1136</sup> Ex. P500, Investigation Report, 4 July 1995, p. 3.

<sup>1137</sup> Ex. P500, Investigation Report, 4 July 1995, p. 3; Ex. P442, Photographs, 1 July 1995 Attack (Scheduled Incident A8).

<sup>1138</sup> Ex. P500, Investigation Report, 4 July 1995, p. 4.

<sup>1139</sup> Ex. P500, Investigation Report, 4 July 1995, p. 3; Ex. P442, Photographs, 1 July 1995 Attack (Scheduled Incident A8).

<sup>1140</sup> Ex. P500, Investigation Report, 4 July 1995, p. 3; Vekaz Turković, T. 3120. The aggressor's positions being the VRS positions, Vekaz Turković, T. 3120; Sarajevo Adjudicated Facts III, 40-41.

<sup>1141</sup> Ex. P500, Investigation Report, 4 July 1995, p. 4.

<sup>1142</sup> Ex. P500, Investigation Report, 4 July 1995, p. 4; Ex. P502, Photographs of Site Investigation, 2 July 1995, pp 2-3.

<sup>1143</sup> Ex. P500, Investigation Report, 4 July 1995, p. 4; Sarajevo Adjudicated Facts III, 40-41.

<sup>1144</sup> Ex. P500, Investigation Report, 4 July 1995, p. 4; Ex. P502, Photographs of Site Investigation, 2 July 1995, pp 1-3.

<sup>1145</sup> Ex. P499, Transcript of Vekaz Turković from *Prosecutor v. D. Milošević*, T. 5207.

ricocheted twice, first on the upper corner of the house and then in the garden, before finally landing and exploding on the garage of Zejna Šljivo's house on Bunički Potok Street.<sup>1146</sup> According to the report, the concussion warhead projectile got "unfastened from the rest of the projectile".<sup>1147</sup>

428. According to Turković, the investigating team was able to determine the direction of fire (*i.e.* the Ilidža area) from an analysis of the distance between the two points of ricochet. According to the witness, "it [was] a simple finding using basic human knowledge without any expertise".<sup>1148</sup>

429. While the local police conducted their investigation, UNMOs Captain Melum and Major Bruurmijn also conducted their own investigation.<sup>1149</sup> In line with previous training they had received,<sup>1150</sup> they examined the crater and its environs and used a compass to establish the origin of the projectile.<sup>1151</sup>

430. At the impact site, Melum and Bruurmijn found the projectile only,<sup>1152</sup> whereas the local police had already seized the propulsion system composed of six rockets of two different calibres (128mm and 122mm),<sup>1153</sup> found approximately 150 metres away.<sup>1154</sup> Major Bruurmijn saw the rockets later at the local police station.<sup>1155</sup>

431. Based on the analysis of the crater, the warhead and the propulsion system, the UNMO investigating team concluded that the explosion of 1 July 1995 at Bunički Potok Street had been caused by a 231-kilogram air bomb consisting of a concussion projectile with a delayed fuse<sup>1156</sup> attached to two sets of three rockets each. The bomb had been launched from a rail from a direction between 280 and 320 degrees.<sup>1157</sup> The UNMOs also established that the location where the

<sup>1146</sup> Ex. P499, Transcript of Vekaz Turković from *Prosecutor v. D. Milošević*, T. 5207; Vekaz Turković, T. 3119.

<sup>1147</sup> Ex. P500, Investigation Report, 4 July 1995, p. 4; Ex. P499, Transcript of Vekaz Turković from *Prosecutor v. D. Milošević*, T. 5207.

<sup>1148</sup> Vekaz Turković, T. 3119-3120, 3144. *See also* Vekaz Turković, T. 3155-3156.

<sup>1149</sup> Hubertus J.W. Bruurmijn, T. 2654, 2693. Major Bruurmijn was one the UNMO duty officer who responded to Captain Melum's call for support the evening of the incident, Hubertus J.W. Bruurmijn, T. 2648-2649; Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), pp 1-2. *See also* MP-238, T. 2767-2770.

<sup>1150</sup> Hubertus J.W. Bruurmijn, T. 2631.

<sup>1151</sup> Hubertus J.W. Bruurmijn, T. 2654, 2658.

<sup>1152</sup> Hubertus J.W. Bruurmijn, T. 2658; Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 6.

<sup>1153</sup> Hubertus J.W. Bruurmijn, T. 2658; Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), pp 6-7.

<sup>1154</sup> Hubertus J.W. Bruurmijn, T. 2658, 2693-2694; Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 6.

<sup>1155</sup> *Ibid.*

<sup>1156</sup> Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 6; Hubertus J.W. Bruurmijn, T. 2697. *See also* Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 1; Sarajevo Adjudicated Facts III, 38.

<sup>1157</sup> Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 6; Hubertus J.W. Bruurmijn, T. 2658, 2699.

propulsion system was found was within the same direction range of 280 and 320 degrees.<sup>1158</sup> Based on these factors, Major Bruurmijn identified the Ilidža area, which was then held by the VRS, as the source of fire.<sup>1159</sup>

432. While the UNMO team was not allowed by the local police to investigate the impact site at Alekse Šantića Street, Major Bruurmijn had the opportunity to discuss their findings with the local investigators.<sup>1160</sup> Initially, the local police were persuaded that a distinct unexploded modified air bomb had caused the damage there. Major Bruurmijn indicated to them that an UNMO observation post had observed only one projectile. He also stressed the local police's own finding that no warhead had been found at the Alekse Šantića Street site and no rockets had been found at the Bunički Potok Street site. As a consequence, the conclusion he shared with the local police was that the parts retrieved at the two sites belonged to the same air bomb which had most likely fallen apart in flight. Major Bruurmijn considers the theory of a double ricochet adduced by the local police to be less probable than the theory that the air bomb fell apart in flight. However, in light of the fact that he could not investigate the impact site at Alekse Šantića Street, he could not exclude the ricochet theory.<sup>1161</sup>

(v) Possible Military Targets

433. Nefa Šljivo testified that he could not recall there being any military activity on 1 July 1995<sup>1162</sup> and that there were no ABiH military installations or targets near his house.<sup>1163</sup> He clarified that there were some ABiH soldiers in the area of Hrasnica, but not where the modified air bomb landed.<sup>1164</sup> Similarly, he testified that during his stay in Hrasnica, approximately every two days, the witness saw groups of three to four ABiH soldiers.<sup>1165</sup> On the top of Mt. Igman, he suspected there to be an ABiH base. Soldiers from this base, upon the end of their shifts, descended to Hrasnica to their families.<sup>1166</sup> Major Bruurmijn also stated that, as far as he was aware, there were no military targets in the area where the explosion occurred. According to him, the only place of any military significance would have been the *Famos* factory, where he had heard that the

<sup>1158</sup> Hubertus J.W. Bruurmijn, T. 2660, 2663; Ex. P443, UNMO Report on 1 July 1995 Attack (Scheduled Incident A8), p. 6.

<sup>1159</sup> Hubertus J.W. Bruurmijn, T. 2663-2664; Ex. P444, Map of Sarajevo Marked by Hubertus J.W. Bruurmijn, showing the area on the map. The witness stressed that the crater analysis of a propelled projectile, however, cannot establish the point of departure or the distance travelled, but only the direction of the origin of fire, T. 2686-2688, 2698. *See also* Sarajevo Adjudicated Facts III, 40-41.

<sup>1160</sup> Hubertus J.W. Bruurmijn, T. 2694.

<sup>1161</sup> Hubertus J.W. Bruurmijn, T. 2694, 2703-2704.

<sup>1162</sup> Ex. P2308, Transcript of Nefa Šljivo from *Prosecutor v. D. Milošević*, T. 4509.

<sup>1163</sup> Ex. P2308, Transcript of Nefa Šljivo from *Prosecutor v. D. Milošević*, T. 4509; Ex. P2307, Witness Statement of Nefa Šljivo, 27 April 2006, p. 2.

<sup>1164</sup> Nefa Šljivo, T. 5590.

<sup>1165</sup> Ijaz Hussain Malik, T. 6539-6243.

<sup>1166</sup> Ijaz Hussain Malik, T. 6240-6241.

Bosnian Muslims produced ammunitions or weapons.<sup>1167</sup> The Trial Chamber notes that the *Famos* factory is located about one kilometre from Hrasnica.<sup>1168</sup>

434. Thorbjørn Øvergård, another UNMO based in Hrasnica until 1 May 1995,<sup>1169</sup> testified that the ABiH 4<sup>th</sup> Motorised Brigade had its headquarters in the centre of Hrasnica.<sup>1170</sup> He, however, also stated that the centre of Hrasnica was a “residential civilian area”.<sup>1171</sup> Furthermore, when faced with the information that the 4<sup>th</sup> Motorised Brigade consisted of 3,000 to 3,500 military men, Thorbjørn Øvergård answered that he had never seen so many soldiers in Hrasnica.<sup>1172</sup>

(vi) Findings

435. The Trial Chamber finds beyond a reasonable doubt that on 1 July 1995 at about 21:30 hours, a modified air bomb exploded at Bunički Potok Street, injuring 13 persons. The Trial Chamber finds that the bomb fell in a civilian area of Hrasnica with no military activities nearby. The only reasonable inference is that all the victims were civilians not taking part in hostilities at the time. The Trial Chamber bases its conclusion on the fact that (i) the air bomb landed in a residential area and (ii) the victims included a housewife, a student, a business woman, three children, pensioners and UNMOs.

436. The Trial Chamber notes that the evidence shows two alternative explanations of the manner of the shell explosion: one based on the double ricochet theory; the other that the bomb disassembled in flight, losing its propulsion system on Alekse Šantića Street at about 150 metres from where it finally landed and exploded. The Trial Chamber is unable to reach a conclusion beyond a reasonable doubt on this issue as both explanations, based on the evidence, appear plausible. Regardless of which of the two explanations is correct, the Trial Chamber is however satisfied beyond a reasonable doubt that the modified air bomb originated from the VRS held territory of Ilidža.<sup>1173</sup>

<sup>1167</sup> Hubertus J.W. Bruurmijn, T. 2664-2665.

<sup>1168</sup> The *Famos* factory is located immediately to the right of Hrasnica, Thorbjørn Øvergård; T. 2956-2957; Ex. P485, Map Marked by Thorbjørn Øvergård, mark “F”.

<sup>1169</sup> Thorbjørn Øvergård, T. 2950; Ex. P481, Witness Statement of Thorbjørn Øvergård, 30 April 1996, para. 1.

<sup>1170</sup> Thorbjørn Øvergård, T. 2965, 2980-2981, also stating that the headquarters of the 4<sup>th</sup> Motorised Brigade was located in a basement of a big building for civilians; Ex. P481, Witness Statement of Thorbjørn Øvergård, 30 April 1996, para. 13; Ex. D34, Map Marked by Thorbjørn Øvergård. The Trial Chamber notes that the distance between the headquarters of the 4<sup>th</sup> Motorised Brigade and the incident scene is of about 1 km, Ex. D34, Map Marked by Thorbjørn Øvergård; Ex. P2383, Map Marked by Mirsad Kučanin.

<sup>1171</sup> Ex. P481, Witness Statement of Thorbjørn Øvergård, 30 April 1996, para. 13.

<sup>1172</sup> Thorbjørn Øvergård, T. 2965.

<sup>1173</sup> See also Sarajevo Adjudicated Facts III, 40-42.

(i) 28 August 1995 (Incident A9)(i) Indictment

**28 August 1995:** A 120mm mortar shell landed in Mula-Mustafe Bašeskije Street outside the entrance to the City Market. At least 35 persons were killed and 78 were injured. The origin of the fire was Trebević, VRS territory.<sup>1174</sup>

(ii) The City Market

437. The indoor city market of Sarajevo (“City Market”) is located in a building in the city centre, on Mula-Mustafe Bašeskije Street.<sup>1175</sup> The City Market is approximately 100 metres from the Markale open market.<sup>1176</sup> At the time, the Sarajevo police had warned people not to gather in public places due to the risk of shelling and sniping attacks. In spite of this warning, Markale was one of the places where people would gather in large groups.<sup>1177</sup>

(iii) Incident

438. On the morning of 28 August 1995, Đula Leka, a 65 years old pensioner, was shopping for groceries in the city centre with her husband Ahmed.<sup>1178</sup> At about 11:00 hours, they were in the vicinity of the City Market and as they approached the corner of the market building, a shell landed and exploded in front of the entrance to the City Market.<sup>1179</sup> Đula Leka was standing at about five to seven metres from the impact point<sup>1180</sup> and the blast knocked her down to the pavement.<sup>1181</sup> She was wounded on the left arm and breast.<sup>1182</sup> Around her, she saw injured persons lying on the street moaning in pain or crying for help.<sup>1183</sup> Đula Leka also saw a lot of dead persons covered in blood on the street,<sup>1184</sup> including her brother-in-law at about 10 metres from her.<sup>1185</sup> At that moment, she did not know where her husband was.<sup>1186</sup> A taxi drove her to Koševo Hospital where she was

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<sup>1174</sup> Scheduled Incident A9.

<sup>1175</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, p. 2.

<sup>1176</sup> Sead Bešić, T. 3289-3290. *See also* Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 7. *See supra* para. 350.

<sup>1177</sup> Nedžib Đozo, T. 4574-4576; Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, p. 3.

<sup>1178</sup> Ex. P62, Witness Statement of Đula Leka, 29 August 1995. *See also* Ex. P61, Witness Statement of Đula Leka, 25 February 1996, p. 2.

<sup>1179</sup> Ex. P62, Witness Statement of Đula Leka, 29 August 1995. *See also* Sarajevo Adjudicated Facts III, 43.

<sup>1180</sup> Ex. P61, Witness Statement of Đula Leka, 25 February 1996, p. 2.

<sup>1181</sup> Ex. P62, Witness Statement of Đula Leka, 29 August 1995.

<sup>1182</sup> *Ibid.*

<sup>1183</sup> *Ibid.*

<sup>1184</sup> Ex. P62, Witness Statement of Đula Leka, 29 August 1995; Ex. P61, Witness Statement of Đula Leka, 25 February 1996, p. 2; Ex. P2294, Video of victims being removed from the site of Scheduled Incident A9 (Markale Market, 28 August 1995).

<sup>1185</sup> Ex. P61, Witness Statement of Đula Leka, 25 February 1996, p. 2.

<sup>1186</sup> *Ibid.*

treated for her wounds.<sup>1187</sup> She was then transferred to the Thorax Surgery Clinic of the Clinical Centre of Sarajevo University,<sup>1188</sup> where she remained for another four to five days.<sup>1189</sup> While at the Koševo hospital, Đula Leka noted that the hospital was “very busy because of the large number of wounded people”.<sup>1190</sup>

439. According to Đula Leka, the city centre where the shell landed was a strictly civilian area, with no military activity.<sup>1191</sup>

(iv) Investigation

a. Introduction

440. The incident at the City Market became commonly known as Markale II, to distinguish it from an earlier incident of a similar scale which occurred on 5 February 1994 at the nearby open market.<sup>1192</sup> The mortar impact on the City Market was observed from the UNMO observation post 1 (“OP-1”), situated at Čolina Kapa, south of Sarajevo on the hills overlooking the city.<sup>1193</sup> Within one hour after the explosion, three separate investigations were initiated by French UNPROFOR engineers, UNMO team and Bosnian police.<sup>1194</sup>

441. Later the same day, a follow-up investigation and analysis of all the evidence, including the findings of the UNPROFOR and UNMO teams, as well as the OP-1 observation, was also carried out by a senior UNPROFOR intelligence officer (“UNPROFOR G-2”)<sup>1195</sup> on instructions of Lt.

<sup>1187</sup> Ex. P61, Witness Statement of Đula Leka, 25 February 1996, p. 2; Ex. P62, Witness Statement of Đula Leka, 29 August 1995.

<sup>1188</sup> Ex. P62, Witness Statement of Đula Leka, 29 August 1995.

<sup>1189</sup> Ex. P61, Witness Statement of Đula Leka, 25 February 1996, p. 2. *See also* Ex. P637, Medical Certificates from Koševo Hospital, 28 August 1995, p. 2.

<sup>1190</sup> Ex. P62, Witness Statement of Đula Leka, 29 August 1995. *See also* Ex. P635, Medical Record from Koševo State Hospital, 28 August 1995; Ex. P637, Medical Certificates from Koševo Hospital, 28 August 1995; Ex. P638, Medical Record from Koševo Hospital, 28 August 1995; Ex. P640, Medical Record from Koševo Hospital, 30 August 1995; Ex. P643, Medical Record from Koševo Hospital, 28 August 1995.

<sup>1191</sup> Ex. P61, Witness Statement of Đula Leka, 25 February 1996, p. 2.

<sup>1192</sup> *See supra* paras 350-358; Ex. P2357, Transcript of Rupert Smith from *Prosecutor v. D. Milošević*, T. 3335.

<sup>1193</sup> Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3; Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1987-1988. OP-1 is marked with a cross to the south of Sarajevo in a map annexed to Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 7. *See also* Harry Konings, T. 5340, 5344; Ex. P. 2297, Photograph of Sarajevo Marked by Harry Konings; Ex. P2298, Map Marked by Harry Konings; Ex. D70, Map of Sarajevo Marked by Mirza Sabljica.

<sup>1194</sup> *See infra* paras 444-455.

<sup>1195</sup> Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 2; Ex. P2356, Report of Markale II Incident, 29 August 1995; Ex. P2357, Transcript of Rupert Smith from *Prosecutor v. D. Milošević*, T. 3335-3336. G-2 stands for the intelligence officer for the UNPROFOR Headquarters, Ex. P2349, Transcript of Rupert Smith from *Prosecutor v. S. Milošević*, 9 October 2003, T. 27330-27331; Harry Konings, T. 5368.

General Rupert Smith, the UNPROFOR Commander for BiH. The conclusions of the UNPROFOR G-2 were included in one final report.<sup>1196</sup>

b. UNMO Observation Post 1

442. The OP-1 comprised an observation post proper<sup>1197</sup> and a house about 150 metres downhill, where the UNMOs would sleep, when at the post, but not on duty.<sup>1198</sup> Both locations had a strategic view over all the city of Sarajevo.<sup>1199</sup> OP-1 was run by members of the UNMO team Sarajevo Central 1 (“SC-1”),<sup>1200</sup> which had its team base in Sedrenik<sup>1201</sup> and at the time was under the command of Lt. Col. Harry Konings.<sup>1202</sup>

443. At about 9:00 hours on 28 August 1995, UNMOs Thom Knustad from Norway<sup>1203</sup> and Paul Conway from Ireland assumed their duties at OP-1.<sup>1204</sup> It was a bright, sunny morning<sup>1205</sup> and Knustad was sitting outside the house<sup>1206</sup> while Conway was at the observation post.<sup>1207</sup> At about 11:00 hours, Knustad saw a smokestack<sup>1208</sup> coming up from what he instantly identified as the Markale area and then heard the impact about five to six seconds later.<sup>1209</sup> Knustad joined Conway

<sup>1196</sup> Ex. P2349, Transcript of Rupert Smith from *Prosecutor v. S. Milošević*, 9 October 2003, T. 27330-27331. *See also* Ex. P2357, Transcript of Rupert Smith from *Prosecutor v. D. Milošević*, T. 3336; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 2.

<sup>1197</sup> Ex. P2299, Photograph of Observation Post 1 in Sarajevo.

<sup>1198</sup> Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3.

<sup>1199</sup> Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3; Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1994; Harry Konings, T. 5345; Ex. P1518, Map of Sarajevo. *See also* Ex. D97, Map of Sarajevo.

<sup>1200</sup> Harry Konings, T. 5341; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3552.

<sup>1201</sup> Harry Konings, T. 5402; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3552. *See also* Ex. P2297, Photograph of Sarajevo Marked by Harry Konings. Sedrenik, in the north-east part of Sarajevo, Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3552.

<sup>1202</sup> Harry Konings, T. 5383; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3552.

<sup>1203</sup> Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3585.

<sup>1204</sup> Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3; Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1993-1994.

<sup>1205</sup> Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1993-1994. *See also* Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3584; Harry Konings, T. 5365.

<sup>1206</sup> Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1996-1997; Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3.

<sup>1207</sup> Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3; Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1997. *See also* Ex. P2299, Photograph of Observation Post 1 in Sarajevo.

<sup>1208</sup> “Smokestack is the smoke that would develop from an impact of, for example, a mortar grenade or an artillery grenade, mainly grey towards black of colour”, Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1995. *See also* Sarajevo Adjudicated Facts III, 43.

<sup>1209</sup> Sound travels at about 300 metres per second, Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1995-1996. *See also* Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3.

at the observation post,<sup>1210</sup> where they recorded the incident in the log book kept there and Conway immediately reported the incident to the UNMO headquarters at the PTT building.<sup>1211</sup>

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<sup>1210</sup> Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3; Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1997.

<sup>1211</sup> *Ibid.*



c. UNMO and UNPROFOR Investigations

444. Lt. Col. Konings, as UNMO's team leader was informed of the explosion via UNMO radio as he was driving to SC-1, on his way back from the UNMO Headquarters.<sup>1212</sup> A few minutes after he reached the team base in Sedrenik, the local police called him requesting assistance for the investigation. Konings and two colleagues, Captain Carbonel from Spain and Lt. Higgs from the United Kingdom, picked up the CSB officers from the police station and arrived at the scene of the incident about 30 to 40 minutes after the explosion.<sup>1213</sup>

445. Upon arrival at the City Market, they observed layers of broken glass, many blood pools and body parts on the street.<sup>1214</sup> The dead bodies, however, had already been removed from the scene.<sup>1215</sup> A team of UNPROFOR French officers was already active on the scene and some members of the Sarajevo police were also present.<sup>1216</sup> The UNMOs, the French UNPROFOR and the CSB police carried out parallel, but separate investigations.<sup>1217</sup>

446. The UNMO team and the French UNPROFOR engineers processed the scene by performing the crater analysis and calculating the azimuth bearing independently of each other.<sup>1218</sup> The crater was located in front of the entrance of the City Market building,<sup>1219</sup> whereas the tail fin of the shell was found a little further away from the crater<sup>1220</sup> and was identified as that of a 120mm mortar projectile.<sup>1221</sup>

<sup>1212</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3565. *See also* Harry Konings, T. 5354.

<sup>1213</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3566; Ex. P2292, UNMO Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), pp 1, 3; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 1, 6; Ex. P524, Transcript of Sead Bešić from *Prosecutor v. D. Milošević*, T. 2569-2570.

<sup>1214</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3566.

<sup>1215</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3581; Ex. P2294, Video of victims being removed from from the site of the on Scheduled Incident A9 (Markale Market, 28 August 1995); Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 2, 7.

<sup>1216</sup> Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), pp 2-3, 6-8; P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, T. 3567, 3578; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 1, 6; Ex. P2294, Video of victims being removed from from the site of the on Scheduled Incident A9 (Markale Market, 28 August 1995). *See also* Ex. P461 (under seal), T. 2413; Ex. P460 (under seal), para. 26.c.

<sup>1217</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3569, 3578-3579; Harry Konings, T. 5353. *See also* Ex. P523, Witness Statement of Sead Bešić, 25 April 2006, p. 2.

<sup>1218</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3578-3579.

<sup>1219</sup> Ex. P2292, UNMO Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3; Ex. P2294, Video of victims being removed from the site of Scheduled Incident A9 (Markale Market, 28 August 1995).

<sup>1220</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3569-3570.

<sup>1221</sup> Ex. P2322, Report on Investigation of Markale II Incident, 6 September 1995, pp 1, 9; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 6.

447. According to Konings, the imprint of the crater in the asphalt was very clear and it was immediately recognised as one from a mortar projectile – which can be distinguished from any other artillery projectile<sup>1222</sup> – caused by a 120mm mortar shell.<sup>1223</sup> Based on the shrapnel dispersion pattern of the crater, the UNMOs concluded that the mortar projectile had been fired from a southern direction at an azimuth bearing of approximately 170 degrees.<sup>1224</sup> The French UNPROFOR also reached the conclusion that the mortar shell had been fired from a southerly direction, specifically from a bearing of 2850 *millièmes*, which corresponds to about 160 degrees.<sup>1225</sup> The French UNPROFOR then measured the distance between the crater and the wall of the City Market building.<sup>1226</sup> This data was used to calculate the minimum angle at which the mortar shell impacted on the asphalt, which resulted in 67 degrees.<sup>1227</sup>

448. The azimuth bearing and the estimated angle of impact, however, were insufficient to determine with precision the firing position, as the distance a mortar projectile can travel varies depending on the propulsion charge used.<sup>1228</sup> As the latter was unknown, neither the UNMO team nor the UNPROFOR team could establish the exact origin of fire.<sup>1229</sup> The UNPROFOR team, however, estimated that the mortar shell could have been fired with small charge from a distance of 500 to 600 metres, or with a stronger charge from a greater distance up to 5,000 metres. The latter

<sup>1222</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3570. For a detailed discussion on the importance of this distinction see Harry Konings, T. 5369, 5373.

<sup>1223</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995 (BCS version), p. 37; Harry Konings, T. 5369; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3581; Ex. P2292, UNMO Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 6.

<sup>1224</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3573; Ex. P2291, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 13 March 2007, T. 3599; Ex. P2292, UNMO Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3; Sarajevo Adjudicated Facts III, 44.

<sup>1225</sup> Ex. P2294, Video of victims being removed from the site of the on Scheduled Incident A9 (Markale Market, 28 August 1995), at 6:00 minutes; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 7; Ex. P2291, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 13 March 2007, T. 3596-3597; Ex. P2292, UNMO Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3. *See also* Sarajevo Adjudicated Facts III, 44.

<sup>1226</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3579.

<sup>1227</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3575-3576; Ex. P2292, UNMO Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3; Ex. P2322, Report on Investigation of Markale II Incident, 6 September 1995, p. 8; Ex. P2316 (under seal), p. 23; Ex. P2302, UNMO Patrol Report on Scheduled Incident A9 (Markale Market, 28 August 1995), pp 1-3; Harry Konings, T. 5363.

<sup>1228</sup> Ex. P2316 (under seal), p. 23; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3575, 3583-3584, 3586; Ex. P2291, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 13 March 2007, T. 3600. *See also* Ex. P476, Report on Market Firing Incident Involving Mortars in the Sarajevo Area Dated 28 August 1995, 3 August 2006, p. 13.

<sup>1229</sup> Ex. P2292, UNMO Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 1; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 17. *See also* Ex. P2316 (under seal), p. 23.

option placed the origin of fire on Mt. Trebević, behind the confrontation lines,<sup>1230</sup> which were at about 1,050 metres from the impact point.<sup>1231</sup>

449. After filing his report, Konings spoke with OP-1 observers Thomas Knustad and Paul Conway.<sup>1232</sup> The morning of the incident was sunny, there was no wind and the observers had good visibility on almost the entire city.<sup>1233</sup> The two observers did not hear any mortar being fired until they saw the smokestack from the market area and subsequently heard the impact.<sup>1234</sup> Konings testified that an outgoing 120mm round makes a “loud bang”, creates a flash and smoke, which in his professional opinion could not be missed on a clear and quiet day such as 28 August 1995. According to him, this specific mortar round must then have been fired from farther away behind the mountain ridge, which muffled the sound.<sup>1235</sup> Knustad, who also had expertise in artillery, confirmed this reasoning and stated that he would not have heard the round being fired from behind the VRS line “due to the configuration of the terrain and the way the sound would move behind the hill, behind [his] position”.<sup>1236</sup> Based on those observations in conjunction with his own findings during the investigations, Konings concluded that the firing position was located in the VRS-held territory.<sup>1237</sup>

<sup>1230</sup> Ex. P2316 (under seal), p. 22; Ex. P2322, Report on Investigation of Markale II Incident, 6 September 1995, pp 1-9; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3. *See also* Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3586; Ex. P2291, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 13 March 2007, T. 3600; Ex. P476, Report on Market Firing Incident Involving Mortars in the Sarajevo Area dated 28 August 1995, 3 August 2006, p. 13.

<sup>1231</sup> Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3. *See also* Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 2001-2002; Ex. P69, Map of Sarajevo Area Marked by Thomas Knustad in *Prosecutor v. D. Milošević*; Ex. P1518, Map of Sarajevo.

<sup>1232</sup> Ex. P2299, Photograph of Observation Post 1 in Sarajevo, marked by Harry Konings.; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3584-3585. *See also* Harry Konings, T. 5346

<sup>1233</sup> Harry Konings, T. 5364-5365; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3584-3586; Ex. P2299 Photograph of Observation Post 1 in Sarajevo.

<sup>1234</sup> Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 2004-2006; Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3585.

<sup>1235</sup> Harry Konings, T. 5363-5367; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3584-3586; Ex. P2291, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 13 March 2007, T. 3602-3603; Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 2004-2006, 2048-2049; Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3; Ex. P2356, Report of Markale II Incident, 29 August 1995; Ex. P2349, Transcript of Rupert Smith from *Prosecutor v. S. Milošević*, 9 October 2003, T. 27330, 27406; Ex. P2357, Transcript of Rupert Smith from *Prosecutor v. D. Milošević*, T. 3337-3338.

<sup>1236</sup> Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 2004-2006; Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3. *See also* Ex. P2356, Report of Markale II Incident, 29 August 1995; Ex. P2349, Transcript of Rupert Smith from *Prosecutor v. S. Milošević*, 9 October 2003, T. 27330, 27406; Ex. P2357, Transcript of Rupert Smith from *Prosecutor v. D. Milošević*, 9 October 2003, T. 3337-3338.

<sup>1237</sup> Harry Konings, T. 5411-5412.; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3583-3586. *See also* Ex. P2356, Report of Markale II Incident, 29 August 1995; Ex. P2349, Transcript of Rupert Smith from *Prosecutor v. S. Milošević*, 9 October 2003, T. 27330, 27406; Ex. P2357, Transcript of Rupert Smith from *Prosecutor v. D. Milošević*, T. 3337-3338; Sarajevo Adjudicated Facts III, 44, 47.

450. In addition, at the time of the incident, the mortar-locating Cymbaline radar used by UNPROFOR G-2 was operating in the area.<sup>1238</sup> The radar was set on a direction arc and elevation that would have detected the trajectory of any mortar fired within a range of 950 metres or less.<sup>1239</sup> The analysis of the data collected from the radar showed that a mortar shell fired from a distance of 900 metres from the impact zone would have reached a height on its trajectory which would have been registered by the radar beam. For the mortar shell which hit the City Market to pass undetected by the radar, its trajectory must have been lower than the radar beam, which meant that the shell had been fired from a position at a range between 1,550 and 3,500 metres, depending on the propulsion charge.<sup>1240</sup>

451. Based on the findings of the UNMO and UNPROFOR investigations, the observation of Knustad and Conway, as well as the data collected by radar, the UNPROFOR G-2 report submitted to Smith concluded that the firing position of the mortar shell was located in the VRS held territory, probably Lukavica, at a distance of between 3,000 to 5,000 metres.<sup>1241</sup>

d. Local Police Investigations

452. The local police investigation team consisted of the investigative judge of the High Court in Sarajevo, a prosecutor from the High Public Prosecutor's Office in Sarajevo, KDZ officers and CSB police and forensic officers.<sup>1242</sup> Upon their arrival at the scene, the team noted that most of the bodies had been removed and all the injured persons had been taken to hospital.<sup>1243</sup> The CSB police officers observed the crater caused by the mortar which was on one lane of the road, close to the

<sup>1238</sup> Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3; Ex. P2316 (under seal), p. 23; Ex. P2356, Report of Markale II Incident, 29 August 1995.

<sup>1239</sup> Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3. *See also* Ex. P2316 (under seal), p. 23; Ex. P2356, Report of Markale II Incident, 29 August 1995.

<sup>1240</sup> Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3; Ex. P2356, Report of Markale II Incident, 29 August 1995; Ex. P2349, Transcript of Rupert Smith from *Prosecutor v. S. Milošević*, 9 October 2003, T. 27330; Ex. P2357, Transcript of Rupert Smith from *Prosecutor v. D. Milošević*, T. 3335-3338. *But see* Ex. P2316 (under seal), p. 23, stating that the radars were not very effective.

<sup>1241</sup> Ex. P2356, Report of Markale II Incident, 29 August 1995.

<sup>1242</sup> Ex. P524, Transcript of Sead Bešić in *Prosecutor v. D. Milošević*, 20 February 2007, T. 2569-2570; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 1, 6. *See also* Ex. P462, Transcript of MP-238 from *Prosecutor v. D. Milošević*, 19 February 2007, T. 2562; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3568.

<sup>1243</sup> Ex. P523, Witness Statement of Sead Bešić, 25 April 2006, p. 2; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, p. 7; Ex. P2294, Video of victims being removed from the site of Scheduled Incident A9 (Markale Market, 28 August 1995).

pavement.<sup>1244</sup> The scene was secured by them and access was allowed only to the local and international investigative teams.<sup>1245</sup>

453. Although the scene had been slightly altered by the removal of killed and injured persons,<sup>1246</sup> the crater itself had not been altered. As one of the witnesses explained, the crater was in the asphalt and could have been modified only with the use of heavy machinery over a significant span of time, which could not have gone unnoticed by those present at the scene.<sup>1247</sup> In fact, the crater itself remained unchanged for many years after the event.<sup>1248</sup> The buildings surrounding the impact area were visibly damaged around a radius of about 50-60 metres on both sides of the street.<sup>1249</sup> Sead Bešić, one of the CSB forensic officers, commenced the examination of the scene, took photographs, collected evidence and made a free-hand sketch of the scene.<sup>1250</sup>

454. The stabiliser fin from the projectile was found at about 20 metres from the crater. It was slightly damaged either by the explosion itself or by the cars that passed by the impact zone area.<sup>1251</sup> It was collected and analysed together with numerous shell fragments of different sizes.<sup>1252</sup> The investigators established that the stabiliser was that of a 120 mm light contact fuse mortar shell. Moreover, based on the inscription “MK K 74 KB 9307” it had on the back, they were also able to determine that the mortar shell had been manufactured in July 1993 in the Krušnik factory.<sup>1253</sup>

<sup>1244</sup> Ex. P461 (under seal), T. 2418-2420. *See also* Ex. P463, Photograph of impact site marked by witness MP-238, Ex. P464, Photograph of Impact Site Marked by Witness MP-238, 19 February 2007; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 37, 40.

<sup>1245</sup> Ex. P523, Witness Statement of Sead Bešić, 25 April 2006, p. 2; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 1, 7, 14.

<sup>1246</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, p. 2.

<sup>1247</sup> Ex. P461 (under seal), T. 2418-2419, 2429.

<sup>1248</sup> Ex. P461 (under seal), T. 2419.

<sup>1249</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, p. 9 and p. 68 (BCS version).

<sup>1250</sup> Ex. P522, Witness Statement of Sead Bešić, 28 November 1997, pp 3, 15-19; Ex. P524. Transcript of Sead Bešić from *Prosecutor v. D. Milošević*, 20 February 2007, T. 2572, 2585-2586; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 8, 13-14, 24-26 and 34-56 (BCS version). *See also* Ex. P528, Sketch Regarding Scheduled Incident A9 Marked by Sead Bešić; Sead Bešić, T. 3282-3283.

<sup>1251</sup> Ex. P524, Transcript of Sead Bešić from *Prosecutor v. D. Milošević*, T. 2582-2584; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995 (BCS version), pp 57-60.

<sup>1252</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995 (BCS version), pp 61-63.

<sup>1253</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 7, 16-17; Ex. P460 (under seal), para. 26(a); Ex. P465, Criminal Investigation File, 29 August 1995, pp 2-5; Ex. P690, Expert Analysis Regarding Shelling in Sarajevo on 28 August 1995, 29 August 1995, pp 2-4. *See also* Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995 (BCS version), pp 60, 62; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3571-3572; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 6. The UNPROFOR French engineers further reported that the ammunition was unmarked, unpainted and with a brushed steel finish, based on which they assessed that it was of Serb manufacture and

455. As for the crater analysis, based on the features of the shrapnel traces, which were most intense and deep on the southerly side,<sup>1254</sup> the KDZ and forensic officers established that the mortar shell had been fired from the southern bearing of 170 degrees, with an error margin of five degrees.<sup>1255</sup> The KDZ officers then calculated the angle of impact of the shell on the street<sup>1256</sup> based on the fuse crater, the distance between the crater and the City Market building and the height of the building.<sup>1257</sup> They established that the minimum angle of descent was 67 degrees and that therefore the shell had impacted the surface at an angle of approximately 70 degrees.<sup>1258</sup> In the absence of information as to the charge used to fire the mortar projectile, however, the investigators could not make any firm determination of the distance the shell had been fired from and its exact point of origin.<sup>1259</sup>

e. Casualties

456. On the same day, after the investigations at the impact scene were concluded, the CSB team and the UNMOs went to Koševo and State hospitals to determine how many casualties had been caused by the explosions at the City Market.<sup>1260</sup> According to the official note drafted by the CSB investigative team on the same day, 33 dead bodies were taken to Koševo hospital and 2 to the State hospital, for a total of 35 fatalities. Fifty-seven injured persons were admitted to Koševo hospital and 21 to State hospital.<sup>1261</sup> The following day, additional three persons wounded in the explosion succumbed to their injuries,<sup>1262</sup> bringing the total number of fatal casualties to 38.

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matched the ammunition commonly used by the VRS, Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), pp 3, 6; Ex. P2322, Report on Investigation of Markale II Incident, 6 September 1995, pp 1, 9.

<sup>1254</sup> Ex. P461 (under seal), T. 2427, 2429; Ex. P524, Transcript of Sead Bešić in *Prosecutor v. D. Milošević*, 20 February 2007, T. 2578-2580. *See also* Ex. P463, Photograph of Impact site marked by witness MP-238, 19 February 2007; Ex. P464, Photograph of Impact Site Marked by Witness MP-238, 19 February 2007.

<sup>1255</sup> MP-238, T. 2744-2746; Ex. P461 (under seal), T. 2426-2429, 2435; Ex. P524, Transcript of Sead Bešić in *Prosecutor v. D. Milošević*, 20 February 2007, T. 2578-2580; Ex. P463, Photograph of Impact Site Marked by Witness MP-238; Ex. P464, Photograph of Impact Site Marked by Witness MP-238, 19 February 2007; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 18-21; Ex. P465 Criminal Investigation File, 29 August 1995, p. 5; Ex. P690, Expert Analysis Regarding Shelling in Sarajevo on 28 August 1995, 29 August 1995. *See also* Sarajevo Adjudicated Facts III, 44.

<sup>1256</sup> Ex. P461 (under seal), T. 2427.

<sup>1257</sup> Ex. P461 (under seal), T. 2427, 2435-2436, 2453-2456; Ex. P466, Extract from Criminal Investigation File, 29 August 1995; Ex. P467, Diagram and Estimates of Missile Bomb Impact, 29 August 1995; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 22-23.

<sup>1258</sup> Ex. P461 (under seal), T. 2427, 2435-2436, 2453-2456; Ex. P466, Extract from Criminal Investigation File, 29 August 1995; Ex. P467, Diagram and Estimates of Missile Bomb Impact, 29 August 1995; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 22-23.

<sup>1259</sup> Ex. P461 (under seal).

<sup>1260</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 8-9; Ex. P68, UNMO Patrol Report on Scheduled Incident A9 (Markale Market, 28 August 1995), pp 1-2; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3581-3582; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 14; Ex. P2292, UNMO Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 2.

<sup>1261</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 7-9. *See also* Ex. P68, UNMO Patrol Report on Scheduled Incident A9 (Markale Market, 28 August 1995),

457. As a result of the investigations, it was established that the following persons died as a result of the explosion:<sup>1263</sup> Samir Topuzović,<sup>1264</sup> Senad Muratović,<sup>1265</sup> Hajrudin Hozo,<sup>1266</sup> Muhamed Kukić,<sup>1267</sup> Zeno Bašević,<sup>1268</sup> Salko Duraković,<sup>1269</sup> Najla Fazlić,<sup>1270</sup> Husein Bektešević,<sup>1271</sup> Ilija Keranović,<sup>1272</sup> Ismet Klarić,<sup>1273</sup> Meho Zečo,<sup>1274</sup> Jasmina Hodžić,<sup>1275</sup> Mejra Cocalić,<sup>1276</sup> Salko Alić,<sup>1277</sup> Blaženka Smoljan,<sup>1278</sup> Omer Ajanović,<sup>1279</sup> Vehid Komar,<sup>1280</sup> Adnan Ibrahimagić,<sup>1281</sup>

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- p. 2; Ex. P2292, UNMO Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 2; Ex. P633, Medical Records from the Sarajevo State Hospital, 28 August 1995; Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995; Ex. P635, Medical Record from Koševo State Hospital, 28 August 1995; Ex. P636, Medical Record from Koševo State Hospital, 28 August 1995; Ex. P637, Medical Record from Koševo State Hospital, 28 August 1995; Ex. P638, Medical Record from Koševo Hospital, 28 August 1995; Ex. P639, Medical Certificates from Koševo Hospital, 30 August 1995; Ex. P640, Medical Record from Koševo Hospital, 30 August 1995; Ex. P641, Medical Record from Koševo Hospital, 3 September 1995; Ex. P642, Medical Record from Koševo Hospital, 29 August 1995; Ex. P643, Medical Record from Koševo Hospital, 28 August 1995; Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995; Sarajevo Adjudicated Facts III, 45.
- <sup>1262</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, p. 12.
- <sup>1263</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 3, 9.
- <sup>1264</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 1; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 77-78.
- <sup>1265</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 2; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 79-80.
- <sup>1266</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 3; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 81-82.
- <sup>1267</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 4; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 83-84.
- <sup>1268</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 5; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 85-86.
- <sup>1269</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 6; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 87-88.
- <sup>1270</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 7; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 89-90.
- <sup>1271</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 8; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 91-92.
- <sup>1272</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 9; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 93-94.
- <sup>1273</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 10; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 95-96.
- <sup>1274</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 11; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 97-98.
- <sup>1275</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 12; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 99-100.
- <sup>1276</sup> Ex. P637, Medical Certificates from Koševo Hospital, 28 August 1995, p. 1; Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 13; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 101-102.
- <sup>1277</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 14; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 103-104.
- <sup>1278</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 15; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 105-106.
- <sup>1279</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 16; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 107-108.
- <sup>1280</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 17; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 109-110.
- <sup>1281</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 18; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 112-113.

Mirsad Kovačević,<sup>1282</sup> Hidajet Alić,<sup>1283</sup> Hamid Smailhodžić,<sup>1284</sup> Goran Poturković,<sup>1285</sup> Meho Herceglić,<sup>1286</sup> Mesudija Kerović,<sup>1287</sup> Vera Brutus,<sup>1288</sup> Hajrudin Šatrović,<sup>1289</sup> Ajdin Vukotić,<sup>1290</sup> Ibrahim Hajvaz,<sup>1291</sup> Seveda Brkan,<sup>1292</sup> Halida Čepić,<sup>1293</sup> Paša Crnčalo,<sup>1294</sup> Sabaheta Vukotić,<sup>1295</sup> Hašim Kurtović,<sup>1296</sup> Esad Ćorambegić,<sup>1297</sup> Merima Žiga,<sup>1298</sup> Osman Mahmutović, Rijad Gorvo and Alija Dževlan.<sup>1299</sup>

458. The persons who were injured in the explosion and known by name were:<sup>1300</sup> Ethem Husović,<sup>1301</sup> Rasim Farač, Osman Levanta,<sup>1302</sup> Feriz Kanlić,<sup>1303</sup> Mirza Hodžić,<sup>1304</sup> Nedžad Korjenić,

<sup>1282</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 19; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 114-115.

<sup>1283</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 20; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 116-117.

<sup>1284</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 21; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 118-119.

<sup>1285</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 22; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 120-121.

<sup>1286</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 23; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 122-123.

<sup>1287</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 24; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 124, 126.

<sup>1288</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 25; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 125, 127.

<sup>1289</sup> Or Hajro Šatrović, Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 26; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 128-129.

<sup>1290</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 27; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 130-131.

<sup>1291</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 28; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 132-133.

<sup>1292</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 29; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 134-135.

<sup>1293</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 30; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 136-137.

<sup>1294</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 31; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 138-139.

<sup>1295</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, pp 32-33; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 140-141.

<sup>1296</sup> Or Našim Kurtović, Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 34; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 142-143.

<sup>1297</sup> Or Ćorambegić, Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 35; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 144-145.

<sup>1298</sup> Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, p. 36; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 146-147. The UNMOs initially confirmed 31 killed persons and 79 injured (with 64 names provided by the Ministry of Health, Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 17; Ex. P68, UNMO Patrol Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 2; Ex. P2292, UNMO Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 2.

<sup>1299</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, p. 12; Ex. P644, Autopsy Record from Koševo Hospital, 28 August 1995, pp 39, 42, 43.

<sup>1300</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.

<sup>1301</sup> Ex. P639, Medical Certificates from Koševo Hospital, 30 August 1995, p. 2; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.

<sup>1302</sup> See Ex. P638, Medical Record from Koševo Hospital, 28 August 1995, p. 1; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.



Razija Čolić,<sup>1305</sup> Đula Leka,<sup>1306</sup> Bilal Habibović,<sup>1307</sup> Ajkuna Cocalić, Alma Halilović, Dario Blauhi, Rada Laubuh, Muho Kadrić,<sup>1308</sup> Nihada Hadžijahić, Kosa Pečanac, Minela Satara, Mensuda Klarić,<sup>1309</sup> Adisa Duran,<sup>1310</sup> Aziz Hadžić, Violeta Dudić, a child named Berina, Salko Kurtović,<sup>1311</sup> Čarim Terzić, Mejra Marevac, Šemsa Bunjo, Sabaheta Kafrč, Indira Svoboda, Samir Borovac, Jusuf Hašimbegović, Fatima Čulesker,<sup>1312</sup> Rasim Koso,<sup>1313</sup> Hasena Kaljanac, Ismet Švraka,<sup>1314</sup> Andrea Svoboda,<sup>1315</sup> Janja Pašić,<sup>1316</sup> Amerisa Ahmetović, Pelka Jačimović, Mustafa Karkelja,<sup>1317</sup> Nedžad Mango, Muhidin Begić,<sup>1318</sup> Ferida Hajrić, Šemsa Bunjo, Zijad Bejtić,<sup>1319</sup> Samir Marevac,<sup>1320</sup> Asim Dževla, Dževad Hodžić,<sup>1321</sup> Murat Zahiragić, Mehmed Ahmetović,<sup>1322</sup> Andrija Simunović, Ruža Galić,<sup>1323</sup> Izet Hardželaš, Fehim Zolota, Amir Trnka, Ferida Bajrić,<sup>1324</sup> Suada

- <sup>1303</sup> See Ex. P636, Medical Certificates from Koševo Hospital, 28 August 1995, p. 2; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1304</sup> Ex. P638, Medical Record from Koševo Hospital, 28 August 1995, p. 5; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1305</sup> Ex. P637, Medical Certificates from Koševo Hospital, 28 August 1995, p. 3; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1306</sup> Or Dzula Leko, Ex. P637, Medical Certificates from Koševo Hospital, 28 August 1995, p. 2; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1307</sup> Ex. P638, Medical Record from Koševo Hospital, 28 August 1995, p. 6; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1308</sup> Ex. P638, Medical Record from Koševo Hospital, 28 August 1995, p. 4; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1309</sup> Ex. P636, Medical Certificates from Koševo Hospital, 28 August 1995, p. 3; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1310</sup> Ex. P637, Medical Certificates from Koševo Hospital, 28 August 1995, p. 5; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1311</sup> Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995, pp 15-16. The name of the victim is spelled as "Salko" in the English translation of Ex. P526, and Ex. P634, p. 15, whereas the BCS version of Ex. P526 and Ex. P634 refer to "Halko", Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4, 10; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995 (BCS version), pp 2, 12. *See also* Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1312</sup> Ex. P638, Medical Record from Koševo Hospital, 28 August 1995, p. 3; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1313</sup> Ex. P636, Medical Certificates from Koševo Hospital, 28 August 1995, p. 1; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1314</sup> Ex. P641, Medical Record from Koševo Hospital, 3 September 1995, p. 2.
- <sup>1315</sup> Ex. P642, Medical Record from Koševo Hospital, 29 August 1995.
- <sup>1316</sup> Ex. P637, Medical Certificates from Koševo Hospital, 28 August 1995, p. 4; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1317</sup> Ex. P638, Medical Record from Koševo Hospital, 28 August 1995, p. 8; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1318</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1319</sup> Ex. P640, Medical Record from Koševo Hospital, 30 August 1995, p. 1.
- <sup>1320</sup> Ex. P635, Medical Record from Koševo State Hospital, 28 August 1995; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1321</sup> Ex. P639, Medical Certificates from Koševo Hospital, 30 August 1995, p. 1; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1322</sup> Ex. P638, Medical Record from Koševo Hospital, 28 August 1995, p. 2; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1323</sup> Ex. P643, Medical Record from Koševo Hospital, 28 August 1995.
- <sup>1324</sup> Ex. P636, Medical Certificates from Koševo Hospital, 28 August 1995, pp 4-5; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.

Dizdarević, Omer Zec,<sup>1325</sup> Suzana Sandžaktarević,<sup>1326</sup> Zaim Kaširić,<sup>1327</sup> Omer Begić, Senad Skenderović,<sup>1328</sup> Mahit Kurtović,<sup>1329</sup> Emira Guberović,<sup>1330</sup> Damir Mujačić,<sup>1331</sup> Mirsad Ademović, Nedžad Trhulj, Halmija Crnčalo,<sup>1332</sup> Hamza Tunović, Selver Stomovljak,<sup>1333</sup> Sabit Tahirović, Hako Tahirović, Nazif Sijamć,<sup>1334</sup> Ibrahim Muša,<sup>1335</sup> Šukrija Ferović<sup>1336</sup> and Merdžana Obralić.<sup>1337</sup>

459. According to the CSB investigative team, the neighbourhood where the shell landed was in the middle of the city and was a civilian area without any military activity and the victims were mainly civilian.<sup>1338</sup>

f. Follow up to Investigation

460. On 29 August 1995, the CSB investigating team had a lengthy meeting in relation to the City Market incident to which Konings was invited as the UNMO team representative.<sup>1339</sup> The CSB

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- <sup>1325</sup> Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995, p. 6; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1326</sup> Civilian, Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995, p. 7; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1327</sup> Or Zaim Košarić, Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995, p. 3; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1328</sup> "OS" probably member of the "Armed Forces of Defence Forces", Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995, p. 10; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1329</sup> Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995, p. 8; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1330</sup> Ex. P633, Medical Records from the Sarajevo State Hospital, 28 August 1995, p. 1; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1331</sup> Child born in 1984, Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995, p. 12; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1332</sup> Or Hilmija Trncalo, Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995, p. 17; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1333</sup> Or Selver Stomornjak, Ex. P633, Medical Records from the Sarajevo State Hospital, 28 August 1995, p. 2; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1334</sup> Or Nazif Sijamić, Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995, p. 5; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1335</sup> Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995, p. 11; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1336</sup> Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995, p. 2; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1337</sup> Child born in 1984, Ex. P634, Medical Certificates and Records from the Sarajevo State Hospital, 28 August 1995, p. 1; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 4-5, 9-11.
- <sup>1338</sup> Ex. P532 (under seal), para. 9. *See also* Ex. P631, Transcript of Milan Mandilović from *Prosecutor v. D. Milošević*, T. 573-574; Ex. P2220, Transcript of Bakir Nakaš from *Prosecutor v. D. Milošević*, T. 1106-1107; Ex. P633, Medical Records from the Sarajevo State Hospital, 28 August 1995, p. 1. *See also* Sarajevo Adjudicated Facts III, 46.
- <sup>1339</sup> Harry Konings, T. 5359-5360; MP-193, T. 3307-3310 (private session); Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3591, 3593; Ex. P68, UNMO Patrol Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 1; Ex. P2292, UNMO Investigation Report on Scheduled

team discussed the investigation findings and tried to establish what had happened on 28 August 1995.<sup>1340</sup> In his testimony, Konings stressed that the UNMOs did not take part in the discussion and that there was no exchange of investigative notes and that each team compiled its own separate report on the incident.<sup>1341</sup> Rather, he participated in the meeting as an observer, “listening and comparing the data” that had been collected by the UNMOs the day before to that collected by the CSB police, which he found to be identical.<sup>1342</sup> During the meeting, Konings informed the CSB team of what had been observed on the morning of 28 August 1995 from the UNMO OP-1 stationed on Čolina Kapa.<sup>1343</sup>

g. Expert Report

461. The expert report of Richard Higgs confirms that the mortar shell was fired from a direction of about 170-175 degrees and that the angle of descent was closer to 70 degrees, as determined by the Bosnian authorities.<sup>1344</sup> According to the expert, at said angle of descent the origin of fire can be placed at a range of 900, 1,600, 2,400 or 3,000 metres, depending on the propulsion charge used.<sup>1345</sup> Considering where these ranges plot on the map within the azimuth of 175 degrees and, in particular, that the UNMOs from OP-1 did not hear any mortar being fired, the expert excluded the possibility that this mortar shell had been fired from a range of 900 or 1,600 metres.<sup>1346</sup> The range of 2,400 metres instead, put the firing point in a position and elevation consistent with the angle of

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<sup>1340</sup> Incident A9 (Markale Market, 28 August 1995), p. 1; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 18; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, p. 12.  
 Harry Konings, T. 5359-5360; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 18;

<sup>1341</sup> Harry Konings, T. 5353, 5360-5362. *See also* Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3578-3579, 3593; Ex. P523, Witness Statement of Sead Bešić, 25 April 2006, p. 2.

<sup>1342</sup> Harry Konings, T. 5362; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, p. 12; Ex. P2302, UNMO Patrol Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 2.

<sup>1343</sup> Harry Konings, T. 5363-5364. *See also* Ex. P2302, UNMO Patrol Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 2; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, p. 12; Ex. P64, Witness Statement of Thomas Knustad, 21 May 1996, p. 3; MP-193, T. 3310 (private session).

<sup>1344</sup> Ex. P476, Report on Market Firing Incident Involving Mortars in the Sarajevo Area Dated 28 August 1995, 3 August 2006, pp 10-13. The expert also states that from the evidence that has been shown to him, there is no reason to disbelieve the reports from the Bosnian authorities, UNMO and UNPROFOR, Ex. P476, Report on Market Firing Incident Involving Mortars in the Sarajevo Area Dated 28 August 1995, 3 August 2006 p. 9. *See also* Sarajevo Adjudicated Facts III, 44.

<sup>1345</sup> Ex. P476, Report on Market Firing Incident Involving Mortars in the Sarajevo Area Dated 28 August 1995, 3 August 2006, p. 13.

<sup>1346</sup> Ex. P476, Report on Market Firing Incident Involving Mortars in the Sarajevo Area Dated 28 August 1995, 3 August 2006, pp 13-14. The expert noted that at both a distance of 900 or 1600 metres the firing point would still be in the area of the confrontation line and the firing would be easily heard by the UN observers, Ex. P476, Report on Market Firing Incident Involving Mortars in the Sarajevo Area Dated 28 August 1995, 3 August 2006, p. 14.

descent as well as with the effects seen at the impact site.<sup>1347</sup> The expert therefore concluded that the most likely fire position was situated at 2,400 metres to the south of the impact area.<sup>1348</sup>

#### h. Allegations of Staged Incident

462. Soon after the incident, allegations emerged that the shelling at the City Market had been staged and the evidence planted on the scene.<sup>1349</sup> However, according to Konings this was impossible.<sup>1350</sup> Earlier that morning, at about 8:30-9:00 hours,<sup>1351</sup> Konings had driven past City Market coming from the SC-1 team base in Sedrenik on his way to the UNMO headquarters in the PTT building.<sup>1352</sup> He noted that there had been a lot of civilians on the streets and sidewalks near the entrance of the City Market, trading or selling goods as well as the usual police patrols and “some” military men, but he did not observe any crater on the road and he did not think it was possible to create an artificial one in about two hours.<sup>1353</sup> He also excluded the possibility that any other type of explosive had been detonated on the spot, as the crater he analysed, as well as the damage around it, was a “perfect” example of a 120mm mortar shell impact.<sup>1354</sup> Finally, he excluded the possibility that dead bodies from previous incidents had been planted on the scene, as the bodies he examined at the morgue had fresh wounds and it was clear that they had recently been killed.<sup>1355</sup> Konings also stated that he did not believe it was possible to stage such chaos.<sup>1356</sup> The Trial Chamber finds the explanation provided by Konings on this issue to be credible and convincing.

463. Another witness testified that he was about 50 metres from the City Market when he heard the explosion and was at the scene five to ten minutes later. He stated that when he arrived at the

<sup>1347</sup> Ex. P476, Report on Market Firing Incident Involving Mortars in the Sarajevo Area Dated 28 August 1995, 3 August 2006, p. 13.

<sup>1348</sup> Ex. P476, Report on Market Firing Incident Involving Mortars in the Sarajevo Area Dated 28 August 1995, 3 August 2006, pp 13-14.

<sup>1349</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3588-3590; Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 2005-2007; MP-193, T. 3311-3312 (private session); Ex. P2316 (under seal), pp 21-22. *See also* Nedžad Vejzagić, T. 4091.

<sup>1350</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3588-3590.

<sup>1351</sup> Harry Konings, T. 5354.

<sup>1352</sup> Harry Konings, T. 5354, 5402; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3552, 3555, 3587. *See also* Ex. P2297, Photograph of Sarajevo Marked by Harry Konings.

<sup>1353</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3589.

<sup>1354</sup> Harry Konings, T. 5369, 5373; Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3570, 3581.

<sup>1355</sup> Harry Konings, T. 5388-5389; Ex. P2292, UNMO Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995); Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3557-3558, 3581-3582.

<sup>1356</sup> Ex. P2290, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 12 March 2007, T. 3589.

scene he saw “a great mess, and it was all intensely quiet [...] and still it was very agitated”.<sup>1357</sup> He also did not think it possible to stage such scene.<sup>1358</sup>

464. On 28 and 29 August 1995, General Rupert Smith had several telephone conversations with General Ratko Mladić in relation to the incident. Mladić stated that no fire orders had been issued to his units on that day and that all his positions had been checked and he was sure that none of them had fired. Rather, he claimed that the incident had been orchestrated by the ABiH.<sup>1359</sup> Smith, however, informed Mladić that “it was now beyond a reasonable doubt that the shells had come from the [VRS] territory and that the investigation revealed that the firing point had been approximately 3,5 – 4 km south west of the impact point”.<sup>1360</sup>

i. Investigation into Other Mortar Shell Impacts in the Same Area

465. Nedžib Đozo, a police officer from the Stari Grad station in Sarajevo, testified that about one or two months prior to the shelling of 28 August 1995, the area had been targeted by mortar fire on two occasions.<sup>1361</sup> On the first occasion, one or two mortar shells fired from the VRS held territory of Barice and Markovići to the north<sup>1362</sup> landed and exploded near the Markale open market, injuring some children.<sup>1363</sup> On the second occasion a salvo of three mortar shells exploded, within half an hour of each other,<sup>1364</sup> the first about 300 metres from the Markale City Market, killing a young man,<sup>1365</sup> the second about 200 metres from the Markale City Market,<sup>1366</sup> in front of the Stari Grad municipality building, injuring several persons<sup>1367</sup> and the third about 30 metres from the Markale City Market,<sup>1368</sup> killing one person and injuring several.<sup>1369</sup> The investigations established that the shots were fired from the direction of the VRS held territory of Lukavica or

<sup>1357</sup> Ex. P2317 (under seal), T. 5336. *See also* Ex. P2316 (under seal), p. 22.

<sup>1358</sup> Ex. P2316 (under seal), p. 22.

<sup>1359</sup> Ex. P2348, Statement of Rupert Smith, 14 August 1996, paras 108-109; Ex. P2370, Note of Meetings of Rupert Smith of 14-29 August 1995, 22 August 1995, p. 9.

<sup>1360</sup> Ex. P2370, Note of Meetings of Rupert Smith of 14-29 August 1995, 22 August 1995, p. 9; Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 109; Ex. P2356, Report of Markale II, 29 August 1995; Ex. P67, UNPROFOR Investigation Report, 28 August 1995.

<sup>1361</sup> Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, p. 2; Nedžib Đozo, T. 4528-4529; Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, 14 March 2007, T. 3682.

<sup>1362</sup> Nedžib Đozo, T. 4530-4531, 4565. *See also* Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, p. 3.

<sup>1363</sup> Nedžib Đozo, T. 4530; Ex. P1942, Map of Sarajevo with Shelling Sites Marked by Nedžib Đozo, 18 March 2009.

<sup>1364</sup> Nedžib Đozo, T. 4536. *See also* Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, p. 2.

<sup>1365</sup> Nedžib Đozo, T. 4532; Ex. P1943, Map of Sarajevo with Shelling Sites Marked by Nedžib Đozo, 18 March 2009, (Mark no. 1).

<sup>1366</sup> Nedžib Đozo, T. 4534; Ex. P1943, Map of Sarajevo with Shelling Sites Marked by Nedžib Đozo, 18 March 2009, (Mark no. 2).

<sup>1367</sup> Nedžib Đozo, T. 4533; Ex. P1943, Map of Sarajevo with Shelling Sites Marked by Nedžib Đozo, 18 March 2009 (Mark no. 2).

<sup>1368</sup> Nedžib Đozo, T. 4533, 4535, 4567-4568; Ex. P1943, Map of Sarajevo with Shelling Sites Marked by Nedžib Đozo, 18 March 2009, (Mark no. 3).

<sup>1369</sup> Nedžib Đozo, T. 4533.

Vraca, on the slopes of Mt. Trebević.<sup>1370</sup> Considering that these three mortar shells landed in the same line of direction towards the Markale Market,<sup>1371</sup> the witness concluded that the aim of these shellings was to adjust the sighting of the mortar in order to target the Markale City Market.<sup>1372</sup>

466. On 28 August 1995, the City Market shelling incident was preceded by four mortar shell impacts in the vicinity.<sup>1373</sup> The investigations established that 120mm mortar shells had been used in all four cases from the south, at a bearing between 220 and 240 degrees,<sup>1374</sup> which suggested that the point of origin of these four shells was different from that which hit the City Market.<sup>1375</sup>

(v) Findings

467. The Trial Chamber finds beyond a reasonable doubt that on 28 August 1995 shortly after 11:00 hours, a 120mm mortar shell hit the entrance of the City Market on Mula-Mustafe Bašeskije street killing 38 persons and injuring 75 persons. The Trial Chamber also finds that the mortar shell was fired from the VRS-held territory on the slopes of Mt. Trebević.<sup>1376</sup> Finally, no military activities were taking place in the area of the City Market and the persons present at the market were buying, selling or trading goods, in no way engaged in activities that could be perceived as military. In addition, the evidence shows that all the victims, except one, wore civilian clothes.<sup>1377</sup> The Trial Chamber therefore finds that the only reasonable inference to be drawn from the evidence is that the great majority of the victims were civilians not taking part in hostilities at the time the crime occurred.

<sup>1370</sup> Nedžib Đozo, T. 4537, 4565, 4567. *See also* Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, p. 2.

<sup>1371</sup> Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, p. 2; Ex. P1943, Map of Sarajevo with Shelling Sites Marked by Nedžib Đozo, 18 March 2009.

<sup>1372</sup> Nedžib Đozo, T. 4535-4537, 4564; Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, p. 3.

<sup>1373</sup> Harry Konings, T. 5356-5359; Ex. P2301, Map of Sarajevo Marked by Harry Konings; Ex. P2292, UNMO Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3; Ex. P68, UNMO Patrol Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3; Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, pp 11, 38; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), pp 17-20; Ex. P532 (under seal), para. 8; Ex. P2301, Map of Sarajevo Marked by Harry Konings. *See also* Ex. P2317 (under seal), T. 5338, 5342; Ex. P460 (under seal), para. 26; Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 105.

<sup>1374</sup> Ex. P68, UNMO Patrol Report on Scheduled Incident A9 (Markale Market, 28 August 1995), p. 3; Ex. P67, UNPROFOR Investigation Report on Scheduled Incident A9 (Markale Market, 28 August 1995), pp 18-19.

<sup>1375</sup> Ex. P2291, Transcript of Harry Konings from *Prosecutor v. D. Milošević*, 13 March 2007, T. 3600-3601; Harry Konings, T. 5408-5409. *See also* Ex. P464, Photograph of Impact Site Marked by Witness MP-238; Ex. P476, Report on Market Firing Incident Involving Mortars in the Sarajevo Area Dated 28 August 1995, 3 August 2006, pp 6, 9, 13-14.

<sup>1376</sup> Sarajevo Adjudicated Facts III, 47-48.

<sup>1377</sup> Ex. P526, Criminal Investigation File of Sarajevo Police Regarding Scheduled Incident A9, 28 August 1995, (BCS version), pp 81-82.

## 5. Scheduled Sniping Incidents

### (a) 3 September 1993 (Incident B1)

#### (i) Indictment

**3 September 1993:** Nafa Tarić, a woman aged 35 years, and her daughter Elma Tarić, aged 8 years, were shot by a single bullet while walking together in Ivana Krndelja Street in the centre of Sarajevo. The bullet wounded the mother in her left thigh and wounded the daughter on her right hand and in her abdomen.<sup>1378</sup>

#### (ii) Findings

468. The Trial Chamber has taken judicial notice of adjudicated facts related to this incident.<sup>1379</sup> Considering that the adjudicated facts have not been rebutted during the trial, the Trial Chamber finds beyond a reasonable doubt that on 3 September 1993, Nafa and Elma Tarić, civilians not taking part in hostilities, were deliberately targeted and injured by a shot fired from an SRK-controlled position.

### (b) 2 November 1993 (Incident B2)

#### (i) Indictment

**2 November 1993:** Two men were wounded by a burst of gunfire while they were working clearing rubbish along Braće Ribara Street, presently Porodice Ribar Street, in the Hrasno area of Sarajevo. Ramiz Velić, aged 50 years, was wounded in his left forearm, and Milan Ristić, aged 56 years, was wounded in his right arm and both legs.<sup>1380</sup>

#### (ii) Incident

469. The Trial Chamber has taken judicial notice of adjudicated facts related to this incident.<sup>1381</sup> Considering that the adjudicated facts have not been rebutted during the trial, the Trial Chamber finds beyond a reasonable doubt that on 2 November 1993, Ramiz Velić, a civilian not taking part in the hostilities, was deliberately targeted from an SRK-controlled position in Vrace. The Trial Chamber notes that the facts proposed for judicial notice in relation to this incident made no reference to Milan Ristić, because no finding in relation to his wounding was made by the *Galić* Trial Chamber. Considering that no evidence was led in relation to Milan Ristić, the Trial Chamber finds that the allegation regarding him has not been proved.

<sup>1378</sup> Indictment, Scheduled Incident B1.

<sup>1379</sup> Sarajevo Adjudicated Facts I, 251-256, 258-260.

<sup>1380</sup> Indictment, Scheduled Incident B2.

<sup>1381</sup> Sarajevo Adjudicated Facts I, 261-265.

(c) 6 January 1994 (Incident B3)(i) Indictment

**6 January 1994:** Sanija Dževlan, a woman aged 32 years, was shot and wounded in her buttocks while riding a bicycle across a bridge in Nikole Demonja Street, Dobrinja.<sup>1382</sup>

(ii) Findings

470. The Trial Chamber has taken judicial notice of adjudicated facts related to this incident.<sup>1383</sup> Considering that the adjudicated facts have not been rebutted during the trial, the Trial Chamber finds beyond a reasonable doubt that on 6 January 1994, Dževlan was shot and wounded from an SRK-controlled area.<sup>1384</sup> The Trial Chamber also finds beyond a reasonable doubt that the victim was a civilian not taking part in hostilities.

(d) 19 June 1994 (Incident B4)(i) Indictment

**19 June 1994:** Witness B-1173, a woman aged 31 years, and her son, aged 4 years, were lightly wounded in their legs by a shot that penetrated a crowded tram in which they were travelling. The tram was travelling west on Zmaja od Bosne Street towards Alpašino Polje. Witness B-1174, a man aged 36 years, sustained a slight leg wound and witness B-1175, a woman aged 23 years, was wounded in her left armpit in the same attack. The tram was near the Holiday Inn hotel at the time of the incident.<sup>1385</sup>

(ii) Findings

471. The Trial Chamber has taken judicial notice of adjudicated facts related to this incident.<sup>1386</sup> Considering that such adjudicated facts have not been rebutted during the trial, the Trial Chamber finds beyond a reasonable doubt that, on 19 June 1994, a tram was deliberately targeted from an SRK-controlled territory in the area of the Jewish Cemetery, resulting in the wounding of three persons on board the tram. The Trial Chamber also finds beyond a reasonable doubt that the victims were civilians not taking part in hostilities.

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<sup>1382</sup> Indictment, Scheduled Incident B3.  
<sup>1383</sup> Sarajevo Adjudicated Facts I, 266-270.  
<sup>1384</sup> Sarajevo Adjudicated Facts I, 268, 270.  
<sup>1385</sup> Indictment, Scheduled Incident B4.  
<sup>1386</sup> Sarajevo Adjudicated Facts I, 278-280.



(e) 26 June 1994 (Incident B5)(i) Indictment

**26 June 1994:** Sanela Muratović, a girl aged 16 years, was shot and wounded in her right shoulder while walking with a girlfriend on Đure Jakšića Street, presently Adija Mulabegovića, in the west end of Sarajevo.<sup>1387</sup>

(ii) Findings

472. The Trial Chamber took judicial notice of adjudicated facts related to this incident.<sup>1388</sup> Considering that such adjudicated facts have not been rebutted, the Trial Chamber finds beyond a reasonable doubt that, on 26 June 1994, Sanela Muratović was deliberately shot and wounded by fire originating from territory held by the SRK and that the victim was a civilian not taking part in hostilities.

(f) 22 July 1994 (Incident B6)(i) Indictment

**22 July 1994:** Witness B-1177, a boy aged 13 years, was shot and wounded in his abdomen while window-shopping with his mother and sister in Miljenka Cvitkovića Street, presently Ferde Hauptmana, in the Čengić Vila area of Sarajevo.<sup>1389</sup>

(ii) Incident

473. The Trial Chamber took judicial notice of adjudicated facts related to this incident.<sup>1390</sup> These adjudicated facts have not been rebutted during the trial.

474. Mirsad Kučanin, who at the time relevant to the indictment worked as the criminal inspector at the Centre for Security Service in Sarajevo, gave evidence about the investigation into this incident.<sup>1391</sup>

475. On 22 July 1994 at about 17:00 hours, Kučanin was informed via radio of an incident on the Miljenka Cvitkovića Street, where one person was wounded.<sup>1392</sup> When Kučanin arrived at the site of the incident, he learned that a child had been injured with a firearm and had already been taken to

<sup>1387</sup> Indictment, Scheduled Incident B5.

<sup>1388</sup> Sarajevo Adjudicated Facts I, 281-287.

<sup>1389</sup> Indictment, Scheduled Incident B6. See the Prosecution's "Revised List of Witnesses pursuant to Rule 73bis Decision dated 15 May 2007", 20 June 2007 (confidential), p. 7, showing that pseudonyms AG and B-1177 relate to the same person.

<sup>1390</sup> Sarajevo Adjudicated Facts I, 288-298.

<sup>1391</sup> Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 2.

<sup>1392</sup> Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 2; Ex. P2384, Official Note, 22 July 1994; Ex. P2378, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 27 February 2002, T. 4507-4508.

hospital.<sup>1393</sup> Although the direct responsibility for the investigation lay with the local police, Kučanin, as the most experienced officer present, remained at the location throughout the whole procedure in order to provide assistance and instructions on how to document the scene.<sup>1394</sup> The local police were almost immediately joined by an UNPROFOR team.<sup>1395</sup>

476. The bullet used by the sniper was a 7.62 mm rifle bullet.<sup>1396</sup> The Centre for Security Service in Sarajevo calculated the trajectory of the bullet based on the position of the holes left by the bullet on the sunshade and window.<sup>1397</sup> Using a special ballistic devise, the investigators were able to identify the “Pržulj house” on Zagorska street, in the VRS-held territory, as the origin of fire.<sup>1398</sup>

(iii) Findings

477. The Trial Chamber finds beyond a reasonable doubt that on 22 July 1994, B-1177, a boy aged 13 at the time, was deliberately wounded in his abdomen while window-shopping in Sarajevo. The Trial Chamber also finds beyond a reasonable doubt that the victim was a civilian not taking part in hostilities and that the fire originated from territory held by the VRS.

(g) 8 November 1994 (Incident B7)

(i) Indictment

**8 November 1994:** Fata Guta, a woman aged 54 years, was shot and wounded in the hand while she was going with jerri-cans to collect water from the Moščanica spring in Gazin Han, to the east of Sarajevo.<sup>1399</sup>

478. The Trial Chamber was informed by the Prosecution on 8 April 2010 that it withdrew this incident.<sup>1400</sup> Therefore the Trial Chamber will not make any finding in relation to this incident.

<sup>1393</sup> Ex. P2378, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 27 February 2002, T. 4508-4509; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4662.

<sup>1394</sup> Ex. P2378, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 27 February 2002, T. 4508-4510; Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4642. *See also* Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 2.

<sup>1395</sup> Ex. P2384, Official Note, 22 July 1994; Ex. P2378, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 27 February 2002, T. 4510.

<sup>1396</sup> Ex. P2378, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 27 February 2002, T. 4516.

<sup>1397</sup> Ex. P2376, Witness Statement of Mirsad Kučanin, 12 November 1995, p. 2.

<sup>1398</sup> Ex. P2378, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 27 February 2002, T. 4512-4513; Ex. P2384, Official Note, 22 July 1994; Ex. P2385, BiH File of Sniper Activities from Zagorska Street, 22 July 1994, p. 2. The house Pržulj house is located on a hill, at about 300 meters “as the crow flies”, Ex. P2379, Transcript of Mirsad Kučanin from *Prosecutor v. Galić*, 28 February 2002, T. 4659, 4662. *See also* Ex. P2382, Transcript of Mirsad Kučanin from *Prosecutor v. S. Milošević*, 13 November 2003, T. 28961-28962.

<sup>1399</sup> Indictment, Scheduled Incident B7.

<sup>1400</sup> Response to Defence Motion for Judicial Notice of Adjudicated Facts, 8 April 2010, para. 10(c). *See also* Submission of Revised Witness List, with Confidential Annex A, 29 September 2008, Annex A.

(h) 23 November 1994 (Incident B8)(i) Indictment

**23 November 1994:** Hafiza Karačić, a woman aged 31 years and Sabina Šabanić, a woman aged 26 years, were both wounded in the right shoulder when the tram they were travelling on came under fire on Zmaj od Bosne, between the Technical School and Marshal Tito Barracks.<sup>1401</sup>

(ii) Location of the Sniping Incident

479. The tram route at the Zmaja od Bosne Street between the Technical School and the Marshal Tito Barracks was separated from the Miljacka River by a strip of land controlled by the ABiH.<sup>1402</sup> The Miljacka River was the borderline separating both warring factions.<sup>1403</sup> On the other bank of the Miljacka River was the Grbavica neighbourhood, held by the VRS.<sup>1404</sup> There were four skyscrapers which were notorious sniper locations.<sup>1405</sup> This area was known to be the “most dangerous location of Sarajevo” and several people had previously been wounded on the same stretch of road where the tram was hit.<sup>1406</sup> The tram authorities had instructed all their drivers to drive as fast as possible when they got to this area.<sup>1407</sup>

(iii) Incident

480. In the afternoon of 23 November 1994, a cold but clear day, tram 263 being driven by Huso Palo was the subject of sniper fire while it travelled westwards from the old town going towards Otoka, a new part of the town of Sarajevo, at the Zmaja od Bosne Street between the Technical School and Marshal Tito Barracks.<sup>1408</sup> No soldiers were on the tram, and there were no soldiers or any ABiH vehicles in the area.<sup>1409</sup>

481. It was dangerous to walk home for the snipers were always active,<sup>1410</sup> thus Sabina Šabanić, a 26-year old resident of Sarajevo,<sup>1411</sup> left work a bit early in order to catch the last tram which left

<sup>1401</sup> Indictment, Scheduled Incident B8.

<sup>1402</sup> Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1472-1473. *See also* Afeza Karačić, T. 3386.

<sup>1403</sup> Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1470.

<sup>1404</sup> Sabina Šabanić, T. 697-698.

<sup>1405</sup> Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1453-1454; Sabina Šabanić, T. 684-685, 705; Ex. P103, Witness Statement of Sabina Šabanić, 16 November 1995, para. 10.

<sup>1406</sup> Sabina Šabanić, T. 696-697.

<sup>1407</sup> Ex. P2338, Witness Statement of Huso Palo, 24 February 1996, p. 1.

<sup>1408</sup> Ex. P2338, Witness Statement of Huso Palo, 24 February 1996, p. 1; Ex. P1946, Report on Scheduled Incident B8, 24 November 1994, p. 1; Sarajevo Adjudicated Facts III, 51; Mirza Sabljica, T. 4597-4598. *See* Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1461; Ex. P103, Witness Statement of Sabina Šabanić, 16 November 1995, para. 4; Sabina Šabanić, T. 682, 698-699; Ex. D48, Witness Statement of Afeza Karačić, 20 May 2006, para. 2. *See also* Ex. D49, Witness Statement of Afeza Karačić, 15 November 1995.

<sup>1409</sup> Sarajevo Adjudicated Facts III, 50. *See also* Ex. P104, Witness Statement of Sabina Šabanić, 22 May 1996, para. 5.

<sup>1410</sup> Ex. P104, Witness Statement of Sabina Šabanić, 22 May 2006, para. 3.

the centre at 16:00 hours.<sup>1412</sup> The tram was hit at an intersection,<sup>1413</sup> when turning towards the new railway station,<sup>1414</sup> as it approached the front of Marshal Tito Barracks, not far from the Holiday Inn hotel.<sup>1415</sup> Šabanić did not hear any shot or windows being broken.<sup>1416</sup> The passengers were in panic and wanted to get off the tram, but for safety reasons, the tram proceeded to a sheltered area behind the museum and Marshal Tito Barracks.<sup>1417</sup>

482. As Šabanić got off the tram alongside all other passengers, she began to lose consciousness and realised that she had been shot at.<sup>1418</sup> There was blood on her coat and she was unable to move her arm.<sup>1419</sup> The bullet entered Šabanić's right shoulder, two inches below the top of her right shoulder, and exited at the back.<sup>1420</sup>

483. Despite the fact that Šabanić did not hear the sound of the bullets which hit the tram,<sup>1421</sup> she believed the shots came from the four sky-scrapers in Grbavica, as they were notorious sniper locations.<sup>1422</sup> Further, she also believed the shots came from that direction for she was standing in the tram, facing Grbavica.<sup>1423</sup>

484. Afeza Karačić, a.k.a. "Hafiza", a 31-year old and resident of Sarajevo,<sup>1424</sup> took the same tram.<sup>1425</sup> Karačić was facing the back of the tram and was holding on to a pole of the tram when she

<sup>1411</sup> Ex. P1946, Report on Scheduled Incident B8, 24 November 1994, p. 1

<sup>1412</sup> Ex. P104, Witness Statement of Sabina Šabanić, 22 May 2006, para. 2.

<sup>1413</sup> Exs P101, P105-P109, Photographs Marked by Sabina Šabanić; Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1459-1461; Sabina Šabanić, T. 702-703.

<sup>1414</sup> Ex. P2340, Transcript of Huso Palo from *Prosecutor v. D. Milošević*, 6 February 2007, T. 1536.

<sup>1415</sup> Ex. P493, Report of Patrick van der Weijden, 2 February 2009, p. 24; Sarajevo Adjudicated Facts III, 52.

<sup>1416</sup> Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1448, 1450. Šabanić initially stated that she did hear the breaking of the windows on the tram, Ex. P103, Witness Statement of Sabina Šabanić, 16 November 1995, para. 4. In response to questioning from the Defence about the inconsistency between her statements, the witness confirmed that she corrected the mistake in her first statement and said she did not hear the window break on the tram, Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1459-1460; Sabina Šabanić, T. 702-703.

<sup>1417</sup> Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1448, 1467-1470; Ex. P103, Witness Statement of Sabina Šabanić, 16 November 1995, paras 4-6; Exs P101, P105, Photographs Marked by Sabina Šabanić.

<sup>1418</sup> Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1450; Ex. P103, Witness Statement of Sabina Šabanić, 16 November 1995, para. 5.

<sup>1419</sup> Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1450.

<sup>1420</sup> Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1458; Ex. P103, Witness Statement of Sabina Šabanić, 16 November 1995, para. 7.

<sup>1421</sup> Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1448, 1450.

<sup>1422</sup> Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1453-1454; Sabina Šabanić, T. 684-685, 705 where she corrected her testimony in relation to the number of skyscrapers. See Sabina Šabanić, T. 693-696, stating that it was "common knowledge" that they were snipers positions in those buildings; Sabina Šabanić, T. 699-700. See also Ex. P103, Witness Statement of Sabina Šabanić, 16 November 1995, para. 10; Ex. P104, Witness Statement of Sabina Šabanić, 22 May 2006, para. 6.

<sup>1423</sup> Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1455-1456; Ex. P103, Witness Statement of Sabina Šabanić, 16 November 1995, para. 10.

<sup>1424</sup> Ex. P1946, Report on Scheduled Incident B8, 24 November 1994, p. 1.

<sup>1425</sup> Afeza Karačić, T. 3387-3388, 3397; Sarajevo Adjudicated Facts III, 49.

was hit by sniper fire.<sup>1426</sup> The bullet entered her right shoulder and exited just above her right elbow.<sup>1427</sup> As Karačić and all other passengers exited the tram, she stepped over a dead body.<sup>1428</sup>

485. Šabanić and Karačić were taken by the UNPROFOR soldiers to the Koševo Hospital Trauma Clinic for surgery.<sup>1429</sup> While in hospital, Šabanić met another injured woman who told her that she and her husband were in the same tram and that her husband had been killed.<sup>1430</sup> Šabanić stayed in hospital for four days and her arm was immobilised for a period of ten days since the bullet had passed straight through her right shoulder without hitting the bone.<sup>1431</sup>

486. Karačić immediately underwent surgery and spent three to four days in intensive care.<sup>1432</sup> She underwent another surgery three months later,<sup>1433</sup> and as a result of her injuries was declared 80 per cent disabled.<sup>1434</sup>

487. Palo, the tram driver, stated that although he was not sure where the shots were fired from,<sup>1435</sup> he believed that the origin of the fire was from the left of the tram, coming from one of the skyscrapers in Grbavica, which were approximately 200-300 metres from where the tram was hit.<sup>1436</sup> The Trial Chamber also took judicial notice of the fact that the origin of the fire was either the high-rise buildings on Lenjinova Street or the Metalka building, both of which were held by the VRS.<sup>1437</sup>

#### (iv) Investigation

488. The investigation of this incident was carried out by the Sarajevo High Court Investigating Judge Izet Baždarević and a team of six experts, including ballistic and forensic officers.<sup>1438</sup> Upon arriving at the scene, the investigating team observed that the tram was no longer there and had

<sup>1426</sup> Afeza Karačić, T. 3389-3390.

<sup>1427</sup> *Ibid.*

<sup>1428</sup> Afeza Karačić, T. 3389.

<sup>1429</sup> Afeza Karačić, T. 3389, 3394-3395; Ex. P103, Witness Statement of Sabina Šabanić, 16 November 1995, para. 6; Ex. P1946, Report on Scheduled Incident B8, 24 November 1994, p. 1.

<sup>1430</sup> Sabina Šabanić, T. 703-704; Ex. P102, Transcript of Sabina Šabanić from *Prosecutor v. D. Milošević*, T. 1484.

<sup>1431</sup> Ex. P103, Witness Statement of Sabina Šabanić, 16 November 1995, para. 7. *See also* Sarajevo Adjudicated Facts III, 55.

<sup>1432</sup> Afeza Karačić, T. 3395; Ex. P548, Medical Record of Afeza Karačić, 25 November 1994.

<sup>1433</sup> Afeza Karačić, T. 3396; Ex. P549, Medical Record of Afeza Karačić, 6 March 1995.

<sup>1434</sup> Ex. D48, Witness Statement of Afeza Karačić, 20 May 2006, para. 2. *See also* Ex. D49, Witness Statement of Afeza Karačić, 15 November 1995, p. 2; Ex. P548, Medical Record of Afeza Karačić, 25 November 1994. Karačić's radial nerve was cut off, and she initially could not move her arm at all. However, she has recently been able to regain some form of mobility of her arm, Afeza Karačić, T. 3396.

<sup>1435</sup> Ex. P2340, Transcript of Huso Palo from *Prosecutor v. D. Milošević*, 6 February 2007, T. 1539, 1547.

<sup>1436</sup> Ex. P2337, Statement of Huso Palo, 24 November 1994, p. 1; Ex. P2338, Statement of Huso Palo, 24 February 1996, p. 2; Ex. P2340, Transcript of Huso Palo from *Prosecutor v. D. Milošević*, 6 February 2007, T. 1535, 1539, 1547.

<sup>1437</sup> Sarajevo Adjudicated Facts III, 53-54.

<sup>1438</sup> Ex. P1946, Report on Scheduled Incident B8, 24 November 1994, p. 1.

been driven to the tram depot.<sup>1439</sup> Thus the tram was not inspected on the spot, but rather at the tram depot.<sup>1440</sup>

489. The report states that the tram was hit by one shot coming from the direction of Grbavica.<sup>1441</sup> Mirza Sabljica – a ballistics expert from the CSB in Sarajevo who participated in the investigation of the sniping incident – pointed out that although it was not possible to ascertain the exact place from which the bullet was fired, the investigation team was able to establish that the bullet had been fired from the area of Grbavica.<sup>1442</sup> He stated that looking in the direction in which the tram was travelling; the bullet came in from the left.<sup>1443</sup> Witness MP-432 also stated that the bullet entered the tram through an open window on the left hand side of the tram.<sup>1444</sup> The investigating team was unable to establish the angle at which the bullet entered the tram due to the lack of entry damage on the outer wall of the tram.<sup>1445</sup>

490. According to Sabljica, the bullet fragmented as it hit the upper right hand side corner of an inner window frame of the tram, thereby leaving two bullet traces at about 157 cm from the floor and at 7 cm distance from each other and wounding persons on board.<sup>1446</sup> According to witness MP-432 who was part of the investigation team, it was very likely that the bullet first hit the persons before leaving traces on the body of the tram.<sup>1447</sup> He explained that fragmenting bullets may fragment at a given moment on their own, without the need for a direct impact.<sup>1448</sup> He added that although in this case, the investigating team did not find evidence that the bullet used was a fragmenting one it considered it very likely that it was.<sup>1449</sup>

491. Patrick van der Weijden, a military sniper expert witness, concluded in his report that the gun-fire originated from the Metalka building to the south of the Miljacka River.<sup>1450</sup> Further, van der Weijden believed that the weapon used would most likely have been a machine-gun mounted on

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<sup>1439</sup> *Ibid.*

<sup>1440</sup> Ex. P1946, Report on Scheduled Incident B8, 24 November 1994, p. 1; MP-432, T. 5325.

<sup>1441</sup> Ex. P1946, Report on Scheduled Incident B8, 24 November 1994, p. 1; MP-432, T. 5288. *See also* Sarajevo Adjudicated Fact III, 52-53.

<sup>1442</sup> Mirza Sabljica, T. 4602-4603; Ex. P1946, Report on Scheduled Incident B8, 24 November 1994, p. 1

<sup>1443</sup> Mirza Sabljica, T. 4602.

<sup>1444</sup> MP-432, T. 5330.

<sup>1445</sup> Mirza Sabljica, T. 4627, 4629. *See also* Ex. P1946, Report on Scheduled Incident B8, 24 November 1994, p. 1.

<sup>1446</sup> Mirza Sabljica, T. 4602; MP-432, T. 5295; Mirza Sabljica, T. 4601; Ex. P1946, Report on Scheduled Incident B8, 24 November 1994, p. 1; Mirza Sabljica, T. 4628.

<sup>1447</sup> MP-432, T. 5296.

<sup>1448</sup> MP-432, T. 5297.

<sup>1449</sup> *Ibid.*

<sup>1450</sup> Ex. P493, Report of Patrick van der Weijden, 2 February 2009, p. 25; Mirza Sabljica, T. 4596, 4610.

a bipod or tripod.<sup>1451</sup> According to the expert witness, a machine gun would have a better effect against a moving target, like a tram, in comparison to a sniper rifle.<sup>1452</sup>

(v) Findings

492. The Trial Chamber finds beyond a reasonable doubt that on 23 November 1994 at around 16:00 hours, Afeza Karačić and Sabina Šabanić were each deliberately wounded on the right shoulder when the tram they were travelling on came under fire on Zmaja od Bosne Street, between the Technical School and Marshal Tito Barracks. The Trial Chamber also finds that Afeza Karačić and Sabina Šabanić were civilians not taking part in hostilities. The sniping fire came from the direction of the Metalka building to the south of the Miljacka River, which was under the control of VRS forces. The shot was fired by a member of the VRS.<sup>1453</sup>

(i) 10 December 1994 (Incident B9)

(i) Indictment

**10 December 1994:** Derviša Selmanović, a woman aged 49 years, was shot and wounded in the right knee while she was gathering firewood in the backyard of a house in Sedrenik Street, in the north east of Sarajevo.<sup>1454</sup>

(ii) Location of the Sniping Incident

493. Sedrenik Street is located in a residential area in the north-east of Stari Grad municipality in Sarajevo.<sup>1455</sup> It is overlooked by the Špicasta Stijena hill,<sup>1456</sup> which at the relevant time was occupied by the VRS.<sup>1457</sup> Špicasta Stijena was a notorious sniper position of the VRS.<sup>1458</sup> The ABiH had trenches facing Špicasta Stijena in particular and the Barice neighbourhood towards the north in general.<sup>1459</sup>

<sup>1451</sup> Ex. P493, Report of Patrick van der Weijden, 2 February 2009, p. 25.

<sup>1452</sup> *Ibid.*

<sup>1453</sup> Sarajevo Adjudicated Facts III, 56.

<sup>1454</sup> Indictment, Scheduled Incident B9.

<sup>1455</sup> Ex. P1939, Report on Scheduled Incident B9, 14 December 1994, 14 December 1994.

<sup>1456</sup> Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, 14 March 2007, T. 3684; Ex. P1937, Witness Statement of Nedžib Dozo, 22 November 1995, para. 7.

<sup>1457</sup> Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, 14 March 2007, T. 3684-3685. *See* Sarajevo Adjudicated Facts III, 57.

<sup>1458</sup> Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, para. 6; Sarajevo Adjudicated Facts III, 57.

<sup>1459</sup> Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, 14 March 2007, T. 3689.

(iii) Incident

494. During the conflict, sniping from Špicasta Stijena occurred practically on a daily basis for a prolonged period of time.<sup>1460</sup> In order to enable the inhabitants of Sedrenik to move about freely despite the constant sniping, members of the civilian protection hung out blankets and the like to prevent the snipers from Špicasta Stijena from seeing through.<sup>1461</sup>

495. Although Derviša Selmanović, a 49-year old resident of Sarajevo, was employed as a cook assistant in the ABiH,<sup>1462</sup> she always dressed in civilian clothes and walked to and from her place of work, which was located near the Koševo Hospital.<sup>1463</sup> Selmanović had gone to a friend's house in the Sedrenik neighborhood, where she had once lived.<sup>1464</sup> There were no military facilities or activities in the vicinity and no fighting was going on between the warring parties.<sup>1465</sup> Some houses were exposed to Špicasta Stijena and were under constant fire from the snipers.<sup>1466</sup>

496. On the morning of 10 December 1994, a partly overcast day with little fog and little sun,<sup>1467</sup> there was sniper activity in the Sedrenik area. Around 11:00 hours, when it stopped, Selmanović went out into the yard of her friend's house with the intention of collecting some firewood to take home.<sup>1468</sup> As she got to the firewood, she suddenly felt a sharp pain in her right knee and a burning sensation going down her leg.<sup>1469</sup> Although Selmanović did not immediately realise that she had been hit by a sniper bullet, she instinctively sought shelter behind the house while "another 20 to 30

<sup>1460</sup> Ex. P112, Transcript of Derviša Selmanović from *Prosecutor v. D. Milošević*, T. 1596; Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, 14 March 2007, T. 3695.

<sup>1461</sup> Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, 14 March 2007, T. 3695.

<sup>1462</sup> Ex. P111, Witness Statement of Derviša Selmanović, 20 April 2006, paras 5-6; Ex. P1939, Report on Scheduled Incident B9, 14 December 1994.

<sup>1463</sup> Derviša Selmanović, T. 718, 737. She also stated that although she was given some form of a uniform as a cook assistant, she never wore it and was advised by the ABiH officials not to wear a uniform traveling to and from work, Ex. P111, Witness Statement of Derviša Selmanović, 20 April 2006, paras 7-8. *See also* Sarajevo Adjudicated Facts III, 62.

<sup>1464</sup> Ex. P1940, Official Note, 12 March 1995, p. 1; Ex. P112, Transcript of Derviša Selmanović from *Prosecutor v. D. Milošević*, T. 1589, 1601.

<sup>1465</sup> Ex. P112, Transcript of Derviša Selmanović from *Prosecutor v. D. Milošević*, T. 1586; Ex. P111, Witness Statement of Derviša Selmanović, 20 April 2006, para. 12; Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, para. 7.

<sup>1466</sup> Ex. P112, Transcript of Derviša Selmanović from *Prosecutor v. D. Milošević*, T. 1594; Ex. P1940, Official Note, 12 March 1995, p. 1. Because of the sniping, the inhabitants were forced to enter their houses through abnormal means such as through the window or by a ladder, Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, para. 6.

<sup>1467</sup> Ex. P112, Transcript of Derviša Selmanović from *Prosecutor v. D. Milošević*, T. 1586, 1607; Ex. P111, Witness Statement of Derviša Selmanović, 20 April 2006, para. 10.

<sup>1468</sup> Ex. P1940, Official Note, 12 March 1995, p. 1; Ex. P111, Witness Statement of Derviša Selmanović, 20 April 2006, para. 10.

<sup>1469</sup> Ex. P111, Witness Statement of Derviša Selmanović, 20 April 2006, para. 10; Sarajevo Adjudicated Facts III, 58, 60. *See also* Ex. P1939, Report on Scheduled Incident B9, 14 December 1994.



bullets” were fired at the house.<sup>1470</sup> The Trial Chamber took judicial notice of the fact that the bullet was fired by a member of the VRS from the VRS-controlled area of Špicasta Stijena.<sup>1471</sup>

497. A neighbour, Ibro Bundo, helped her get to his house, where he tried to stop the bleeding from her wound by tying a piece of cord around her leg.<sup>1472</sup> According to Selmanović, the ambulance that was called was unable to arrive at the scene of the incident due to the constant sniper fire from Špicasta Stijena.<sup>1473</sup> An UNPROFOR patrol, which was nearby, helped transport her to the intersection between Sedrenik Street and R. Gorušanića Street, where an ambulance was waiting.<sup>1474</sup> She was then taken to the Koševo Hospital, where she received treatment for her wound and was sent home the same day.<sup>1475</sup> It was established that a bullet had struck her knee from the inside and exited on the outside of her leg.<sup>1476</sup>

(iv) Investigation

498. On 10 December 1994, at around 12:00 hours, the Stari Grad Police Station was notified of a person being wounded as a result of a gunshot fired from Špicasta Stijena.<sup>1477</sup> An investigation team, made up of the duty officer at the police station of Stari Grad, a technician and a ballistics expert, was sent to the scene.<sup>1478</sup> However, due to constant gunshot fire from Špicasta Stijena, the on-site investigation was not very detailed.<sup>1479</sup> A neighbour provided the name of the victim and pointed out where she was wounded.<sup>1480</sup> Derviša Selmanović had already been taken to hospital.<sup>1481</sup>

499. Subsequently, the investigation team spoke with the victim’s doctor at the hospital.<sup>1482</sup> The information received that Selmanović had been hit on her left leg is reflected in the on-site

<sup>1470</sup> Ex. P1940, Official Note, 12 March 1995.

<sup>1471</sup> Sarajevo Adjudicated Facts III, 59, 61.

<sup>1472</sup> Ex. P111, Witness Statement of Derviša Selmanović, 20 April 2006, para. 10; Ex. P1940, Official Note, 12 March 1995, p. 1.

<sup>1473</sup> Ex. P1940, Official Note, 12 March 1995, p. 1; Ex. P111, Witness Statement of Derviša Selmanović, 20 April 2006, para. 10.

<sup>1474</sup> Ex. P111, Witness Statement of Derviša Selmanović, 20 April 2006, para. 10; Ex. P1940, Official Note, 12 March 1995, p. 1. *See also* Ex. P112, Transcript of Derviša Selmanović from *Prosecutor v. D. Milošević*, T. 1604.

<sup>1475</sup> Ex. P111, Witness Statement of Derviša Selmanović, 20 April 2006, para. 10; Ex. P1940, Official Note, 12 March 1995, p. 1.

<sup>1476</sup> Ex. P110, Witness Statement of Derviša Selmanović, 27 February 1996, para. 3. *See* Ex. P112, Transcript of Derviša Selmanović from *Prosecutor v. D. Milošević*, T. 1590.

<sup>1477</sup> Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, para. 3; Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, T. 3683-3684.

<sup>1478</sup> Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, T. 3685.

<sup>1479</sup> Ex. P1939, Report on Scheduled Incident B9, 14 December 1994. *See* Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, T. 3684; Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, para. 4.

<sup>1480</sup> Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, T. 3686; Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, para. 4.

<sup>1481</sup> Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, T. 3686.

<sup>1482</sup> Ex. P1937, Witness Statement of Nedžib Đozo, 22 November 1995, para. 4.

investigation report.<sup>1483</sup> About three months later, when the victim was able to be interviewed by the Stari Grad police, it was established that she was actually wounded on her right leg.<sup>1484</sup> In a video-recording made by the Prosecution in June 2006, Selmanović stated that the shooting came from her right side and that she was hit on the outside of her right leg.<sup>1485</sup> However, testifying in another case before the Tribunal in February 2007, she corrected that statement by admitting that she had been confused during the 2006 video-recording when pointing to her right to show the direction from which the sniping fire came.<sup>1486</sup> She confirmed that the shooting actually came from her left side and that she was hit on the inner side of her right leg.<sup>1487</sup>

500. Patrick van der Weijden, an expert witness in this case, stated that the impact site was about 900 to 1100 metres away from the likely source of the gunfire.<sup>1488</sup> According to van der Weijden, the VRS was in possession of weapons capable of firing from this distance.<sup>1489</sup>

501. Van der Weijden believed that from the assumed firing position, the sniper would have been able to observe movement at the impact site with his naked eye. However, for targeting, magnification would probably have been necessary.<sup>1490</sup> He was of the opinion that the sniper used a machine-gun, likely fitted with a tripod for better accuracy, coupled with the aid of a lens.<sup>1491</sup> Further, he believed that even if the sniper could not identify the target as being a civilian from the colour of the clothing, he still could have identified Selmanović by the way she was moving and the activity she was carrying out.<sup>1492</sup>

502. According to Nedžib Đozo, a Sarajevo police officer who investigated the sniping incident, it was “impossible” that the shooting came from the soldiers of the ABiH<sup>1493</sup> because from their trenches there was no line of sight to where Selmanović was injured.<sup>1494</sup> Moreover, Đozo testified

<sup>1483</sup> Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, T. 3691. The duty officer at the Stari Grad police station on 10 December 1994, pointed out that when information – such as where a victim was wounded – was obtained it would be entered into the log-book, which was kept by the shift commander of the Stari Grad police station. If that information later turned out to be incorrect, the log-book would not be corrected, Nedžib Đozo, T. 4552-4554.

<sup>1484</sup> Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, 14 March 2007, T. 3691; Nedžib Đozo, T. 4522-4524.

<sup>1485</sup> Ex. P114, Video Clip.

<sup>1486</sup> Ex. P112, Transcript of Derviša Selmanović from *Prosecutor v. D. Milošević*, T. 1590-1593, 1606; Derviša Selmanović, T. 733-736.

<sup>1487</sup> *Ibid.*

<sup>1488</sup> Ex. P493, Report of Patrick van der Weijden, 2 February 2009, p. 45. However, this was an estimated guess on the map because the conditions were too cloudy for a proper measurement. From the location van der Weijden visited later, which could not have been more than 100 metres away from the incident site, the distance was 1,100 metres, Patrick van der Weijden, T. 3030.

<sup>1489</sup> Patrick van der Weijden, T. 3030; Ex. P493, Report of Patrick van der Weijden, 2 February 2009, p. 58.

<sup>1490</sup> Patrick van der Weijden, T. 3030.

<sup>1491</sup> *Ibid.*

<sup>1492</sup> Patrick van der Weijden, T. 3043.

<sup>1493</sup> Ex. P1936, Transcript of Nedžib Đozo from *Prosecutor v. D. Milošević*, 14 March 2007, T. 3690.

<sup>1494</sup> *Ibid.*

that the ABiH unit was made up of locals who would not be shooting at their relatives and neighbours.<sup>1495</sup>

(v) Findings

503. The Trial Chamber finds beyond a reasonable doubt that on 10 December 1994 at around 11:00 hours, Derviša Selmanović was deliberately injured by a sniper bullet on the inner side of her right leg. In spite of her occupation as a cook assistant in the ABiH, the Trial Chamber is also satisfied that the victim was a civilian not taking part in hostilities at the time the sniping occurred. The Trial Chamber is further satisfied that the sniper shot originated from the Špicasta Stijena hill, which was a notorious sniper position of the VRS.

(j) 27 February 1995 (Incident B10)

(i) Indictment

**27 February 1995:** Senad Kešmer, a man aged 31 years, Alma Čehagić, a woman aged 19 years, Alija Holjan, a man aged 55 years, and others, were shot and wounded while traveling in a westbound tram on Zmaj od Bosne. The tram was near the Tito barracks at the time.<sup>1496</sup>

(ii) Incident

504. Witness MP-229, a tram driver, stated that on 27 February 1995, there was a cease-fire in place between the VRS and the ABiH.<sup>1497</sup> It was a day with good visibility and fine weather.<sup>1498</sup>

505. At around 12:30 hours on that day, MP-229 was driving a tram from the centre of Sarajevo to the depot, moving westwards.<sup>1499</sup> Alma Mulaosmanović-Čehajić (also known as Alma Čehajić), Alija Holjan and Senad Kešmer were among the passengers of the tram.<sup>1500</sup> The tram was crowded, all the seats were taken and some passengers were standing.<sup>1501</sup> The passengers of the tram were civilian men, women and children<sup>1502</sup> and one soldier, who was standing next to MP-229.<sup>1503</sup>

<sup>1495</sup> *Ibid.*

<sup>1496</sup> Indictment, Scheduled Incident B10; Sarajevo Adjudicated Facts III, 64, 66.

<sup>1497</sup> Ex. P22 (under seal), para. 5; Ex. P30, Transcript of MP-229 from *Prosecutor v. D. Milošević*, T. 1624.

<sup>1498</sup> Ex. P24 (under seal), para. 4.

<sup>1499</sup> Ex. P22 (under seal), para. 3; Ex. P23 (under seal), para. 1; Ex. P29, Transcript of MP-229 from *Prosecutor v. D. Milošević*, T. 1616; Ex. P30, Transcript of MP-229 from *Prosecutor v. D. Milošević*, T. 1629.

<sup>1500</sup> Ex. P13, Witness Statement of Alma Mulaosmanović-Čehajić, 22 February 1996, para. 2; Ex. P2312, Witness Statement of Alija Holjan, 22 February 1996, p. 2; Ex. P2313, Witness Statement of Alija Holjan, 25 April 2006, paras 9-10; Ex. P59, Witness Statement of Senad Kešmer, 22 February 1996, p. 2. During her oral testimony, the witness stated that in the Indictment, her maiden name is mistakenly spelt as Čehagić, while in fact her maiden name is Čehajić, Alma Mulaosmanović-Čehajić, T. 587.

<sup>1501</sup> Ex. P24 (under seal), para. 6; Ex. P30, Transcript of MP-229 from *Prosecutor v. D. Milošević*, T. 1624.

<sup>1502</sup> Ex. P13, Witness Statement of Alma Mulaosmanović-Čehajić, 22 February 1996, para. 2. *See also* Ex. P15, Transcript of Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*, T. 1656-1657.

<sup>1503</sup> Ex. P24 (under seal), para. 6; Ex. P30, Transcript of MP-229 from *Prosecutor v. D. Milošević*, T. 1623.

506. Shortly after the tram left the stop close to the Marshal Tito barracks, it came under fire. As the passengers heard the shots and the sound of broken glass, they ducked for cover.<sup>1504</sup> The first shots hit the rear of the tram, and as the tram kept on moving, the bullets started to hit its front part.<sup>1505</sup> MP-229 noticed that one woman lying on the floor was bleeding from her leg.<sup>1506</sup>

507. Mulaosmanović-Čehajić, who was standing near the third tram door and was facing the direction of the Marshal Tito barracks, explained that due to overcrowding, not all the passengers could take cover on the floor.<sup>1507</sup> As a result, some, including her, could only kneel down.<sup>1508</sup> The witness sustained a bullet wound to her arm below her left elbow. The wound was an entry and exit wound showing that the bullet came from her back and exited towards her front.<sup>1509</sup>

508. Senad Kešmer, who was standing in the front part of the tram with his back to the south, upon hearing the shots turned his body sideways, in order to achieve minimal exposure of his body surface to fire.<sup>1510</sup> Nevertheless, Kešmer was hit by a piece of metal that entered the left side of his head. He could not, however, determine whether it was a bullet or a metal part of the tram.<sup>1511</sup> Kešmer noticed an elderly woman near him who was wounded in the stomach.<sup>1512</sup> A girl was wounded on the arm, and Kešmer believed she was taken to hospital.<sup>1513</sup>

509. Alija Holjan, who was sitting on the right hand side in the middle of the tram, was hit on his right shoulder at the level of the shoulder blade.<sup>1514</sup> He also saw an elderly woman, who was sitting

<sup>1504</sup> Ex. P29, Transcript of MP-229 from *Prosecutor v. D. Milošević*, T. 1616; Ex. P30, Transcript of MP-229 from *Prosecutor v. D. Milošević*, T. 1620-1625; Alma Mulaosmanović-Čehajić, T. 599-600; Ex. P24 (under seal), para. 4; Ex. D1, Map Marked by Alma Mulaosmanović-Čehajić; Ex. P14, Witness Statement of Alma Mulaosmanović-Čehajić, 20 March 2006, para. 9; Ex. P15, Transcript of Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*, T. 1658, 1662; Ex. P20, Statement of Alma Mulaosmanović-Čehajić to Sarajevo Security Service Centre, 14 April 1995.

<sup>1505</sup> Ex. P59, Witness Statement of Senad Kešmer, 22 February 1996, para. 2; Ex. P60, Report of Sniping Incident B10, 27 February 1995, pp 3, 7.

<sup>1506</sup> Ex. P22 (under seal), para. 3. *See also* Ex. P30, Transcript of MP-229 from *Prosecutor v. D. Milošević*, T. 1626.

<sup>1507</sup> Ex. P14, Witness Statement of Alma Mulaosmanović-Čehajić, 20 March 2006, para. 9; Ex. P13, Witness Statement of Alma Mulaosmanović-Čehajić, 22 February 1996, para. 2; Alma Mulaosmanović-Čehajić, T. 600, 604; Ex. P15, Transcript of Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*, T. 1652, 1658; Ex. P20, Statement of Alma Mulaosmanović-Čehajić to Sarajevo Security Service Centre, 14 April 1995.

<sup>1508</sup> Ex. P14, Witness Statement of Alma Mulaosmanović-Čehajić, 20 March 2006, para. 9; Ex. P13, Witness Statement of Alma Mulaosmanović-Čehajić, 22 February 1996, para. 2; Ex. P15, Transcript of Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*, T. 1658.

<sup>1509</sup> Alma Mulaosmanović-Čehajić, T. 600-601; Ex. P15, Transcript of Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*, T. 1654, 1656; Ex. P14, Witness Statement of Alma Mulaosmanović-Čehajić, 20 March 2006, para. 9.

<sup>1510</sup> Ex. P59, Witness Statement of Senad Kešmer, 22 February 1996, p. 2. *See also* Ex. P28, Annotated Map of Sarajevo.

<sup>1511</sup> Ex. P59, Witness Statement of Senad Kešmer, 22 February 1996, p. 2.

<sup>1512</sup> *Ibid.*

<sup>1513</sup> *Ibid.*

<sup>1514</sup> Ex. P2314, Witness Statement of Alija Holjan, 14 April 1995; Ex. P2312, Witness Statement of Alija Holjan, 22 February 1996, p. 2; Ex. P2313, Witness Statement of Alija Holjan, 25 April 2006, para. 10.

in front of him, who was wounded.<sup>1515</sup> The witness stated that he was aware of four other persons injured during the shooting and that a woman who had been wounded to her leg subsequently died at the hospital.<sup>1516</sup>

510. Without stopping, MP-229 drove the tram for another 50 metres. At a sheltered place close to the university's Faculty of Natural Sciences and Mathematics and the police station, MP-229 opened the doors to let the passengers disembark.<sup>1517</sup>

(iii) Aftermath of the Incident

511. After the incident, some wounded passengers, including Mulaosmanović-Čehajić and Holjan, were transported to the first aid station near the tram stop.<sup>1518</sup> From there, Mulaosmanović-Čehajić went home and on the following day, she underwent treatment at a hospital.<sup>1519</sup> From the first aid station, Holjan was discharged to recuperate at home.<sup>1520</sup> He still suffers from the consequences of his wound and was declared "20% invalid".<sup>1521</sup> Kešmer went to the hospital where he was told that his wound was not serious and was discharged.<sup>1522</sup> About three months later, he pulled a piece of metal from near his temple.<sup>1523</sup>

512. MP-229 gave evidence that she found 30 bullet holes and marks on the left hand side of the tram, just below and on the windows.<sup>1524</sup> According to MP-229, the shots were fired from the VRS-held territory of Grbavica. However, MP-229 conceded that the exact origin of the shots was difficult to determine.<sup>1525</sup>

<sup>1515</sup> Ex. P2312, Witness Statement of Alija Holjan, 22 February 1996, p. 2; Ex. P2314, Witness Statement of Alija Holjan, 14 April 1995.

<sup>1516</sup> Ex. P2313, Witness Statement of Alija Holjan, 25 April 2006, para. 11; Ex. P2312, Witness Statement of Alija Holjan, 22 February 1996, p. 2.

<sup>1517</sup> Ex. P14, Witness Statement of Alma Mulaosmanović-Čehajić, 20 March 2006, para. 9; Ex. P13, Witness Statement of Alma Mulaosmanović-Čehajić, 22 February 1996, para. 2; Ex. P15, Transcript of Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*, T. 1653; Ex. P2312, Witness Statement of Alija Holjan, 22 February 1996, p. 2. *See also* Ex. P24 (under seal), para. 5; Ex. P30, Transcript of MP-229 from *Prosecutor v. D. Milošević*, T. 1620, 1631, 1634; Ex. P22 (under seal), para. 3.

<sup>1518</sup> Ex. P13, Witness Statement of Alma Mulaosmanović-Čehajić, 22 February 1996, para. 2; Ex. P14, Witness Statement of Alma Mulaosmanović-Čehajić, 20 March 2006, para. 9; Ex. P15, Transcript of Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*, T. 1658; Ex. P2314, Witness Statement of Alija Holjan, 14 April 1995; Ex. P2312, Witness Statement of Alija Holjan, 22 February 1996, p. 2.

<sup>1519</sup> Ex. P14, Witness Statement of Alma Mulaosmanović-Čehajić, 20 March 2006, para. 9; Ex. P20, Statement of Alma Mulaosmanović-Čehajić to Sarajevo Security Service Centre, 14 April 1995.

<sup>1520</sup> Ex. P2314, Witness Statement of Alija Holjan, 14 April 1995.

<sup>1521</sup> Ex. P2313, Witness Statement of Alija Holjan, 25 April 2006, para. 16.

<sup>1522</sup> Ex. P59, Witness Statement of Senad Kešmer, 22 February 1996, p. 2.

<sup>1523</sup> *Ibid.*

<sup>1524</sup> Ex. P22 (under seal), para. 4; Ex. P24 (under seal), para. 5; Ex. P30, Transcript of MP-229 from *Prosecutor v. D. Milošević*, T. 1626.

<sup>1525</sup> Ex. P22 (under seal), para. 3; Ex. P23 (under seal), para. 2; Ex. P24 (under seal), para. 5; Ex. P25, Annotated map of Sarajevo, 6 February 2007; Ex. P30, Transcript of MP-229 from *Prosecutor v. D. Milošević*, T. 1620, 1635; Ex. D2, Map Marked by MP-229.

513. The eye-witnesses and victims of this incident stated that the shots were fired from the direction of the skyscrapers in Grbavica<sup>1526</sup>

514. MP-229 testified that the only military facilities in the area were the Marshal Tito barracks.<sup>1527</sup> According to her, it was impossible that somebody could have been shooting at the barracks and hit the tram instead.<sup>1528</sup> Mulaosmanović-Čehajić stated that she did not remember seeing any ABiH soldiers or installations in the surrounding area on that day,<sup>1529</sup> nor was she aware of any combat activity.<sup>1530</sup>

(iv) Investigation

515. Mirza Sabljica, who worked as a ballistics expert with the Sarajevo CSB, testified that shortly after the incident had taken place, he participated in an on-site investigation. From witness statements, his team was able to establish that the tram was hit as it began to move westbound from the tram station in front of the Marshal Tito barracks in the direction of Novi Grad.<sup>1531</sup> Five persons, including Mulaosmanović-Čehajić, Holjan and Kešmer were wounded in the incident.<sup>1532</sup> Sabljica testified that his team found eight bullet marks on the tram.<sup>1533</sup> Five of the bullets were found in the front section of the tram, and the other three in the middle section.<sup>1534</sup> In conjunction with the ballistic examination, Sabljica's team determined that the fire originated from the fourth high-rise building on Lenjinova Street in Grbavica.<sup>1535</sup>

<sup>1526</sup> Ex. P59, Witness Statement of Senad Kešmer, 22 February 1996, p. 2. *See also* Ex. P2312, Witness Statement of Alija Holjan, 22 February 1996, p. 2; Ex. P2313, Witness Statement of Alija Holjan, 25 April 2006, para. 10; Alma Mulaosmanović-Čehajić, T. 600-601; Ex. D1, Map Marked by Alma Mulaosmanović-Čehajić, mark G; Ex. P15, Transcript of Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*, T. 1653-1655; Ex. P16, Map Marked by Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*; Ex. P17, Photo Marked by Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*; Ex. P13, Witness Statement of Alma Mulaosmanović-Čehajić, 22 February 1996, para. 3; Ex. P14, Witness Statement of Alma Mulaosmanović-Čehajić, 20 March 2006, para. 8.

<sup>1527</sup> Ex. P2313, Witness Statement of Alija Holjan, 25 April 2006, para. 13.

<sup>1528</sup> Ex. P24 (under seal), para. 7.

<sup>1529</sup> Ex. P15, Transcript of Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*, T. 1656.

<sup>1530</sup> Ex. P15, Transcript of Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*, T. 1656. *But see* Ex. P19, Report from the HQ ABiH Command to UNPROFOR Zagreb, 27 February 1995, p. 2. *See also* Ex. P19, pp 9, 23, which estimates the origin of fire to be the area of the Vrbanja bridge, where there was fire-fighting between two warring factions. As regards the location of the Vrbanja bridge, *see* Ex. D1, Map Marked by Alma Mulaosmanović-Čehajić, mark X; Ex. P18, Photo Marked by Alma Mulaosmanović-Čehajić in *Prosecutor v. D. Milošević*, blue mark X; Ex. P15, Transcript of Alma Mulaosmanović-Čehajić from *Prosecutor v. D. Milošević*, T. 1677.

<sup>1531</sup> Mirza Sabljica, T. 4604-4605; Ex. P1949, Report on Scheduled Incident B10, 27 February 1995, p. 5.

<sup>1532</sup> Ex. P1949, Report on Scheduled Incident B10, 27 February 1995, p. 3.

<sup>1533</sup> Mirza Sabljica, T. 4607.

<sup>1534</sup> Ex. P1949, Report on Scheduled Incident B10, 27 February 1995, p. 4. The Trial Chamber notes that MP-229 gave evidence about finding "30 bullet holes". The Trial Chamber is satisfied that the evidence shows that the tram had several bullet holes, though it cannot make any determination as to the exact number, *see supra* para. 512.

<sup>1535</sup> Mirza Sabljica, T. 4606-4607, 4609; Ex. P1949, Report on Scheduled Incident B10, 27 February 1995, pp 4-6.

516. In approximately March 1996, when the conflict had ended and the siege was lifted, Sabljica visited each of the four high-rise buildings in Grbavica on Lenjinova Street, pursuant to orders of an investigating judge and the chief of the crime prevention police.<sup>1536</sup> On the higher floors of the buildings in question, Sabljica found that five or six identical apartments had been redesigned to serve as sniper nests.<sup>1537</sup> The outer wall facing the Miljacka River in each of these apartments had small conical openings, in order to provide the sniper with a good view of the target, combined with the safety of the apartment.<sup>1538</sup> Sabljica established that these conical openings provided a view of the complete stretch of the tram tracks from the Holiday Inn to the Faculty of Natural Sciences and Mathematics.<sup>1539</sup>

(v) Findings

517. The Trial Chamber finds beyond a reasonable doubt that the tram, driven on 27 February 1995 by MP-229, was deliberately hit by sniper fire near the Marshal Tito barracks. As a result, Mulaosmanović-Čehajić and Alija Holjan sustained serious wounds, while Senad Kešmer was lightly wounded. The Trial Chamber is also satisfied that the only reasonable inference to be drawn from the evidence is that the victims were civilians not taking part in hostilities. The Trial Chamber also reached the only reasonable conclusion that the shots were fired from one of the high-rise buildings located on Lenjinova Street in Grbavica, which was under the control of the VRS at the relevant time.

(k) 3 March 1995 (Incident B11)

(i) Indictment

**3 March 1995:** Azem Agović, a man aged 46 and Alen Gičević, a man aged 33 years, were shot and wounded while traveling in an eastbound tram on Zmaj od Bosne. The tram was near the Holiday Inn at the time.<sup>1540</sup>

(ii) Incident

518. On 3 March 1995, it was the Muslim holiday of Bajram.<sup>1541</sup> It was a bright and sunny day.<sup>1542</sup> The trams in Sarajevo were allowed to run due to a cease-fire reached between the ABiH

<sup>1536</sup> Mirza Sabljica, T. 4609-4610.

<sup>1537</sup> Mirza Sabljica, T. 4611.

<sup>1538</sup> Mirza Sabljica, T. 4611-4612.

<sup>1539</sup> Mirza Sabljica, T. 4612.

<sup>1540</sup> Indictment, Scheduled Incident B11.

<sup>1541</sup> Ex. P536, Witness Statement of Azem Agović, 21 November 1995, p. 2; Ex. P537, Witness Statement of Azem Agović, 21 April 2006, para. 8; Ex. P130, Witness Statement of Alen Gičević, 21 April 2006, para. 8.

<sup>1542</sup> Ex. P32, Witness Statement of Slavica Livnjak, 24/25 April 2006, paras 6, 8; Ex. P33, Transcript of Slavica Livnjak from *Prosecutor v. D. Milošević*, T. 863.

and the VRS.<sup>1543</sup> On that day, Slavica Livnjak was driving a tram from the depot eastwards towards Baščaršija.<sup>1544</sup> The tram was crowded and contained about 100 passengers.<sup>1545</sup> Alen Gičević, his girlfriend and Azem Agović were among the tram passengers.<sup>1546</sup> Gičević had been a member of the ABiH but was demobilised nine months before.<sup>1547</sup> Gičević was standing on the right-hand side of the tram, near the third door, facing the Faculty of Philosophy, the Jewish Cemetery and Vrača.<sup>1548</sup> Agović was sitting in the middle, facing the rear of the tram.<sup>1549</sup>

519. At about 12:15 hours while travelling on Zmaja od Bosne street, the tram approached the area next to the Holiday Inn, where the tracks make a double 'S'-shaped curve which forces trams to slow down.<sup>1550</sup> Livnjak estimated that at this point she was driving at the speed of approximately 20-25 kilometres an hour.<sup>1551</sup> At once, she saw that the tram ahead of hers was hit in the rear by sniper fire, and shortly afterwards, her own tram was hit as well on its right side, in an area between the third door and the middle joint of the tram.<sup>1552</sup>

520. Gičević testified that he heard two or three shots and the sound of breaking glass before he noticed that other passengers took cover on the floor of the tram, screaming in panic.<sup>1553</sup> He then felt severe pain in his right knee and noticed that he was bleeding.<sup>1554</sup> Gičević also saw that one

<sup>1543</sup> Slavica Livnjak, T. 644; Ex. P32, Witness Statement of Slavica Livnjak, 24/25 April 2006, paras 6, 8; Ex. P33, Transcript of Slavica Livnjak from *Prosecutor v. D. Milošević*, T. 863. See also Ex. P536, Witness Statement of Azem Agović, 21 November 1995, p. 2.

<sup>1544</sup> Slavica Livnjak, T. 644; Ex. P32, Witness Statement of Slavica Livnjak, 24/25 April 2006, para. 8; Alen Gičević, T. 797; Ex. P128, Transcript of Alen Gičević from *Prosecutor v. D. Milošević*, T. 1556; Ex. P129, Witness Statement of Alen Gičević, 15 November 1995, p. 2.

<sup>1545</sup> Ex. P31, Witness Statement of Slavica Livnjak, 20 November 1995, para. 3.

<sup>1546</sup> Azem Agović, T. 3322, 3324; Ex. P536, Witness Statement of Azem Agović, 21 November 1995, p. 2; Ex. P537, Witness Statement of Azem Agović, 21 April 2006, paras 8-9; Ex. P129, Witness Statement of Alen Gičević, 15 November 1995, p. 2; Ex. P130, Witness Statement of Alen Gičević, 21 April 2006, para. 9.

<sup>1547</sup> Ex. P128, Transcript of Alen Gičević from *Prosecutor v. D. Milošević*, T. 1571-1572.

<sup>1548</sup> Alen Gičević, T. 809; Ex. P128, Transcript of Alen Gičević from *Prosecutor v. D. Milošević*, T. 1556; Ex. P129, Witness Statement of Alen Gičević, 15 November 1995, p. 2; Ex. P131, Map Marked by Alen Gičević in *Prosecutor v. D. Milošević*; Ex. P132, Photograph marked by Alen Gičević in *Prosecutor v. D. Milošević*; Ex. P134, Photograph marked by Alen Gičević in *Prosecutor v. D. Milošević*.

<sup>1549</sup> Ex. P535, Transcript of Azem Agović from *Prosecutor v. D. Milošević*, T. 2052; Ex. P536, Witness Statement of Azem Agović, 21 November 1995, p. 2. See also Ex. P537, Witness Statement of Azem Agović, 21 April 2006, para. 9.

<sup>1550</sup> Ex. P32, Witness Statement of Slavica Livnjak, 24/25 April 2006, para. 7; Ex. P34, Photograph Marked by Slavica Livnjak in *Prosecutor v. D. Milošević*; Ex. P35, Photograph Marked by Slavica Livnjak in *Prosecutor v. D. Milošević*; Azem Agović, T. 3321-3322, 3325; Ex. P536, Witness Statement of Azem Agović, 21 November 1995, p. 2; Ex. P537, Witness Statement of Azem Agović, 21 April 2006, para. 9; Ex. P535, Transcript of Azem Agović from *Prosecutor v. D. Milošević*, T. 2052; Ex. D43, Aerial View of Sarajevo Marked by Azem Agović; Ex. P128, Transcript of Alen Gičević from *Prosecutor v. D. Milošević*, T. 1559; Sarajevo Adjudicated Facts III, 71. See also Ex. P130, Witness Statement of Alen Gičević, 21 April 2006, para. 9; Ex. P128, Transcript of Alen Gičević from *Prosecutor v. D. Milošević*, T. 1559.

<sup>1551</sup> Ex. P31, Witness Statement of Slavica Livnjak, 20 November 1995, para. 3.

<sup>1552</sup> Slavica Livnjak, T. 649; Ex. P33, Transcript of Slavica Livnjak from *Prosecutor v. D. Milošević*, T. 865.

<sup>1553</sup> Alen Gičević, T. 808-810; Ex. P128, Transcript of Alen Gičević from *Prosecutor v. D. Milošević*, T. 1573-1574, 1580; Ex. P129, Witness Statement of Alen Gičević, 15 November 1995, p. 2; Ex. P130, Witness Statement of Alen Gičević, 21 April 2006, para. 9.

<sup>1554</sup> Ex. P128, Transcript of Alen Gičević from *Prosecutor v. D. Milošević*, T. 1557; Ex. P130, Witness Statement of Alen Gičević, 21 April 2006, para. 9; Ex. P129, Witness Statement of Alen Gičević, 15 November 1995, p. 2.



man, who was sitting to his right, between the door and the middle joint of the tram, was bleeding and holding his arms crossed over his stomach.<sup>1555</sup>

521. Agović testified that after hearing the shots, he felt severe pain, as he realised that a bullet had entered his body above his left hip and exited at his right hip.<sup>1556</sup> He saw that a young man and a child had also been wounded.<sup>1557</sup> Slavica Livnjak heard that passengers were injured in the rear of the tram and later saw two injured passengers, a young and an old man.<sup>1558</sup>

522. The tram continued its ride and finally stopped when it reached a safer area at Marin Dvor, behind some containers next to the Executive Council Building and a tobacco factory.<sup>1559</sup>

(iii) Aftermath and Investigation

523. Agović, whose entire abdomen was open, was taken to the Koševo hospital, where he underwent a lengthy and complex surgery, following which he remained in intensive care for 16 days.<sup>1560</sup>

524. With the help of his girlfriend, Gičević walked for about 100 metres towards a taxi, which took him to the State Hospital, where he was treated.<sup>1561</sup> Two operations were necessary for the doctors to remove a bullet jacket from the bone above his knee.<sup>1562</sup> Gičević spent 15 days in the hospital before being discharged.<sup>1563</sup>

525. MP-229, a tram driver who arrived at the scene with her tram shortly after the incident,<sup>1564</sup> testified that after her arrival, shots were fired from the direction of Grbavica, which were returned by UNPROFOR.<sup>1565</sup> The exchange of fire went on for some fifteen minutes, in the course of which

<sup>1555</sup> Ex. P128, Transcript of Alen Gičević from *Prosecutor v. D. Milošević*, T. 1580; Ex. P129, Witness Statement of Alen Gičević, 15 November 1995, para. 9.

<sup>1556</sup> Ex. P535, Transcript of Azem Agović from *Prosecutor v. D. Milošević*, T. 2053-2054; Ex. P536, Witness Statement of Azem Agović, 21 November 1995, p. 2; Ex. P537, Witness Statement of Azem Agović, 21 April 2006, para. 9.

<sup>1557</sup> Ex. P536, Witness Statement of Azem Agović, 21 November 1995, p. 2; Ex. P537, Witness Statement of Azem Agović, 21 April 2006, para. 9.

<sup>1558</sup> Ex. P32, Witness Statement of Slavica Livnjak, 24/25 April 2006, para. 9.

<sup>1559</sup> Ex. P32, Witness Statement of Slavica Livnjak, 24/25 April 2006, para. 9; Ex. P536, Witness Statement of Azem Agović, 21 November 1995, p. 2; Ex. P537, Witness Statement of Azem Agović, 21 April 2006, para. 10; Azem Agović, T. 3318; Ex. P538, Azem Agović's Letter of Admission into the Medical Centre; Ex. P129, Witness Statement of Alen Gičević, 15 November 1995, p. 2; Ex. P130, Witness Statement of Alen Gičević, 21 April 2006, paras 8-9.

<sup>1560</sup> Azem Agović, T. 3319; Ex. P536, Witness Statement of Azem Agović, 21 November 1995, p. 2; Ex. P537, Witness Statement of Azem Agović, 21 April 2006, para. 10; Ex. P538, Azem Agović's Letter of Admission into the Medical Centre; Ex. P539, Medical Documentation of Azem Agović.

<sup>1561</sup> Ex. P129, Witness Statement of Alen Gičević, 15 November 1995, p. 2; Ex. P130, Witness Statement of Alen Gičević, 21 April 2006, p. 3.

<sup>1562</sup> Ex. P129, Witness Statement of Alen Gičević, 15 November 1995, p. 2.

<sup>1563</sup> Ex. P130, Witness Statement of Alen Gičević, 21 April 2006, para. 9.

<sup>1564</sup> Ex. P22 (under seal), para. 6.

<sup>1565</sup> Ex. P22 (under seal), para. 7; Ex. P25, Annotated Map of Sarajevo.

a French UNPROFOR soldier was wounded.<sup>1566</sup>

526. Gičević, Agović and Livnjak estimated that the shots came from the south, from either the Metalka building in Grbavica or from the Jewish Cemetery, located behind Grbavica.<sup>1567</sup>

527. The investigation conducted by the Sarajevo CSB also came to the conclusion that the shots were fired from the area of Grbavica.<sup>1568</sup> The investigation team found that “a single bullet” hit the tram, coming from the right side of the tram with a trajectory angle of 80 degrees in relation to the right side of the tram and 4 degrees in relation to the ground.<sup>1569</sup> The team also found that the bullet hit the back part of the tram, 84.5 centimetres from the centre of the tram and 153.5 centimetres from the ground.<sup>1570</sup> The internal damage to the tram was located at the back part of the tram, 6.5 centimetres from the centre of the tram.<sup>1571</sup>

528. In November 2006, expert witness Patrick van der Weijden visited the location.<sup>1572</sup> He concluded that the Metalka building in Grbavica was the most likely source of the gun-fire. Van der Weijden explained that the gun-fire could not have originated from the Jewish cemetery since the line of sight to the incident site was blocked by several high buildings.<sup>1573</sup>

529. Van der Weijden then visited the Metalka building and measured the distance from the building to the incident site which he found to be 312 metres.<sup>1574</sup> Using a stop watch, van der Weijden concluded that the time the tram would have been in view of the sniper was eight seconds.<sup>1575</sup>

530. Van der Weijden testified that in his view, the weapon used in this incident was probably a machine-gun and not a sniper rifle because there were several people injured in the incident and, although it would be possible for a sniper to fire several shots in rapid succession, it would be much

<sup>1566</sup> Ex. P22 (under seal), para. 7.

<sup>1567</sup> Azem Agović, T. 3321-3322, 3325; Ex. P535, Transcript of Azem Agović from *Prosecutor v. D. Milošević*, T. 2052; Ex. P537, Witness Statement of Azem Agović, 21 April 2006, para. 9; Ex. D43, Aerial View of Sarajevo Marked by Azem Agović; Ex. P32, Witness Statement of Slavica Livnjak, 24/25 April 2006, para. 9; Ex. P128, Transcript of Alen Gičević from *Prosecutor v. D. Milošević*, T. 1559; Ex. P130, Witness Statement of Alen Gičević, 21 April 2006, paras 8-9.

<sup>1568</sup> Ex. P71, Witness Statement of Zlatko Mededović, 5 September 2000, p. 3; Ex. P73, Report on Scheduled Incident B11, 3 March 1995, p. 1; Ex. P74, Official Report Authored by the Security Services Centre, 3 March 1995, Doc ID 0069-3743, p. 1.

<sup>1569</sup> Ex. P72, Report on Scheduled Incident B11, 10 March 1995, pp 2-3; Ex. P73, Report on Scheduled Incident B11, 3 March 1995, Doc ID 0061-5440.

<sup>1570</sup> Ex. P72, Report on Scheduled Incident B11, 10 March 1995. *See also* Ex. P73, Report on Scheduled Incident B11, 3 March 1995, Doc ID 0069-3743, p. 2.

<sup>1571</sup> Ex. P72, Report on Scheduled Incident B11, 10 March 1995, p. 2.

<sup>1572</sup> Patrick van der Weijden, T. 3018. *See also* Ex. P493, Report of Patrick van der Weijden, 2 February 2009, pp 31-34.

<sup>1573</sup> Patrick van der Weijden, T. 3023.

<sup>1574</sup> Patrick van der Weijden, T. 3020-3021; Ex. P493, Report of Patrick van der Weijden, 2 February 2009, p. 31.

<sup>1575</sup> Ex. P493, Report of Patrick van der Weijden, 2 February 2009, p. 33.

easier to do so with a machine-gun.<sup>1576</sup> Finally, Van der Weijden testified that he is not aware of trams being used for military purposes in Bosnia during the conflict.<sup>1577</sup>

531. Gičević and Agović both testified that at the time, there were no military institutions, military vehicles or any other military equipment present in the vicinity where the incident took place.<sup>1578</sup> The military facility closest to the incident site is the Marshal Tito barracks, approximately one kilometre away.<sup>1579</sup> The Trial Chamber took judicial notice of the fact that both Gičević and Agović were civilians and that visibility was sufficient for a shooter to identify the victims as civilians.<sup>1580</sup>

(iv) Findings

532. The Trial Chamber finds beyond a reasonable doubt that the tram, driven on 3 March 1995 by Slavica Livnjak, was deliberately hit by sniper fire in front of the Holiday Inn. The Trial Chamber also notes that the evidence shows that generally the trams were civilian vehicles not used for military purposes. The Trial Chamber is therefore satisfied that the only reasonable inference to be drawn from the evidence is that the victims were civilians not taking part in hostilities. The Trial Chamber also concludes that the shots were fired from the Metalka building in Grbavica, which was under the control of the VRS at the relevant time.

(l) 3 May 1995 (Incident B12)

(i) Indictment

**3 May 1995:** Šemša Čovrk, a woman aged 27 years, was shot and wounded in the abdomen while walking on Josipa Kraša Street in Novi Grad.<sup>1581</sup>

533. The Trial Chamber was informed by the Prosecution on 8 April 2010 that it withdrew this incident.<sup>1582</sup> Therefore the Trial Chamber will not make any finding in relation to this incident.

6. Conclusion

534. The Prosecution submits that “from May 1992 through November 1995, the SRK carried out a protracted campaign of artillery and mortar shelling and sniping on the civilian areas and

<sup>1576</sup> Patrick van der Weijden, T. 3022.

<sup>1577</sup> Patrick van der Weijden, T. 3024.

<sup>1578</sup> Ex. P130, Witness Statement of Alen Gičević, 21 April 2006, para. 11; Ex. P537, Witness Statement of Azem Agović, 21 April 2006, para. 12.

<sup>1579</sup> *Ibid.*

<sup>1580</sup> Sarajevo Adjudicated Facts III, 70, 74.

<sup>1581</sup> Indictment, Scheduled Incident B12.

<sup>1582</sup> Response to Defence Motion for Judicial Notice of Adjudicated Facts, 8 April 2010, para. 10(c).

population of Sarajevo” which includes the crimes alleged in the Indictment.<sup>1583</sup> It also submits that the campaign was: (i) widespread as it resulted in the killings of “thousands of lives and the wounding of thousands more”; and (ii) systematic as the SRK “purposefully planned and attacked civilians in an assault spanning over three years”.<sup>1584</sup>

535. Furthermore, the Prosecution submits that the campaign “was planned, instigated, ordered, committed and aided by”, *inter alia*, Stanislav Galić, Dragomir Milošević, Čedo Sladoje and Ratko Mladić.<sup>1585</sup>

536. The Defence does not dispute that civilians in Sarajevo – on both sides of the confrontation lines – were targeted during the conflict period. However, it is the Defence position that “these findings benefit from over fifteen years of investigation, examination, and litigation” and that a conclusion about the campaign “could not be reached with such ease during the conflict”.<sup>1586</sup> The Defence also argues that – against the backdrop of substantial “propaganda”, “the perception of a biased international community, and a pitched battle for the city itself” – it was reasonable to believe at the time that there was no such campaign and that “civilian casualties were legitimate collateral damage to an on-going conflict”.<sup>1587</sup> The Defence also emphasises that a “propaganda war” unfolded in Sarajevo with the media presenting only “one side of the story”.<sup>1588</sup> Hence, it is the Defence position that Serbs considered the media to be “unreliable and biased” and distrusted an international community which lacked impartiality during the conflict.<sup>1589</sup>

537. The Trial Chamber has to determine, at this juncture, whether the evidence is sufficient to establish beyond a reasonable doubt that there was a campaign of shelling and sniping on the civilian population as alleged in the Indictment.<sup>1590</sup> In this context, the Trial Chamber finds that the question raised by the Defence on what was “reasonable to believe” or “perceived” *at the time* of the shelling is immaterial. The Trial Chamber however deems that such question might be relevant to the issue of whether Perišić had any knowledge with respect to the events in Sarajevo. It will thus address this issue in the section of the Judgement devoted to the Accused’s individual criminal responsibility.<sup>1591</sup>

<sup>1583</sup> Prosecution Final Brief, para. 386

<sup>1584</sup> *Ibid.*

<sup>1585</sup> Prosecution Final Brief, para. 387.

<sup>1586</sup> Defence Final Brief, para. 554.

<sup>1587</sup> *Ibid.*

<sup>1588</sup> Defence Final Brief, paras 566-567.

<sup>1589</sup> Defence Final Brief, paras 567, 831. *See* Defence Final Brief, paras 569-572, also arguing that the mandate of the UNPROFOR proved unworkable and that weapons were introduced by the ABiH through areas controlled by the UNPROFOR, hidden as “humanitarian aid”.

<sup>1590</sup> Indictment, paras 40-42.

<sup>1591</sup> *See infra* section VI.J.3.

538. Numerous adjudicated facts admitted in this case show that between September 1992 and August 1994, “civilians were shot at almost every day”<sup>1592</sup> and were directly or indiscriminately attacked from SRK-controlled territory,<sup>1593</sup> and that the attacks on civilians “had no discernible significance in military terms”.<sup>1594</sup> Attacks on civilians were numerous<sup>1595</sup> and “as a result and at a minimum, hundreds of civilians were killed and thousands of others were injured”.<sup>1596</sup> It is also adjudicated that “the sniping and shelling of civilians was carried out pursuant to a deliberate campaign of attacking civilians”.<sup>1597</sup> The attacks on civilians from SRK-controlled territory continued from August 1994 through 21 November 1995.<sup>1598</sup>

539. It is also adjudicated that such campaign “emanated from a higher authority or at least had its approval”,<sup>1599</sup> that “General Galić acted in furtherance of a strategy to attack the civilian population of Sarajevo”<sup>1600</sup> and that Dragomir Milošević was directly involved in the shelling involving modified air bombs and mortars fired by the SRK.<sup>1601</sup>

540. The adjudicated facts admitted in this case are further buttressed by the evidence received from witnesses and documentary evidence on the siege of Sarajevo.<sup>1602</sup> The Trial Chamber also recalls its findings on the incidents scheduled in the Indictment showing specific instances where the SRK deliberately fired at the civilian population.<sup>1603</sup>

541. The Defence submits several arguments to rebut the existence of a campaign of sniping and shelling against civilians. The Trial Chamber dismisses these arguments for the reasons given below.

542. The Defence argues that there were “often instances of intense fighting” between the SRK and the ABiH and this “may have resulted in collateral damage to civilians and civilian areas”.<sup>1604</sup> The Defence also points out that Sarajevo’s neighbourhoods “maintained a sizeable military presence”.<sup>1605</sup> The Defence also argues that there were several allegations that the ABiH or the BiH

<sup>1592</sup> Sarajevo Adjudicated Facts I, 154. *See also* Sarajevo Adjudicated Facts I, 176.

<sup>1593</sup> Sarajevo Adjudicated Facts I, 155, 158.

<sup>1594</sup> Sarajevo Adjudicated Facts I, 174; Sarajevo Adjudicated Facts III, 83.

<sup>1595</sup> Sarajevo Adjudicated Facts I, 173. Attacks on civilians occurred with greater frequency in some periods, but very clearly the message which they carried was that no Sarajevo civilian was safe anywhere, at any time of day or night, Sarajevo Adjudicated Facts I, 175.

<sup>1596</sup> Sarajevo Adjudicated Facts I, 164.

<sup>1597</sup> Sarajevo Adjudicated Facts II, 23, 25.

<sup>1598</sup> Sarajevo Adjudicated Facts III, 82.

<sup>1599</sup> Sarajevo Adjudicated Facts II, 23, 25.

<sup>1600</sup> Sarajevo Adjudicated Facts II, 27.

<sup>1601</sup> Sarajevo Adjudicated Facts III, 94-99.

<sup>1602</sup> *See supra* paras 305-333.

<sup>1603</sup> *See supra* paras 338-339, 343-344, 357-358, 364-366, 376-377, 384-385, 403-415, 435-436, 467-468, 470-472, 477, 492, 503, 517, 532.

<sup>1604</sup> Defence Final Brief, para. 561.

<sup>1605</sup> Defence Final Brief, para. 560.

government violated the laws of war. Notably, that they: (i) were accused of shelling and sniping against their own civilians and blamed the VRS;<sup>1606</sup> (ii) used civilian buildings or areas to fire shells on Serbian-controlled areas;<sup>1607</sup> (iii) used vehicles painted in the same colour as UNPROFOR;<sup>1608</sup> and (iv) according to rumours, “planted bodies at crime scenes” to give “further credence to the notion of the propaganda war being waged by the Bosnian Government”.<sup>1609</sup>

543. The Trial Chamber dismisses the argument that intense fighting between the SRK and the ABiH “*may* have resulted” in collateral damage to civilians as it is speculative.<sup>1610</sup> Furthermore, the Trial Chamber finds that the Scheduled Incidents discussed above show a targeted aim at the victims while there were no hostilities, rather than a collateral damage. The Trial Chamber also finds speculative the other Defence arguments insofar as they refer to “accusations” or “rumours”.

544. With respect to the Defence argument regarding the ABiH military presence in Sarajevo’s neighbourhoods, the Trial Chamber recalls the evidence demonstrating that the SRK shelled often civilian areas despite the absence of any military activity or presence.<sup>1611</sup>

545. Furthermore, the accusation that the ABiH shelled its own civilians – even if proven – is related to isolated events that took place in early 1995. Similarly, the Defence allegations that the ABiH used civilian or UNPROFOR buildings or areas to fire shells on Serb-controlled areas refer to isolated incidents concentrated in January 1993,<sup>1612</sup> November 1994<sup>1613</sup> and June 1995.<sup>1614</sup> The Trial Chamber finds therefore that these arguments related to the involvement of the ABiH in the conflict do not rebut the evidence on the existence of widespread sniping and shelling attacks carried out by the SRK throughout the Indictment period.<sup>1615</sup>

<sup>1606</sup> Defence Final Brief, para. 566.

<sup>1607</sup> Defence Final Brief, para. 573.

<sup>1608</sup> *Ibid.*

<sup>1609</sup> *Ibid.*

<sup>1610</sup> Defence Final Brief, para. 461 (emphasis added). *See also* Defence Final Brief, para. 544.

<sup>1611</sup> *See supra* paras 319-323, 326 and section V.A.4.

<sup>1612</sup> Ex. D655, UNPROFOR Letters of Protests, 21 January 1993, p. 3; Ex. D656, UNPROFOR Letter, 20 January 1993.

<sup>1613</sup> Ex. D64, UNPROFOR Letter on Exchange of Fire between BiH and Serb Forces, 17 November 1994. This letter states that the ABiH fired four mortar rounds on that evening from the area “bounded” by the Presidency, the Residency and the Koševo Hospital. MP-072 further explained that the report localised the zone of the mortar installation by providing a perimeter with perfectly identifiable points (the Presidency, the Residency and the Koševo Hospital), MP-72, T. 4392. *See also* Defence Sarajevo Adjudicated Facts I, 13

<sup>1614</sup> Ex. D94, UNPROFOR Report regarding BiH Mandate, 28 June 1995; Ex. D24, UNPROFOR Weekly Situation Report, 2 July 1995, pp 3-4. The Trial Chamber notes that this incident occurred in the context of the ABiH operation which attempted to break the siege of Sarajevo, *see supra* para. 311.

<sup>1615</sup> An investigation by UNPROFOR in early 1995 concluded that a sniper position located in the former parliament building controlled by ABiH forces had, in some instances, targeted their own civilians. In fact, the investigators hypothesised that in all likelihood this was the work of “renegade elements” in the ABiH who were determined to generate media coverage of the conflict, MP-072, T. 4368-4369; Ex. D63, Newspaper Article, 1 August 1995, p. 2.

546. The Defence also submits that the Tabeau report on the number of persons killed and wounded in Sarajevo between 1992 and 1995 gives no indication on the origin of fire and supports the assertion that it was “reasonable not to believe that a campaign to shell and snipe civilians existed during the Indictment period”.<sup>1616</sup> The Defence also points out that the numbers of casualties reported in the Tabeau report represent all ethnicities.<sup>1617</sup>

547. The Trial Chamber notes that the Tabeau report refers to the fact that the number of civilian casualties representing all ethnicities decreased between 1993 and 1995, when Perišić became Chief of the VJ General Staff.<sup>1618</sup> According to Tabeau, 4,043 civilians were killed during the entire siege, but only 949 civilians were killed during Perišić’s tenure as Chief of the General Staff.<sup>1619</sup> The Trial Chamber finds that these numbers, in light of the entire evidence of this case, do not contradict the existence of a widespread or systematic attack against the civilian population during the Indictment period.<sup>1620</sup>

548. The Trial Chamber also finds that the Defence’s argument that UNPROFOR could not confirm the number of casualties because the Bosnian Government often restricted the international community’s access to hospitals,<sup>1621</sup> has little or no weight in the determination of the existence of a campaign of shelling and sniping against the civilian population.

549. In sum, the Trial Chamber is satisfied that the evidence presented on the siege of Sarajevo shows beyond a reasonable doubt that from September 1992 to November 1995, the SRK launched a campaign against the civilian population of Sarajevo characterised by a widespread and systematic shelling and sniping which resulted in the killings of hundreds of civilians and the wounding of thousands of others.

## 7. Identity of the Principal Perpetrators

550. The Prosecution alleges that the crimes committed by the SRK from September 1992 to November 1995 were in part planned, instigated, ordered, committed, and aided and abetted by members of the 30<sup>th</sup> PC, including Ratko Mladić, Stanislav Galić, Dragomir Milošević and Čedo Sladoje.<sup>1622</sup>

<sup>1616</sup> Defence Final Brief, paras 575-576.

<sup>1617</sup> Defence Final Brief, para. 575.

<sup>1618</sup> Ex. P2331, Expert Report of Ewa Tabeau, 18 August 2003, p. 9, Tables A3 and A4.

<sup>1619</sup> Ewa Tabeau, T. 5795. According to the Tabeau report, 4,043 civilians were killed during the entire siege, Ex. P2331, Expert Report of Ewa Tabeau, 18 August 2003, p. 9, Table A4.

<sup>1620</sup> Ex. P2331, Expert Report of Ewa Tabeau, 18 August 2003, p. 9, Tables A3 and A4.

<sup>1621</sup> Defence Final Brief, para. 577.

<sup>1622</sup> Indictment, para. 43; Prosecution Final Brief, para. 387.

551. The Trial Chamber heard evidence that the SRK was a disciplined corps, with a rigid command structure, and that its commanders strictly executed the orders coming from the VRS Commander, Ratko Mladić.<sup>1623</sup> According to Rupert Smith, Mladić held a tight control over the VRS, from the Main Staff to the lower units.<sup>1624</sup> He issued detailed orders to his corps, leaving little room for latitude at the operational level.<sup>1625</sup> Smith stated that when an order was given at the top of the chain of command “you saw that it was executed at the bottom”.<sup>1626</sup> At the same time, if an event had happened on the ground, “you could be confident that it was reported up to the top of command”.<sup>1627</sup> MP-72 testified that Mladić was the strategist of the siege of Sarajevo.<sup>1628</sup>

552. In addition, the Trial Chamber has taken judicial notice of the fact that Stanislav Galić was the commander of the SRK from 10 September 1992 until 10 August 1994 and he reported directly to Ratko Mladić.<sup>1629</sup> Throughout his tenure, he was present in the Sarajevo war theatre, in close proximity to the confrontation lines, and actively monitored the situation.<sup>1630</sup> Galić was in charge of continuing the planning and execution of the encirclement of Sarajevo.<sup>1631</sup>

553. Galić was fully apprised of the sniping and shelling directed at civilians taking place in the city of Sarajevo and its surroundings.<sup>1632</sup> Galić issued orders to target the civilian population and the sniping and shelling of civilians was widespread and conducted over a long period of time by SRK troops.<sup>1633</sup> The sniping and shelling of civilians was carried out pursuant to a deliberate campaign, which must have emanated from a higher authority or at least had its approval.<sup>1634</sup> Galić acted in furtherance of a strategy to attack the civilian population of Sarajevo.<sup>1635</sup>

554. The Trial Chamber has further taken judicial notice of the fact that Dragomir Milošević was Commander of the SRK from 10 August 1994 until 21 November 1995 and was directly

<sup>1623</sup> MP-408, T. 6160-6161, 6184, 6224 (closed session); Ex. P2316 (under seal), p. 32; Ex. P2317 (under seal), T. 5346; MP-72, T. 4336 (closed session); Sarajevo Adjudicated Facts II, 15.

<sup>1624</sup> Ex. P2357, Transcript of Rupert Smith from *Prosecutor v. D. Milošević*, T. 3298-3303; Ex. P2362, Transcript of Rupert Smith from *Prosecutor v. Popović et al.*, T. 17577-17579.

<sup>1625</sup> Rupert Smith, T. 6372-6373; Ex. P2362, Transcript of Rupert Smith from *Prosecutor v. Popović et al.*, T. 17577-17579; Ex. P2357, Transcript of Rupert Smith from *Prosecutor v. D. Milošević*, T. 3298-3303. *See* Ex. P2358, Order of General Mladić, 23 January 1995. *See also supra* paras 275-276.

<sup>1626</sup> Ex. P2362, Transcript of Rupert Smith from *Prosecutor v. Popović et al.*, T. 17578.

<sup>1627</sup> *Ibid.*

<sup>1628</sup> MP-72, T. 4319-4320; Ex. P10, SkyNews Video Clip; MP-72, T. 4319 (closed session). *See also supra* para. 319; Sarajevo Adjudicated Facts II, 23.

<sup>1629</sup> Sarajevo Adjudicated Facts II, 1-2.

<sup>1630</sup> Sarajevo Adjudicated Facts II, 9, 11. *See also* Sarajevo Adjudicated Facts II, 10, 12.

<sup>1631</sup> Sarajevo Adjudicated Facts II, 5.

<sup>1632</sup> Sarajevo Adjudicated Facts II, 19. *See also* Sarajevo Adjudicated Facts II, 16-17; Ex. P2316 (under seal), p. 32; Ex. P2317 (under seal), T. 5346.

<sup>1633</sup> Sarajevo Adjudicated Facts II, 21-22.

<sup>1634</sup> Sarajevo Adjudicated Facts II, 23.

<sup>1635</sup> Sarajevo Adjudicated Facts II, 27.



subordinated to Mladić.<sup>1636</sup> He regularly toured the confrontation lines and held a tight chain of command within the SRK.<sup>1637</sup> He continued to implement the pattern of sniping and shelling initiated under Galić throughout his tenure as SRK commander.<sup>1638</sup> Dragomir Milošević was in command and control of his troops who carried out the campaign of sniping and shelling, and was aware that crimes were committed.<sup>1639</sup> Finally, from 6 August 1995 until 10 September 1995, the SRK Chief of Staff Čedo Sladoje was in charge of the SRK and “issued orders *in lieu* of Dragomir Milošević”.<sup>1640</sup>

555. The Trial Chamber is satisfied that, through the Indictment period, the SRK were under the effective control of its commander, *i.e.* Stanislav Galić from 10 September 1992 until 10 August 1994, Dragomir Milošević from 10 August 1994 until 21 November 1995 and Čedo Sladoje from 6 August 1995 until 10 September 1995. The Trial Chamber is also satisfied that in turn during his tenure as VRS Commander, Mladić had effective control over his subordinates in the VRS, including the SRK.

## 8. Legal Findings

556. The Indictment charges the Accused with murder and attacks on civilians as a violation of the laws or customs of war (Counts 2 and 4), and murder and inhumane acts as a crime against humanity (Counts 1 and 3).

### (a) Crimes under Article 3 of the Statute

557. It is not disputed that an armed conflict existed in Sarajevo between the ABiH and the VRS during the Indictment period and that the crimes which Perišić is charged with were closely related to the conflict and committed against the civilian population of Sarajevo during that period.<sup>1641</sup>

558. The Trial Chamber finds that the attacks by sniping and shelling were conducted against the civilian population and individual civilians not taking part in hostilities. These acts resulted in death or serious injury within the civilian population. The Trial Chamber further finds that these acts were carried out by SRK forces and wilfully directed against civilians, that is, either deliberately against civilians or through recklessness.

<sup>1636</sup> Sarajevo Adjudicated Facts III, 1, 3-4.

<sup>1637</sup> Sarajevo Adjudicated Facts III, 90, 104-105.

<sup>1638</sup> Sarajevo Adjudicated Facts III, 112-113.

<sup>1639</sup> Sarajevo Adjudicated Facts III, 98-100, 110-111.

<sup>1640</sup> Sarajevo Adjudicated Facts III, 96-97.

<sup>1641</sup> See Prosecution Final Brief, para. 386; Defence Final Brief, paras 556-563. See *supra* paras 306, 311, 534, 536.

559. The Trial Chamber is therefore satisfied beyond a reasonable doubt that the crimes of murder and attacks on civilians for Counts 2 and 4 have been established for the Scheduled Incidents described in Schedules A and B of the Indictment, save for Scheduled Incidents A4, B7 and B12.

(b) Offences under Article 5 of the Statute

560. The Trial Chamber finds that the crimes committed in Sarajevo during the Indictment period formed part of an attack directed against the civilian population and that this attack was widespread and systematic. The Trial Chamber is also satisfied that the crimes committed by the SRK formed part of that attack and that the perpetrators knew of the attack and that the crimes were part of it.

561. The Trial Chamber is further satisfied that murder and inhumane acts falling within the meaning of Article 5 of the Statute for Counts 1 and 3 were committed in Sarajevo during the Indictment period.

562. The Trial Chamber therefore finds that key VRS officers, including Mladić, Galić and Dragomir Milošević were involved in the commission of the crimes in Sarajevo by devising and implementing a campaign of sniping and shelling on civilians, which was an integral part to the siege of Sarajevo. The Trial Chamber found that the crimes committed by VRS members, under the effective control of these VRS officers, constituted murder and attacks on civilians as violation of the laws or customs of war (Counts 2 and 4), and murder and inhumane acts as crimes against humanity (Counts 1 and 3). The Trial Chamber is therefore satisfied that these key officers and their subordinates committed the charged crimes.

563. The issue of whether the Accused bears responsibility for these crimes will be addressed separately.

## **B. ZAGREB**

### 1. Lead-up to Shelling

564. The Trial Chamber took judicial notice of the following facts. In the early morning hours of 1 May 1995, armed forces of Croatia launched a military offensive known as Operation Flash.<sup>1642</sup> Two Croatian guard brigades, one regular HV brigade, and special police forces took part in the operation.<sup>1643</sup> Negotiations to find a peaceful settlement took place during the operation, and agreements were reached on 3 May 1995.<sup>1644</sup> Operation Flash ended around 4 May 1995 with the RSK losing control over Western Slavonia<sup>1645</sup> and a large part of the Serb population fleeing the area.<sup>1646</sup>

565. On 1 May 1995, a meeting was held between, *inter alia*, the President of the RSK, Milan Martić, the Commander of the Main Staff of the SVK, Milan Čeleketić, the Prime Minister, and other ministers of the RSK government. The meeting concerned the proposal of the RSK SDC to deal with the situation that had arisen in Western Slavonia resulting from Operation Flash during the morning of that day. Both peaceful solutions involving negotiations and a surrender of Western Slavonia, and non-peaceful solutions were discussed and Milan Martić, Milan Čeleketić, and the most senior officers of the SVK Main Staff were in favour of the latter.<sup>1647</sup>

566. At 13:00 hours on 1 May 1995, Milan Čeleketić, in the presence of, *inter alia*, Milan Martić, ordered artillery fire on Sisak, south-east of Zagreb.<sup>1648</sup> The same day, Milan Čeleketić ordered the M-87 Orkan unit of the SVK to be alert and ready for engagement on his order and directed them to march from the Knin area to take up positions in Vojnić, 50 kilometres south of Zagreb, by 14:00 hours that day.<sup>1649</sup> Artillery fire on Sisak was opened at 17:00 hours that day.<sup>1650</sup> The reason for it was to retaliate against the attack of the Croatian forces in Western Slavonia.<sup>1651</sup>

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<sup>1642</sup> Defence Adjudicated Facts I, 14.

<sup>1643</sup> *Ibid.*

<sup>1644</sup> *Ibid.*

<sup>1645</sup> Defence Adjudicated Facts I, 14. *See* Ex. D444, Map Marked by Mile Novaković, under 2; Mile Novaković, T. 13512-13513.

<sup>1646</sup> Defence Adjudicated Facts I, 14.

<sup>1647</sup> Zagreb Adjudicated Facts, 1. *See also* Rade Rašeta, T. 5993-5994.

<sup>1648</sup> Zagreb Adjudicated Facts, 2; Rade Rašeta, T. 5943-5946. *See also* Ex. P2336, Correspondence From the SVK Main Staff Relating to the Situation on the Field, 26 May 1995, p. 1; Ex. P2334, Report From the SVK Main Staff to the VJ General Staff Regarding the Course of the War, 2 May 1995.

<sup>1649</sup> Zagreb Adjudicated Facts, 5.

<sup>1650</sup> Zagreb Adjudicated Facts, 3. *See* MP-80, T. 8442-8444, 8756-8758, 8766 (closed session); Ex. P2336, Correspondence from the SVK Main Staff Relating to the Situation on the Field, 26 May 1995, p. 1; Ex. P2334, Report From the SVK Main Staff to the VJ General Staff Regarding the Course of the War, 2 May 1995.

<sup>1651</sup> Zagreb Adjudicated Facts, 4.

## 2. Shelling on 2 May 1995

567. The Trial Chamber took judicial notice of the following facts. On 2 May 1995, rockets struck the centre of Zagreb, including: Strossmayer Square, Matica Hrvatska Street, Petrinjska Street, Boskovićeva Street and Mrazovićeva Street as well as Draškovićeva Street, the intersection of Vlaška and Draškovićeva Streets and a school building in Križanićeva Street, the village of Plešo near Zagreb/Plešo airport, and the airport itself.<sup>1652</sup>

568. Five people were killed as a result of this shelling. Damir Dračić's injuries were sustained while he was in his car.<sup>1653</sup> The body of Damir Dračić was found lying on the sidewalk at Vlaška Street.<sup>1654</sup> Ana Mutevelić was killed when a tram was hit at the intersection of Draškovićeva and Vlaška Streets.<sup>1655</sup> The body of Stjepan Krhen was found in the courtyard of No. 41 Vlaška Street.<sup>1656</sup> Stjepan Krhen had sustained several injuries on his body, his chest, and his legs, and had succumbed to his wounds immediately.<sup>1657</sup> Ivanka Kovač died at the trauma clinic in Draškovićeva Street from the injuries she sustained some 700 metres from the hospital.<sup>1658</sup> The cause of Ivanka Kovač's death was determined as blast wounds inflicted to the head, body and extremities.<sup>1659</sup> Ivan Brodar was injured on Draškovićeva Street and died as a result of his injuries on 3 May 1995.<sup>1660</sup> Ivan Brodar was aged 77 at the time of the shelling, and suffered multiple traumas to the head, chest, and lower extremities.<sup>1661</sup> The report prepared by the Croatian Ministry of Health states that four victims of this shelling were civilians and one was a member of the military.<sup>1662</sup> The Trial Chamber finds beyond a reasonable doubt that the four civilian victims of the attack were not taking active part in hostilities.

<sup>1652</sup> Zagreb Adjudicated Facts, 8. *See also* Ex. P286, Photograph Album of 2 May 1995 Rocket Attack, Petrinjska Street, Zagreb; Ex. P287, Photograph Album of 2 May 1995 Rocket Attack, Strossmayer Square, Zagreb; Ex. P288, Photograph Album of 2 May 1995 Rocket Attack, Matica Hrvatska Street, Zagreb; Ex. P289, Photograph Album of 2 May 1995 Rocket Attack, Križanić Street, Zagreb; Ex. P291, Photograph Album of 2 May 1995 Rocket Attack, Velika Gorica Territory, Plešo Airport; Ex. P292, Photograph Album of 2 May 1995 Rocket Attack, Velika Gorica Territory, Plešo Neighbourhood; Ex. P293, Photograph Album of 2 May 1995 Rocket Attack, Draškovićeva and Vlaška Streets, Zagreb; Ex. P302, Map of Zagreb Centre; Ex. P303, Site Documentation and Maps of the Rocket Attacks on the City of Zagreb on 2 and 3 May 1995; Ex. P304, Annotated Site Documentation Map of the Rocket Attacks on the City of Zagreb on 2 and 3 May 1995; Ex. P306, On-Site Investigation Report by the Zagreb Police Administration 2 May 1995.

<sup>1653</sup> Zagreb Adjudicated Facts, 11.

<sup>1654</sup> Zagreb Adjudicated Facts, 10.

<sup>1655</sup> Zagreb Adjudicated Facts, 12.

<sup>1656</sup> Zagreb Adjudicated Facts, 13.

<sup>1657</sup> Zagreb Adjudicated Facts, 14.

<sup>1658</sup> Zagreb Adjudicated Facts, 15.

<sup>1659</sup> Zagreb Adjudicated Facts, 16; Ex. P299, Autopsy Report of Ivanka Kovač, p. 1.

<sup>1660</sup> Zagreb Adjudicated Facts, 17.

<sup>1661</sup> Zagreb Adjudicated Facts, 18; Ex. P300, Autopsy Report of Ivan Brodar, pp 5-6; Ex. P301, Report by Zagreb County Court Appointed Expert Josip Škavić.

<sup>1662</sup> Ex. C3, Report on Civilian Victims in the Attack on Zagreb, 2-3 May 1995, p. 3.

569. As a result of the shelling on 2 May 1995 at least 146 people were injured.<sup>1663</sup> According to the report prepared by the Croatian Ministry of Health, the vast majority of victims of this shelling were civilians.<sup>1664</sup> At the time that this issue was adjudicated by the *Martić* Trial Chamber in 2007, many of those who were injured still suffered from the injuries sustained on that day.<sup>1665</sup> The Trial Chamber also finds beyond a reasonable doubt that the civilian victims of the attack were not taking active part in hostilities.

### 3. Shelling on 3 May 1995

570. The Trial Chamber took judicial notice of the following facts. At midday on 3 May 1995, Zagreb was again shelled by Orkan rockets on the following locations: Mažuranićeva Square, Marshall Tito Square where the Croatian National Theatre was located, and Klaićeva Street Children's Hospital.<sup>1666</sup>

571. As a result of the shelling on Zagreb on 3 May 1995, two people died. Luka Skračić suffered a blast wound to the head with an alien object lodged in his brain and was in a coma on 3 May 1995.<sup>1667</sup> Luka Skračić eventually died as a result of pneumonia which he developed from having suffered blast wounds on 3 May 1995.<sup>1668</sup> Ivan Markulin, a bomb disposal technician and police officer, died when the bomblet he was trying to deactivate exploded outside Klaićeva Street Children's Hospital.<sup>1669</sup> The Trial Chamber also finds that Ivan Markulin, although a police officer, was not taking active part in hostilities at the time of his death.

572. As a result of the shelling on Zagreb on 3 May 1995, 54 people were injured.<sup>1670</sup> According to the report prepared by the Croatian Ministry of Health, the vast majority of victims of this shelling were civilians.<sup>1671</sup> The Trial Chamber also finds that the civilian victims of the attack were not taking active part in hostilities.

<sup>1663</sup> Zagreb Adjudicated Facts, 38. *See* Zagreb Adjudicated Facts, 9, 37.

<sup>1664</sup> Ex. C3, Report on Civilian Victims in the Attack on Zagreb, 2-3 May 1995, p. 3.

<sup>1665</sup> Zagreb Adjudicated Facts, 19.

<sup>1666</sup> Zagreb Adjudicated Facts, 39. *See* Ex. P290, Photograph Album of 3 May 1995 Rocket Attack, Žitnjak-Martinci Village, Zagreb; Ex. P302, Map of Zagreb Centre; Ex. P297, Photograph Album of 3 May 1995 Rocket Attack, Zagreb Pediatric Hospital; Ex. P303, Site Documentation and Maps of the Rocket Attacks on the City of Zagreb on 2 and 3 May 1995; Ex. P307, Report of the Zagreb Police Administration, 17 May 1995.

<sup>1667</sup> Zagreb Adjudicated Facts, 43.

<sup>1668</sup> Zagreb Adjudicated Facts, 41-42.

<sup>1669</sup> Zagreb Adjudicated Facts, 44.

<sup>1670</sup> Zagreb Adjudicated Facts, 58. *See* Zagreb Adjudicated Facts, 57.

<sup>1671</sup> Ex. C3, Report on Civilian Victims in the Attack on Zagreb, 2-3 May 1995, p. 3.

#### 4. Who Ordered the Shelling of Zagreb?

573. There is evidence that, according to the military structure at the time, the order to shell Zagreb on 2 and 3 May 1995 was within the purview of either the Commander of the SVK Main Staff or a Corps Command.<sup>1672</sup> The Trial Chamber has also heard evidence that, as a rule, the command over the artillery is in the hands of the commander of a joint tactical and operational unit, either directly or through the chief of artillery.<sup>1673</sup> A SVK document analysing the combat readiness of the artillery in April 1995, expressly indicated that “the utilisation of the Orkan rocket system [should] be approved exclusively by the commander of the [Main Staff of the] SVK”.<sup>1674</sup> Rade Rašeta, Chief of Security of the SVK Main Staff, confirmed that the Orkan rocket squad was under the command of Milan Čeleketić, as Commander of the Main Staff of the SVK.<sup>1675</sup> Facts which were adjudicated in the *Martić* case also support this evidence.<sup>1676</sup>

574. The Trial Chamber also took judicial notice of the facts showing that on several occasions Martić himself had admitted to ordering the shelling of Zagreb.<sup>1677</sup>

575. Milan Martić admitted on television to having ordered the shelling of Zagreb on 2 and 3 May 1995.<sup>1678</sup> On 3 May 1995, Milan Martić stated:

As a counter measure to what Tudjman did to you here, we have shelled all their cities: Sisak several times and Karlovac, Zagreb yesterday and today. This was done for you. [...] Today, an ultimatum followed if they continue to attack our besieged forces, we will continue to attack Zagreb and destroy their cities.<sup>1679</sup>

Milan Martić threatened to resume the shelling of Zagreb if their conditions were not met, and spoke of "massive rocket attacks on Zagreb which would leave 100,000 people dead".<sup>1680</sup>

<sup>1672</sup> Jožef Poje, T. 3087, 3106; Ex. P497, Expert Report of Jožef Poje, pp 61-63. *See also* MP-80, T. 8704-8705, 8755-8756 (closed session); Rade Rašeta, T. 6007; Ex. P2336, Correspondence From the SVK Main Staff Relating to the Situation on the Field, 26 May 1995, p. 1; Ex. P2334, Report From the SVK Main Staff to the VJ General Staff Regarding the Course of the War, 2 May 1995, pp 5-6; Mile Novaković, T. 13279-13280, 13408-13409.

<sup>1673</sup> Jožef Poje, T. 3076-3077. *See also* Ex. P497, Expert Report of Jožef Poje, p. 55.

<sup>1674</sup> Ex. P495, Various Documents Concerning SVK, p. 11. *See also* Jožef Poje, T. 3085. According to the February 1995 directive of the Main Staff of the SVK, the Orkan rocket system was labelled as part of the Main Staff Artillery Group, Ex. P494, Directive of the Supreme Commander of the SVK on the Use of SVK, February 1995, p. 13. Finally, according to the 1 May 1995 order redeploying the Orkan rocket system to the area of Vojnić, this weapon was to be under the direct command of the Commander of the Main Staff of the SVK or Colonel Dilas, Ex. P496, Order of Milan Čeleketić on Raising of Combat Readiness, 1 May 1995; Jožef Poje, T. 3086-3087.

<sup>1675</sup> Rade Rašeta, T. 5941-5942.

<sup>1676</sup> Zagreb Adjudicated Facts, 7; Defence Adjudicated Facts I, 15.

<sup>1677</sup> Defence Adjudicated Facts I, 20.

<sup>1678</sup> Zagreb Adjudicated Facts, 65.

<sup>1679</sup> Zagreb Adjudicated Facts, 60; Ex. P235, Video Clip with Speech of Milan Martić in Western Slavonia.

<sup>1680</sup> Defence Adjudicated Facts I, 16.

576. In a conversation on 3 May 1995 between Slobodan Milošević and Borislav Mikelić, the Prime Minister of the RSK, Slobodan Milošević said that Milan Martić was “boasting about having shelled Zagreb”.<sup>1681</sup> In a radio interview on 5 May 1995, Milan Martić stated: “That order was given by me, personally, as a retaliation to Franjo Tudman and his staff for the order he had given to commit aggression against the Western Slavonia [...]”.<sup>1682</sup>

577. At a meeting in Knin on 5 May 1995 with UN Special Envoy, Yasushi Akashi, Milan Martić stated in response to Yasushi Akashi’s condemnation of the rocket attacks on Zagreb that “[h]ad I not ordered the rocket attacks [...] they would have continued to bomb our cities”.<sup>1683</sup>

578. In an article in Agence France Press published on 6 May 1995, Milan Martić is reported as saying: “I personally gave the order to bombard Zagreb as a response to (Croatian President) Franjo Tudman and the Croatian leadership behind the aggression on Western Slavonia and crimes on civilians”.<sup>1684</sup>

579. In an interview published on 16 May 1995, Milan Martić is reported as saying that he felt justified in ordering the rocket attacks because he was aiming at a military installation.<sup>1685</sup>

580. Further according to one testimony, the decision to shell Zagreb was made by Milan Martić in response to Croatian attack on Western Slavonia.<sup>1686</sup>

581. The RSK Commission charged with determining responsibility for the fall of Western Slavonia found that:

[T]he course of events in Western Slavonia required of the SVK Main Staff to intervene in order to provide assistance to the 18th Corps [...] however, no opinions were sought from the commanding officers of the SVK Main Staff. Decisions were made by the Commander and the President and stances and orders were given on the telephone (there are no written orders).<sup>1687</sup>

582. Rade Račeta confirmed that members of the Main Staff were not consulted about the decision to shell Zagreb.<sup>1688</sup> The RSK Fact-Finding Commission on the Causes and Manner of the Fall of Western Slavonia found that among those responsible for the fall of Western Slavonia was

<sup>1681</sup> Zagreb Adjudicated Facts, 61.

<sup>1682</sup> Zagreb Adjudicated Facts, 62. *See also* Ex. P2823, *International Herald Tribune* Interview with Martić, 16 May 1995.

<sup>1683</sup> Zagreb Adjudicated Facts, 64.

<sup>1684</sup> Zagreb Adjudicated Facts, 63. *See also* Ex. P2823, *International Herald Tribune* Interview with Martić, 16 May 1995.

<sup>1685</sup> Defence Adjudicated Facts I, 16.

<sup>1686</sup> MP-80, T. 8442-8443 (closed session).

<sup>1687</sup> Defence Adjudicated Facts I, 17.

<sup>1688</sup> *Ibid.*

the President of the RSK, Milan Martić, for exceeding his authority as set by the constitution by blocking and preventing the work of the SDC.<sup>1689</sup>

583. The Trial Chamber recalls that according to the RSK Constitution, the President led the SVK in times of peace and war in accordance with the Constitution and the decisions of the SDC.<sup>1690</sup> Accordingly, any decision to shell Zagreb should have been taken by a collegiate – the SDC.<sup>1691</sup> However, the Trial Chamber took judicial notice of the adjudicated facts showing that Milan Martić and Milan Čeleketić circumvented the SDC.<sup>1692</sup> According to Rade Rašeta, the decisions to shell Zagreb on 2 and 3 May 1995 were not taken by the SDC but by the SVK Main Staff Commander and the President of the RSK.<sup>1693</sup> This is further supported by reports of, *inter alia*, the RSK Fact-Finding Commission on the Causes and Manner of the Fall of Western Slavonia.<sup>1694</sup> Additional evidence suggests that Milan Čeleketić received this order from Milan Martić and executed it as an order coming from the Commander in Chief of the SVK.<sup>1695</sup>

584. Additionally, the Trial Chamber also notes that in a Serbian newspaper “*Argument*” article published on 24 March 1995, Milan Čeleketić is reported as saying:

In case of the Ustasha aggression, we will certainly not miss the opportunity to hit them where it hurts the most. We know their weak spots and where it hurts the most. Weak points are city squares and we know who goes there – civilians. I have already said this and was criticised a little. Well now, they may ask which squares and in which cities. I shall reply that that’s a military secret. We shall make a decision about it and I think we will be precise.

It is hard to say these words because there are, as I said, civilians in the squares, innocent people. However, if we are in war (and we are waging a filthy war for which they are first and foremost to blame), then there will be no mercy.<sup>1696</sup>

At the same time, the Trial Chamber recalls that one of the witnesses testified that the words of Milan Čeleketić were twisted by a journalist and that an erratum to this effect was subsequently published.<sup>1697</sup>

585. The Trial Chamber finds beyond a reasonable doubt that the order to shell Zagreb on 2 and 3 May 1995 was given by Milan Martić. In reaching its conclusion the Trial Chamber relied on Milan Martić’s repetitive admissions that it was him who issued the order to use Orkan-rockets against Zagreb. This finding is additionally supported by circumstantial evidence concerning Milan

<sup>1689</sup> Defence Adjudicated Facts I, 17.

<sup>1690</sup> Defence Adjudicated Facts I, 18.

<sup>1691</sup> *Ibid.* See also *supra* para. 295.

<sup>1692</sup> Defence Adjudicated Facts I, 18.

<sup>1693</sup> Defence Adjudicated Facts I, 18; Rade Rašeta, T. 6006-6007.

<sup>1694</sup> Defence Adjudicated Facts I, 18.

<sup>1695</sup> MP-80, T. 8453-8454, 8486, 8706, 8754-8755, 8767, 8798 (closed session). See also Ex. D183, Letter of Resignation of Milan Čeleketić, 15 May 1995.

<sup>1696</sup> Ex. P2497, Interview with Milan Čeleketić in “*Argument*”, 24 March 1995, p. 6.

<sup>1697</sup> MP-80, T. 8778-8781 (closed session).



Martić's position as President of the RSK and the Supreme Commander of the SVK, and his active involvement in the SVK response to the HV attack on 1 May 1995, including his presence when the order to shell Sisak on that day was issued. The Trial Chamber also finds that this order was further executed by the Commander of the Main Staff of the SVK, Milan Čeleketić. Čeleketić's order in turn was executed by the crew of the Orkan rocket system.

## 5. Weaponry Used

586. The M-87 Orkan is a self-propelled long-range multiple rocket launching system.<sup>1698</sup> The evidence shows that the SVK had only one Orkan system at its disposal, which remained in the territory of the RSK after the JNA's withdrawal from Croatia in 1992.<sup>1699</sup>

587. The 262 mm M87 Orkan rocket is a projectile which, on ignition of the rocket motor, after 4.3 seconds flies like a conventional projectile which cannot be guided in flight.<sup>1700</sup> The maximum range of the Orkan rocket is 50 kilometres.<sup>1701</sup>

588. The R-262mm rocket for the Orkan M-87 rocket system could carry two types of cluster warheads – anti-tank shells or shaped-charge and fragmentation bomblets. The latter type contained 288 shaped-charge and fragmentation bomblets, each containing 420 pellets of 3 mm diameter, which are ejected by a pyrotechnic charge at a height of 800-1,000 metres. Before the ejection of the bomblets, the warhead's aluminium lining is cut by four detonation blades. The bomblets dispersion area is about 2 hectares, and the lethal range of each pellet is about 10 metres.<sup>1702</sup>

589. According to the expert witness Jožef Poje, the Orkan rocket system had a high dispersion pattern – the dispersion impact of the Orkan rocket fired from a distance of between 40 and 45 km would be around 1.3 square km (for the range of 40 km the dispersion pattern would be + - 692 metres by bearing and + - 636 metres by range).<sup>1703</sup> Jožef Poje opines that the purpose of the shelling was “most probably to terrorise and fire on the population, their property, and their infrastructure”.<sup>1704</sup> He explained that “even if there were military targets in the city of Zagreb, due to the city's population density and its characteristics, the use of [the Orkan rockets] for targets had no sense. [...] [I]t was known that there would be a lot of casualties among the civilians”.<sup>1705</sup> He

<sup>1698</sup> Zagreb Adjudicated Facts, 6.

<sup>1699</sup> MP-80, T. 8704 (closed session); Milan Novaković, T. 13408, 13437, 13440-13441.

<sup>1700</sup> Correction of the trajectory in flight is not possible, nor can the rocket be guided to the target in any other way, Ex. P497, Expert Report of Jožef Poje, p. 17.

<sup>1701</sup> Ex. P497, Expert Report of Jožef Poje, p. 47.

<sup>1702</sup> Ex. P497, Expert Report of Jožef Poje, pp 23, 36, 44. *See also* Milan Novaković, T. 13406.

<sup>1703</sup> Jožef Poje, T. 3107; Ex. P497, Expert Report of Jožef Poje, pp 65-66.

<sup>1704</sup> Jožef Poje, T. 3084. *See also* Ex. P497, Expert Report of Jožef Poje, p. 67.

<sup>1705</sup> Jožef Poje, T. 3088. *See also* Jožef Poje, T. 3084, 3096, 3107; Ex. P497, Expert Report of Jožef Poje, pp 38, 47, 61, 67-68; Milan Novaković, T. 13406-13408.

also added that even if the order to use the Orkan in shelling Zagreb came from Milan Martić, the latter should have been advised by the Commander of the SVK Main Staff or the Chief of Artillery as to the appropriateness of the use of such a weapon in the circumstances and the possible consequences.<sup>1706</sup>

590. The Trial Chamber finds that due to its characteristics, especially its high dispersion pattern, the Orkan rocket system is an indiscriminate weapon. It follows that its use in a densely populated civilian area cannot but result in the infliction of severe civilian casualties.

## 6. Legal Findings

591. The Indictment charges the Accused with murder and attacks on civilians as a violation of the laws or customs of war (Counts 6 and 8), and murder and inhumane acts as a crime against humanity (Counts 5 and 7).

### (a) Crimes under Article 3 of the Statute

592. It is not disputed that an armed conflict existed in Croatia and the RSK between the Croatian forces and the SVK during the Indictment period and that the crimes which Perišić is charged with were closely related to the conflict and committed against the civilian population of Zagreb during that period.<sup>1707</sup>

593. The Trial Chamber finds that the attacks with the use of the Orkan rocket system were conducted against the civilian population and individual civilians not taking active part in hostilities. These acts resulted in death and serious injury within the civilian population. The Trial Chamber further finds that these acts were carried out by SVK forces and wilfully directed against civilians, that is, either deliberately against civilians or through recklessness.

594. The Trial Chamber is therefore satisfied beyond reasonable doubt that the crimes of murder and attacks on civilians for Counts 6 and 8 have been established for the Scheduled Incidents described in Schedule C of the Indictment.

### (b) Crimes under Article 5 of the Statute

595. The Trial Chamber finds that the crimes committed in Zagreb during the Indictment period formed part of an attack directed against the civilian population and that this attack – due to its

<sup>1706</sup> Jožef Poje, T. 3094-3095.

<sup>1707</sup> See *supra* section III. See also Prosecution Final Brief, paras 439-440; Defence Final Briefs, paras 579-580.

large-scale and organised nature - was widespread and systematic. The Trial Chamber is also satisfied that the SVK knew of the existence of such attack and that the crimes were part of it.

596. The Trial Chamber is further satisfied that murder and inhumane acts falling within the meaning of Article 5 of the Statute were committed in Zagreb during the Indictment period.

597. The issue of whether Perišić bears responsibility for these crimes will be addressed separately.

## **C. SREBRENICA**

### 1. Srebrenica from 1992 to 6 July 1995

#### (a) Srebrenica in the Beginning of the War

598. On 12 May 1992, Radovan Karadžić gave a speech at the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH and identified six strategic objectives of the Serbian people in BiH.<sup>1708</sup> As discussed earlier in the Judgement, the first strategic objective was the “demarcation of the state as separate from the other two national communities”.<sup>1709</sup> The third strategic goal related to the areas of Srebrenica and Žepa, its aim being to establish a corridor in the Drina River valley and eliminate the Drina River as a border between the Serbian states.<sup>1710</sup>

599. Between May and June 1992, the VRS launched a series of attacks against ABiH forces in the area encompassing the eastern enclaves of Srebrenica, Goražde and Žepa. Heavy fighting in this area continued during 1992, eventually leading to a flood of refugees into the enclaves. The VRS offensive resulted in the surrounding of Srebrenica and ultimately, in its isolation, as the Bosnian Serbs prevented food and supplies from entering the area.<sup>1711</sup>

600. On 19 November 1992, General Ratko Mladić issued VRS Operational Directive 4 which, in relevant part, ordered the Drina Corps to:

defend [...] Zvornik and the corridor, 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>1712</sup>

#### (b) UN Intervention and “Safe Area” Designation

601. UNPROFOR Commander in BiH from 1992 to 1993, General Philippe Morillon, visited Srebrenica in March 1993.<sup>1713</sup> His visit corresponded with a surge in VRS operations in eastern

<sup>1708</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, pp 13-14.

<sup>1709</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 13. *See also* Patrick Treanor, T. 1102; Robert Donia, T. 1691; Ex. P187, Map Depicting the Six Strategic Objectives; Ex. P338, Map Marked by Robert Donia. *See also supra* para. 184.

<sup>1710</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 13; Ex. P334, Excerpt of the RS’s Official Gazette reporting the “Strategic Goals”, 26 November 1993, wherein the third strategic goal is defined as the “establishment of a corridor in the Drina [R]iver valley, and the eradication of the Drina River as a border between the Serbian states”. *See also* Patrick Treanor, T. 1101-1102; Robert Donia, T. 1691; Ex. P187, Map Depicting the Six Strategic Objectives; Ex. P338, Map Marked by Robert Donia. Pyers Tucker, T. 9119-9122, 9129.

<sup>1711</sup> Ex. P866, VRS Main Staff Operational Directive 4, 19 November 1992, 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”; Ex. P866, VRS Main Staff Operational Directive 4, 19 November 1992, p. 3.

<sup>1713</sup> Pyers Tucker, T. 9088-9092.

Bosnia, which resulted in a flood of thousands of additional refugees into Srebrenica.<sup>1714</sup> The humanitarian situation was desperate.<sup>1715</sup> After he was prevented from leaving Srebrenica by panicked residents, General Morillon told the assembled crowd that the town was under the protection of the UN.<sup>1716</sup>

602. On 16 April 1993, the UNSC endorsed General Morillon's statement by adopting Resolution 819, declaring that "all parties and others treat Srebrenica and its surroundings as a 'safe area' that should be free from armed attack or any other hostile act".<sup>1717</sup> The Resolution also demanded that the FRY immediately cease the supply of military arms, equipment and services to Bosnian Serb paramilitary units in Bosnia.<sup>1718</sup> On 6 May 1993, the UNSC created two additional UN protected enclaves in Žepa and Goražde.<sup>1719</sup> The same day, UNPROFOR negotiated a cease-fire agreement between the ABiH and the VRS for the UN protected enclaves.<sup>1720</sup>

603. Both sides violated the cease-fire agreement,<sup>1721</sup> and in fact, the Srebrenica enclave was never demilitarised.<sup>1722</sup> However, despite these violations, a two-year period of relative stability followed the establishment of the enclave as a safe area before it disintegrated in 1995.<sup>1723</sup>

604. In January 1995, an UNPROFOR battalion from the Netherlands, colloquially referred to as "DutchBat", under the command of Colonel Karremans, was assigned to the Srebrenica enclave.<sup>1724</sup> Rupert Smith, UNPROFOR Commander in BiH beginning in January 1995, held a series of

<sup>1714</sup> Pyers Tucker, T. 9119-9122, 9129; Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 18.

<sup>1715</sup> Tucker described the appalling state of the refugees in Srebrenica. Heavy fighting continued at the time, and between 10 and 20 people died every night and graves were dug every morning in the cemetery. Tucker described a rubbish pile next to the hospital which at night was frozen and unrecognisable, but during the day revealed "cut off arms, legs, hands, fingers". For Tucker, people living alongside this pile exemplified that "the people in Srebrenica had given up hope and basic human decency and basic human respect and basic hygiene", Pyers Tucker, T. 9135-9140, 9185-9186.

<sup>1716</sup> Pyers Tucker, T. 9202.

<sup>1717</sup> Ex. P208, UNSC Resolution 819, 16 April 1993, p. 2. *See also* Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 19; Ex. P892 (under seal); Ex. P2462, Report of the SC Mission Established Pursuant to Resolution 819, 30 April 1993.

<sup>1718</sup> Ex. P208, UNSC Resolution 819, 16 April 1993, p. 2.

<sup>1719</sup> Ex. P212, UNSC Resolution 824, 6 May 1993.

<sup>1720</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 19.

<sup>1721</sup> Defence Adjudicated Facts I, 3. *See also* Defence Adjudicated Facts I, 2, stating: "[t]here was a consistent refusal by the Bosnian Muslims to abide by the agreement to demilitarise the 'safe area'. Bosnian Muslim helicopters flew in violation of the no-fly zone; the ABiH opened fire toward Bosnian Serb lines and moved through the 'safe area'; the 28<sup>th</sup> Division was continuously arming itself; and at least some humanitarian aid coming into the enclave was appropriated by the ABiH. To the Bosnian Serbs it appeared that Bosnian Muslim forces in Srebrenica were using the 'safe area' as a convenient base from which to launch offensives against the VRS and that UNPROFOR was failing to take any action to prevent it. General Halilović admitted that Bosnian Muslim helicopters had flown in violation of the no-fly zone and that he had personally dispatched eight helicopters with ammunition for the 28<sup>th</sup> Division".

<sup>1722</sup> Defence Adjudicated Facts II, 4; Richard Butler, T. 6731. *See also* Defence Adjudicated Facts I, 1.

<sup>1723</sup> Defence Adjudicated Facts I, 3.

meetings with RS President Radovan Karadžić during April and early May 1995.<sup>1725</sup> Karadžić asserted that the VRS would not respect the UN safe areas, claiming that they were illegal under international law.<sup>1726</sup> As a result of these meetings, Rupert Smith understood that the Bosnian Serbs were planning to put pressure on the safe areas and to control the UN and NATO forces by restricting their freedom of movement and access to supplies.<sup>1727</sup> Piers Tucker further testified that Muslim commander Nasir Orić was vehemently opposed to demilitarisation and was launching offensive actions from inside the enclave.<sup>1728</sup>

(c) Lead-up to the Military Offensive on Srebrenica

605. On 8 March 1995, as pressure mounted to end the war, Karadžić issued Directive 7 to the VRS, outlining the strategic objectives for the VRS in the enclave. Directive 7 ordered the VRS Drina Corps: “[b]y planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”.<sup>1729</sup> The directive also indicated that “in case the UNPROFOR forces leave Žepa and Srebrenica, the Drina Corps Command shall plan an operation [...] with the task of breaking up and destroying the Muslim forces in these enclaves and definitively liberating the Drina Valley region”.<sup>1730</sup> Karadžić further directed the troops to block UN aid convoys, as follows:

[t]he relevant State and military organs responsible for work with UNPROFOR and humanitarian organisations shall, through 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>1731</sup>

606. On 31 March 1995, the VRS Main Staff issued Directive 7/1, signed by General Mladić.<sup>1732</sup> Directive 7/1 was issued “on the basis of Directive No. 7” and ordered VRS forces to, *inter alia*, engage in “active combat operations [...] around the [Srebrenica and Žepa] enclaves”.<sup>1733</sup>

607. On 2 July 1995, Milenko Živanović, Commander of the Drina Corps, issued an order, “Krivaja 95”, to his subordinate units, the Bratunac Brigade, the Zvornik Brigade, the Milići

<sup>1724</sup> MP-277, T. 2607 (closed session); Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 32.

<sup>1725</sup> Ex. P2348, Statement of Rupert Smith, 14 August 1996, paras 42-56.

<sup>1726</sup> Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 44; Rupert Smith, T. 6311; Ex. P2361, Transcript of Rupert Smith from *Prosecutor v. Popović et al.*, T. 17488-17489; Ex. P2365, Notes of a Meeting between Karadžić and Rupert Smith, 5 April 1995.

<sup>1727</sup> Ex. P2361, Transcript of Rupert Smith from *Prosecutor v. Popović et al.*, T. 17490.

<sup>1728</sup> Piers Tucker, T. 9305.

<sup>1729</sup> Ex. P903, RS Supreme Command Directive 7, 8 March 1995, p. 10; Srebrenica Adjudicated Facts I, 6.

<sup>1730</sup> Ex. P903, RS Supreme Command Directive 7, 8 March 1995, p. 11.

<sup>1731</sup> Ex. P903, RS Supreme Command Directive 7, 8 March 1995, p. 14.

<sup>1732</sup> Ex. P904, Directive for Further Operations 7/1, 31 March 1995.

<sup>1733</sup> Ex. P904, Directive for Further Operations 7/1, 31 March 1995, p. 4.

Brigade and parts of the Skelani Brigade, to prepare for active combat operations.<sup>1734</sup> General Krstić, Chief of Staff of the Drina Corps, was ordered to command the operation.<sup>1735</sup> The order did not include taking the town of Srebrenica, based on an assessment by the VRS Command that the conditions were not right at that moment to capture Srebrenica town.<sup>1736</sup> However, the plan for Krivaja 95 was to reduce the “safe area” of Srebrenica to its urban centre and to move towards the larger VRS goal of plunging the Bosnian Muslim population into a humanitarian crisis and ultimately eliminating the enclave.<sup>1737</sup>

## 2. The Take-Over of Srebrenica

608. The VRS offensive on Srebrenica began in earnest on 6 July 1995,<sup>1738</sup> when ABiH positions near Srebrenica, as well as certain UNPROFOR OPs, came under artillery fire by the VRS.<sup>1739</sup> On 8 July 1995, the VRS attacked the southern edge of Srebrenica, pushing back the defending ABiH forces, and causing the DutchBat personnel to abandon their OPs.<sup>1740</sup>

609. On the evening of 8 July 1995, the shelling of the town intensified and many civilians entered Srebrenica from nearby villages in the southern part of the enclave.<sup>1741</sup> On 9 July 1995, the VRS advanced to just south of Srebrenica town and captured approximately 30 DutchBat personnel and four armoured personnel carriers (“APCs”).<sup>1742</sup> They were detained at the Hotel Fontana in Bratunac.<sup>1743</sup> The remaining DutchBat personnel withdrew to the enclave.<sup>1744</sup> With all of the southern DutchBat OPs either captured or abandoned, the road to Srebrenica town was open.<sup>1745</sup>

<sup>1734</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 21. *See also* Defence Adjudicated Facts I, 4, 5.

<sup>1735</sup> Defence Adjudicated Facts I, 6.

<sup>1736</sup> Defence Adjudicated Facts I, 7.

<sup>1737</sup> Srebrenica Adjudicated Facts, 9. *See also* Defence Adjudicated Facts I, 8: [t]he plan specifically directed the Drina Corps to “split apart the enclaves of Žepa and Srebrenica and to reduce them to their urban areas”. The plan also refers to “reducing the enclaves in size” and specified that the Drina Corps was to “improve the tactical positions of the forces in the depth of the area, and to create conditions for the elimination of the enclaves”; Momir Nikolić, T. 7871-7872; Ex. P2513, Supplementary Statement of Momir Nikolić, 16 April 2009, p. 1; Ex. D134, Order by Drina Corps Command, 2 July 1995, pp 1, 3.

<sup>1738</sup> Srebrenica Adjudicated Facts, 10.

<sup>1739</sup> Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 73; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 35; Ex. P858, FRY Mission New York Diplomatic Cable Regarding Informal Consultations of the UNSC on Srebrenica, 10 July 1995.

<sup>1740</sup> Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 73; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 30; Ex. P858 (under seal).

<sup>1741</sup> Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 73.

<sup>1742</sup> *Ibid.*

<sup>1743</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 35; Richard Butler, T. 6564-6565. *See* Ex. P2392, Video, 11 July 1995, showing Dutch soldiers held at the Hotel Fontana; Ex. P896 (under seal).

<sup>1744</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 36.

<sup>1745</sup> Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 74; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 36.

After the VRS succeeded in pushing back the ABiH and UNPROFOR forces in the “safe area”, Karadžić issued a new order authorising the VRS Drina Corps to capture the town of Srebrenica.<sup>1746</sup>

610. On 10 July 1995, the VRS advanced towards Srebrenica, pushing the remaining DutchBat troops back to town.<sup>1747</sup> Later that day, an estimated several thousand civilians from the southern portions of the enclave fled to the town of Srebrenica.<sup>1748</sup> During the evening hours of 10 July 1995, additional VRS reinforcements, including the 10<sup>th</sup> Sabotage Detachment, arrived south of the Srebrenica enclave.<sup>1749</sup>

611. Late that evening, DutchBat Commander Lieutenant Colonel Karremans informed the mayor of Srebrenica about major NATO air strikes planned for the next morning, 11 July 1995.<sup>1750</sup> The Bosnian Muslim military leaders, unconvinced that such air strikes could stop the advancement of the VRS, decided to leave Srebrenica town and moved towards the northwest corner of the enclave.<sup>1751</sup>

612. While a group of Bosnian Muslims, primarily consisting of women, children and elderly men moved to the UN compounds in Srebrenica and Potočari,<sup>1752</sup> a second group, primarily military-aged men and ABiH members, began to assemble in the north-western part of the Srebrenica enclave, close to the villages of Šušnjari and Jagličići.<sup>1753</sup> This area was known as the departure point of the most direct route leading from the enclave to ABiH-held territory near Tuzla.<sup>1754</sup> It has been estimated that between 10,000 and 15,000 people joined this convoy and attempted to escape Srebrenica along this route.<sup>1755</sup>

<sup>1746</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 36, referring to a VRS Main Staff order dated 9 July 1995.

<sup>1747</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 36; Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 74.

<sup>1748</sup> Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 74. *See also* Ex. P2351, Code Cable from Akashi, 11 July 1995; Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 2.

<sup>1749</sup> Dražen Erdemović, T. 7949. *See also* Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, pp 36-37.

<sup>1750</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 37. *See also* Ex. P2349, Transcript of Rupert Smith from *Prosecutor v. S. Milošević*, T. 27315; Ex. P2350, Code Cable from Akashi, 11 July 1995, referring to “close air support to be used”.

<sup>1751</sup> Richard Butler, T. 6549; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 37.

<sup>1752</sup> Richard Butler, T. 6553; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 37.

<sup>1753</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 38.

<sup>1754</sup> *Ibid.*

<sup>1755</sup> *Ibid.*



613. On the morning of 11 July 1995, NATO air strikes did not materialise for various reasons.<sup>1756</sup> At approximately 14:30 hours, two NATO F-16 planes bombed VRS tanks advancing towards Srebrenica; however, the attacks were halted due to poor visibility and following the VRS threat to kill the DutchBat soldiers being held hostage.<sup>1757</sup> By 16:00 hours, DutchBat soldiers took all of the remaining Bosnian Muslims from Srebrenica to a UN compound near Potočari.<sup>1758</sup>

614. In the early evening hours of 11 July 1995, General Mladić, accompanied by Drina Corps Commander Milenko Živanović, Chief of Staff of the Drina Corps, General Krstić, and other VRS officers, took a triumphant walk through the streets of an almost deserted Srebrenica town.<sup>1759</sup>

### 3. 11 July 1995: Refugees Flee to the Potočari Compound

615. During the VRS attack on the enclave on 11 July 1995 and into the morning hours of 12 July 1995, Muslim refugees began to arrive in Potočari.<sup>1760</sup> The Potočari compound was manned by approximately 30 soldiers, including Lieutenant Eelco Koster, a DutchBat logistics officer, and his unit, and they were tasked with taking care of the refugees.<sup>1761</sup> Following Koster's request for reinforcements, additional soldiers arrived in Potočari, increasing the total number of soldiers at the compound to 50 or 60.<sup>1762</sup>

616. According to Koster, refugees arrived at the Potočari compound from Srebrenica either on foot or in UN vehicles, and were primarily women, children and elderly.<sup>1763</sup> They appeared to be terrified and were looking for help.<sup>1764</sup> Initially, the refugees were not allowed inside the compound, and were directed into large buildings of a former bus shelter outside.<sup>1765</sup> Later that day, when the

<sup>1756</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 37, referring to the report of the Dutch MOD, *Debriefing on Srebrenica*, 4 October 1995, pp 32-36.

<sup>1757</sup> *Ibid.*

<sup>1758</sup> *Ibid.*

<sup>1759</sup> Srebrenica Adjudicated Facts, 13. A video from 11 July 1995 shows the following military commanders entering, or present around, the town of Srebrenica: Ratko Mladić, Milenko Živanović (then Commander of the Drina Corps), Vinko Pandurević (Commander of the Zvornik Infantry Brigade), Radislav Krstić (then Chief of Staff of the Drina Corps), members of the 10<sup>th</sup> Sabotage Detachment Colonel Mirko Trvić (Commander of the 2<sup>nd</sup> Romanija Motorised Brigade), Vujadin Popović (Assistant Commander for Security in the Drina Corps), Colonel Svetozar Andrić (then Commander of the 1<sup>st</sup> Birač Brigade of the Drina Corps) and Milorad Pelemiš (Commander of the 10<sup>th</sup> Sabotage Detachment), Ex. P2390, Video, 11 July 1995. *See also* Richard Butler, T. 6554-6555, 6557-6560; Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 32.

<sup>1760</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 32. Koster counted thousands of people arriving, primarily women, children and older men, T. 44. *See also* Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 45.

<sup>1761</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 32.

<sup>1762</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 35.

<sup>1763</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 33-34.

<sup>1764</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 32.

<sup>1765</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 33; Ex. P386, Video Clip.

crowd started to increase in size, Koster's unit allowed people into the compound in groups of 25.<sup>1766</sup>

617. Koster explained that because the road from Srebrenica to Potočari was in direct sight and line of fire of the VRS, the DutchBat personnel created a side opening in the fence so that the refugees could enter the compound out of the view of the VRS.<sup>1767</sup> Between 4,000 to 5,000 Bosnian Muslim refugees were brought inside, while the rest remained outside the compound, protected only by a demarcation line of red and white tape put up by DutchBat personnel.<sup>1768</sup>

618. The sick and wounded were provided with first aid, as well as food and water.<sup>1769</sup> The situation was dire, as it was tremendously hot and the DutchBat personnel were short of medical equipment and food.<sup>1770</sup> Information regarding the exact number of refugees in Potočari varies from source to source, but general indications are that a total of 25,000 to 35,000 refugees fled to Potočari.<sup>1771</sup>

619. VRS forces were positioned between 300 and 500 meters from the Potočari compound and were firing in the direction of the refugees and over their heads, causing panic among them.<sup>1772</sup> Koster testified that during the day, his men were fired upon by the VRS with mortar fire from approximately 50 metres away.<sup>1773</sup>

#### 4. The Establishment of Serb Authority over Srebrenica Municipality

620. On 11 July 1995, Radovan Karadžić, in his capacity as RS President, issued two orders related to Srebrenica: 1) appointing Miroslav Deronjić to serve as the "Civilian Commissioner for the Serbian Municipality of Srebrenica",<sup>1774</sup> and 2) ordering the formation of a Public Security Station for Serb Srebrenica.<sup>1775</sup> Both orders stated that citizens who engaged in combat operations

<sup>1766</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 33.

<sup>1767</sup> *Ibid.*

<sup>1768</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 38.

<sup>1769</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 35, 46; Ex. P428 (under seal), T. 963.

<sup>1770</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 35-36, 46; Ex. P428 (under seal), T. 963.

<sup>1771</sup> Richard Butler, T. 6574; Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 38; Ex. P428 (under seal), T. 962-963, 979, estimating the number of refugees at between 25,000 and 30,000.

<sup>1772</sup> Ex. P428 (under seal), T. 963.

<sup>1773</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 36.

<sup>1774</sup> Ex. P83, Transcript of Miroslav Deronjić from *Prosecutor v. Krstić (Appeal)*, T. 113-114; Ex. P86, Decision on Appointment of the Civilian Commissioner for the Srebrenica Municipality, 11 July 1995; Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 39.

<sup>1775</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 39.

against the VRS were to “be treated as prisoners of war”, while the remainder were free to choose their place of residence or emigration.<sup>1776</sup>

621. On 14 July 1995, Radovan Karadžić and Miroslav Deronjić held a private meeting, after which Karadžić met with Bosnian Serbs from Srebrenica and discussed the establishment of a War Presidency for the town.<sup>1777</sup> At this time, the appointment of Deronjić to the position of civilian commissioner was revoked and the War Presidency was established.<sup>1778</sup> Deronjić was appointed President of the War Presidency.<sup>1779</sup>

622. On 14 July 1995, Karadžić declared “a state of war” in the Srebrenica-Skelani municipality. On 28 July 1995, the “state of war” was expanded to include the entire territory of the RS.<sup>1780</sup>

### 5. Hotel Fontana Meetings

623. On the evening of 11 July 1995, two meetings were held at the Hotel Fontana in Bratunac between representatives from the DutchBat and the VRS.<sup>1781</sup> The first meeting was attended, *inter alia*, by Lieutenant Colonel Karremans, on behalf of the DutchBat, and by General Mladić, Major-General Živanović, Colonel Janković and Momir Nikolić, on behalf of the VRS.<sup>1782</sup> The meeting was video-recorded and lasted approximately one hour.<sup>1783</sup> It began with angry remarks by Mladić about the NATO air strikes.<sup>1784</sup> During the meeting, Mladić inquired whether buses could be provided to them through the UNPROFOR Chief of Staff in Sarajevo.<sup>1785</sup> The meeting ended with Mladić’s request that the DutchBat representatives arrange for Bosnian Muslim civilian and military representatives to attend a meeting the same evening at 23:00 hours.<sup>1786</sup>

<sup>1776</sup> Ex. P86, Decision on Appointment of the Civilian Commissioner for the Srebrenica Municipality, 11 July 1995; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 39.

<sup>1777</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 215; Ex. P82, Transcript of Miroslav Deronjić from *Prosecutor v. S. Milošević*, T. 29735; Ex. P87, Decision on Appointment of the War Presidency of the Srebrenica Municipality, 14 July 1995.

<sup>1778</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 215; Ex. P82, Transcript of Miroslav Deronjić from *Prosecutor v. S. Milošević*, T. 29735; Ex. P86, Decision on Appointment of the Civilian Commissioner for the Srebrenica Municipality, 11 July 1995; Ex. P87, Decision on Appointment of the War Presidency of the Srebrenica Municipality, 14 July 1995.

<sup>1779</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 215; Ex. P87, Decision on Appointment of the War Presidency of the Srebrenica Municipality, 14 July 1995.

<sup>1780</sup> Ex. P1624, Decision of Radovan Karadžić on Proclaiming a State of War in the RS, 28 July 1995.

<sup>1781</sup> Ex. P2391, Video, 11 July 1995; Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 3.

<sup>1782</sup> Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 3; Ex. P2391, Video, 11 July 1995.

<sup>1783</sup> *Ibid.*

<sup>1784</sup> Ex. P2391, Video, 11 July 1995; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 40.

<sup>1785</sup> *Ibid.*

<sup>1786</sup> *Ibid.*

624. Karremans returned to the Hotel Fontana at 23:00 hours for a second meeting with the VRS commanders, accompanied by a Bosnian Muslim representative, Nesib Mandžić.<sup>1787</sup> Also present at the meeting were Miroslav Deronjić and Ljubisav Simić, Mayor of Bratunac.<sup>1788</sup> The meeting was video-recorded in part.<sup>1789</sup> During the meeting, Mladić placed a broken signboard stating “Municipal Assembly of Srebrenica” on the table in front of everyone.<sup>1790</sup> The participants in the meeting interpreted the gesture to mean that the protected area of Srebrenica was taken and that the civilian population could no longer stay there.<sup>1791</sup> Mladić promised that everyone, regardless of their age and sex, would be evacuated according to their wishes.<sup>1792</sup> Mladić further addressed Nesib Mandžić personally, stating in a threatening language:

I need to have a clear position of the representatives of your people on whether you want to survive, stay, or disappear, and I am prepared to receive a delegation tomorrow of responsible people from the Muslim side here, at 1000 hours, with whom I can discuss the salvation of your people from the enclave, the former enclave of Srebrenica.<sup>1793</sup>

625. The next morning, 12 July 1995, a follow-up and final meeting between the DutchBat and VRS was held at the Hotel Fontana.<sup>1794</sup> The purpose of the meeting was discussed very early that morning, between 07:00 and 07:30 hours, between Mladić, Deronjić,<sup>1795</sup> Ljubisav Simić, President of the Bratunac municipality,<sup>1796</sup> and Dragomir Vasić, Chief of the Security Centre in Zvornik.<sup>1797</sup> At 10:00 hours, the DutchBat officers arrived together with Nesib Mandžić and two additional Bosnian Muslim representatives for the Potočari refugees: Ibro Nuhanović and Čamila Omanović.<sup>1798</sup> From the Bosnian Serb side, the participants included, *inter alia*, Mladić, Krstić, Vujadin Popović,<sup>1799</sup> Janković, Svetozar Kosorić, Drina Corps Chief of Intelligence, Momir

<sup>1787</sup> Ex. P428 (under seal), T. 964-965, 968-969; MP-277, T. 2620 (closed session); Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 40.

<sup>1788</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, pp 40-41; Ex. P437, Video Clip of Second Hotel “Fontana” Meeting, 10 July 1995.

<sup>1789</sup> Ex. P428 (under seal), T. 970-971; Ex. P437, Video Clip of Second Hotel “Fontana” Meeting, 10 July 1995.

<sup>1790</sup> Ex. P428 (under seal), T. 975; Ex. P435 (under seal).

<sup>1791</sup> Ex. P428 (under seal), T. 975.

<sup>1792</sup> Ex. P429 (under seal), T. 990-991.

<sup>1793</sup> Ex. P428 (under seal), T. 977-978.

<sup>1794</sup> Ex. P429 (under seal), T. 986; Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 4.

<sup>1795</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 191.

<sup>1796</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 191. *See also* Ex. P81, Transcript of Miroslav Deronjić from *Prosecutor v. S. Milošević*, T. 29706, mentioning Ljubo Simić as the President of the Bratunac Municipality.

<sup>1797</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 191.

<sup>1798</sup> Ex. P83, Transcript of Miroslav Deronjić from *Prosecutor v. Krstić (Appeal)*, T. 126; Ex. P438, Video Clip of Third Hotel “Fontana” Meeting, 12 July 1995, at 2:19, 3:46; Ex. P436, Statement by Representatives of the Civilian Authorities of Srebrenica Enclave, 17 July 1995.

<sup>1799</sup> Ex. P438, Video of Third Hotel “Fontana” Meeting, 12 July 1995, at 1.50.27.6. *See also* Srebrenica Adjudicated Facts, 97, noting that Popović was Assistant Commander for Security for the Drina Corps.

Nikolić, Bratunac Brigade Assistant Commander for Intelligence and Security, as well as Deronjić and Miroslav Simić.<sup>1800</sup>

626. At the meeting, Mladić insisted that he wanted “absolute cooperation from the civilian population”, and that for their survival, all of the “armed men who attacked and committed crimes” must hand over their weapons. While specifically addressing the representatives of the Bosnian Muslim population, Mladić repeated that they “can choose to stay, or leave if [they] wish[ed]”.<sup>1801</sup> The Bosnian Muslim representatives made it clear that they wanted to leave Srebrenica, and be escorted by the DutchBat forces to safety.<sup>1802</sup>

627. The meeting finished between 11:00 and 11:30 hours.<sup>1803</sup> Deronjić testified that the meeting, recorded by TV cameras, was “some kind of [...] smoke screen for the public”, because most of the contacts with Bosnian Muslims and most decisions had been made outside of this meeting.<sup>1804</sup>

## 6. Transfer of Population

### (a) Organisation of Buses

628. Shortly after the 12 July 1995 meeting at the Hotel Fontana, VRS personnel, as well as the RS MUP Special Police, started to arrive in Potočari to search and secure the area.<sup>1805</sup> On the morning of 12 July 1995, VRS and RS civilian authorities began to mobilise buses.<sup>1806</sup>

629. General Krstić, working in close co-operation with military officials of the VRS Main Staff and the Drina Corps, played a significant role in organising the transportation operation.<sup>1807</sup> General

<sup>1800</sup> Ex. P429 (under seal), T. 987, 989; Ex. P83, Transcript of Miroslav Deronjić from *Prosecutor v. Krstić (Appeal)*, T. 126; Momir Nikolić, T. 7827.

<sup>1801</sup> Dragomir Vasić, T. 6498; Ex. P438, Video Clip of Third Hotel “Fontana” Meeting, 12 July 1995, at 4:53.

<sup>1802</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, paras 192-193; Ex. P83, Transcript of Miroslav Deronjić from *Prosecutor v. Krstić (Appeal)*, T. 127-128, 163. *See also* Ex. P438, Video Clip of Third Hotel “Fontana” Meeting, 12 July 1995.

<sup>1803</sup> Ex. P429 (under seal), T. 990; Ex. P438, Video Clip of Third Hotel “Fontana” Meeting, 12 July 1995, showing some of the attendees at the meeting on 12 July 1995 in Bratunac, as identified by the witness.

<sup>1804</sup> Ex. P83, Transcript of Miroslav Deronjić from *Prosecutor v. Krstić (Appeal)*, T. 127, 163. *See also* Ex. P93, Video Clip of a Meeting; Ex. P94, Video Still of a Meeting at the Fontana Hotel; Ex. P438, Video Clip of Third Hotel “Fontana” Meeting, 12 July 1995, 4:32.

<sup>1805</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 44.

<sup>1806</sup> Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 74; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 45; Ex. P429 (under seal), T. 991-992; Ex. P280, Notes of Intercepted Conversation at 09:15 Hours, in which an unknown person reported to Lieutenant Colonel Krsmanović about issues surrounding obtaining buses and fuel. *See also* Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 196, stating that a request was sent to every company in the Bratunac area, Zvornik, and the Ljubivoja municipality in Serbia, and was even broadcast on the radio, for available buses or vehicles to evacuate the civilian population from the enclave to Bosnian Muslim-held territory. Deronjić stated he spent the rest of the day “preparing a gathering for the Serbs, former residents of Srebrenica, and organising buses to evacuate the population”, Ex. P80, Witness Statement of Miroslav

Krstić ordered the procurement of buses for the transportation of the Bosnian Muslim population from Potočari on 12 and 13 July 1995, including an order for 50 buses to arrive in Srebrenica from nine different municipalities.<sup>1808</sup> Three additional orders regarding transport were issued by the RS MOD.<sup>1809</sup>

630. Buses and trucks were assembled from, *inter alia*, Ilijaš, Pale, Sokolac, Bratunac, and Bratkovići and ordered to arrive at Bratunac stadium on 12 July 1995.<sup>1810</sup> There was a serious shortage of fuel in RS and other areas; thus, obtaining enough fuel to support the movement of the entire civilian population out of Potočari presented a critical issue.<sup>1811</sup> The Bratunac Brigade Command logistically supported the transportation operation by disbursing and accounting for fuel; ultimately, a minimum of 4,700 litres of diesel fuel was provided to the transportation fleet assembled in Potočari on 12 July 1995.<sup>1812</sup> Krstić also issued orders to his subordinates regarding securing the road along which the buses would travel to Kladanj, as well as to secure the location where the Bosnian Muslims would disembark.<sup>1813</sup>

631. As the buses arrived in Potočari, a number of VRS officers, including Mladić, Živanović, Krstić, as well as a number of other Main Staff and Drina Corps personnel, arrived at the Potočari compound to personally observe the situation.<sup>1814</sup> RS Municipal Police and RS Special Police units were also present.<sup>1815</sup> At least two video cameras filmed these events on 12 July 1995.<sup>1816</sup>

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Deronjić, 25 November 2003, para. 196. *See also* Ex. P260, Intercepted Conversation at 11:27 hours, wherein Krstić requested that the buses should start moving right away.

<sup>1807</sup> Srebrenica Adjudicated Facts, 17.

<sup>1808</sup> Srebrenica Adjudicated Facts, 16; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 46. In addition, General Krstić issued an order at 12:10 hours for buses to start moving immediately, Ex. P260, Intercepted Conversation at 11:27 Hours; Richard Butler, T. 6587-6588; Srebrenica Agreed Facts, 16, 18. *See also* Ex. P261, Notes of Intercepted Conversation at 12:00 Hours, showing that Krstić was involved in gathering buses and fuel for the transportation of the Bosnian Muslim population from Potočari on 12 July 1995.

<sup>1809</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 45. The RS MOD and the VRS, including the Drina Corps, issued a series of orders concerning the assembling of buses in Bratunac, Richard Butler, T. 6583. Colonel Pandurević, the commander of the Zvornik Brigade, sent a regular combat report to the Command of the Drina Corps affirming that “pursuant to [their] order”, several buses and trucks were sent to Bratunac, Ex. P2394, Regular Combat Report of the 1<sup>st</sup> Zvornik Brigade to the Command of the Drina Corps, 12 July 1995. According to Butler, the order to send vehicles must have been given by the Drina Corps Command, Richard Butler, T. 6582-6583.

<sup>1810</sup> Ex. P261, Intercepted Conversation at 12:00 Hours; Richard Butler, T. 6586.

<sup>1811</sup> Richard Butler, T. 6585. *See also* Ex. P280, Intercepted Conversation at 09:15 Hours, stressing the lack of fuel.

<sup>1812</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 46. *See also* Ex. P261, Intercepted Conversation at 12:00 Hours, showing that Krstić was involved in gathering buses and fuel for the transportation of the Muslim population from Potočari on 12 July 1995.

<sup>1813</sup> Srebrenica Adjudicated Facts, 16; Ex. P262, Intercepted Conversation at 13:05 Hours, showing that Krstić told an officer in the Vlasenica Brigade of the Drina Corps to have the MUP secure the road from Vlasenica to the tunnel between the RS and BiH lines, since that was where the Muslims would be disembarking.

<sup>1814</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 47; Srebrenica Adjudicated Facts, 14-15; Ex. P429 (under seal), T. 991; Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 37-38. Even before

(b) Separation of Refugees

632. The Trial Chamber took judicial notice of the fact that the separation of refugees was part of a plan devised and implemented by the Bosnian Serb forces to transport all of the Bosnian Muslim women, children and elderly out of the enclave.<sup>1817</sup> According to Momir Nikolić, on the morning of 12 July 1995 in front of the Hotel Fontana, Colonel Popović informed him that all Bosnian Muslim women, children and men unfit for military service would be transported to Bosnian Muslim-controlled territory, while the “able-bodied Bosnian Muslim men will all have to be killed”.<sup>1818</sup> Nikolić received similar information from Colonel Kosorić and was informed that he would be involved in the separation of the able-bodied Bosnian Muslim men from the group.<sup>1819</sup>

633. Between 12:00 and 13:00 hours on 12 July 1995, Mladić arrived in Potočari and entered the area occupied by the crowd of refugees.<sup>1820</sup> After Mladić’s departure, VRS personnel began separating the Bosnian Muslim men from the women, children and elderly.<sup>1821</sup> Nikolić participated in the separation process, along with other members of the Bratunac Brigade.<sup>1822</sup> The presence of armed members of the Bratunac Brigade contributed to the atmosphere of fear and terror in Potočari.<sup>1823</sup>

634. At approximately 16:00 hours on 12 July 1995, VRS soldiers, including General Mladić, arrived at Koster’s position at the Potočari compound with additional jeeps and civilian vehicles.<sup>1824</sup> Koster asked Mladić what he was planning to do, but Mladić did not reply and walked past the demarcation tape towards the refugees.<sup>1825</sup> Koster asked Mladić several times to go to the

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12:00 hours on that day, the VRS soldiers mingled with the Bosnian Muslim population and started removing some of them from the group, Ex. P429 (under seal), T. 994.

<sup>1815</sup> Ex. P2395, Video, July 1995; Ex. P2396, Video, July 1995; Ex. P2397, Video, July 1995; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 47, in which Richard Butler identified General Mladić, as well as members of the 2<sup>nd</sup> Battalion of the Bratunac Light Infantry Brigade, who were present while the refugees were embarking the buses in Potočari. Butler also recognised members of the Vlasenica Light Infantry Brigade and the Milići Light Infantry Brigade present during the disembarking of refugees in Tišća and Luke, Richard Butler, T. 6592-6595; Ex. P2395, Video, July 1995 at 00:37, concerning the Bratunac Brigade Military Police Platoon, which belonged to the Bratunac Light Infantry Brigade; Ex. P2397, Video, July 1995.

<sup>1816</sup> Ex. P2395, Video, July 1995; Ex. P2396, Video, July 1995.

<sup>1817</sup> Srebrenica Adjudicated Facts, 11.

<sup>1818</sup> Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, paras 3-4.

<sup>1819</sup> Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, paras 4-5; Ex. P2513, Supplementary Statement of Momir Nikolić, 16 April 2009.

<sup>1820</sup> Ex. P429 (under seal), T. 991.

<sup>1821</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 40-41; Eelco Koster, T. 2307; Ex. P387, Video Clip; Ex. P384, Transcript of Eelco Koster from *Prosecutor v. Popović et al.*, T. 3104.

<sup>1822</sup> Momir Nikolić, T. 7825; Srebrenica Adjudicated Facts, 25-26; Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 38.

<sup>1823</sup> Srebrenica Adjudicated Facts, 21.

<sup>1824</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 39; Ex. P386, Video Clip.

<sup>1825</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 39.

compound to talk to Colonel Karremans; however, Mladić refused, stating: “No. I am doing what I please to do and I am in charge here and nobody tells me what to do, and I am outside here and you will see what is going to happen”.<sup>1826</sup> Mladić also informed Koster that the DutchBat soldiers would be better off if they co-operated with him.<sup>1827</sup>

635. Outside the gates of the base, Mladić spoke to the crowd gathered at Potočari, stating: “[d]o not panic. You will all be safe. You will all be evacuated to the areas that are under the control of the BiH army. First the old and the infirm, then mothers with their children, and then everybody will follow as well”.<sup>1828</sup>

636. Later that day, MP-227 observed a long line of buses outside the Potočari base, waiting to be loaded with women, children and the elderly.<sup>1829</sup> The Bosnian Serbs forced them onto the buses, while kicking and yelling at them.<sup>1830</sup> Koster asked General Mladić what he was going to do and he replied that he was going to evacuate the refugees to another place.<sup>1831</sup>

637. The Bosnian Serbs continued to put more people in the buses and began driving them away.<sup>1832</sup> Koster’s men attempted to escort the buses and trucks.<sup>1833</sup> However, at control-points manned by Bosnian-Serb police or military personnel, the UN soldiers were disarmed, their vehicles were confiscated and they could no longer accompany the buses outside of the compound.<sup>1834</sup>

638. The Bosnian Muslim men who had been separated from the women, children and elderly in Potočari were first taken to the “White House”, located across the road from the UN compound in Potočari.<sup>1835</sup> Their personal belongings were left outside and were subsequently burned.<sup>1836</sup> VRS

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<sup>1826</sup> *Ibid.*

<sup>1827</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 39, 47.

<sup>1828</sup> Ex. P429 (under seal), T. 993.

<sup>1829</sup> Ex. P429 (under seal), T. 992. *See also* Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 40.

<sup>1830</sup> Ex. P384, Transcript of Eelco Koster from *Prosecutor v. Popović et al.*, T. 3104. *See also* Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 6.

<sup>1831</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 40.

<sup>1832</sup> *Ibid.*

<sup>1833</sup> *Ibid.*

<sup>1834</sup> Richard Butler, T. 6597-6598. *See also* Ex. P2398, Video, July 1995 at 00:22, in which unarmed UN soldiers are accompanying the refugees to Bosnian-Muslim held territory; Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 40.

<sup>1835</sup> Richard Butler, T. 6605-6609; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 49; MP-294, T. 9057-9059; Ex. P390, Video Clip, showing men seated behind a balcony of the “White House”, at 02:29.

<sup>1836</sup> Richard Butler, T. 6606; Ex. P390, Video Clip.



soldiers were responsible for guarding these men, before they were brought to Bratunac.<sup>1837</sup> RS MUP Special Police were also present in the area.<sup>1838</sup>

639. While at the Potočari compound, MP-277 witnessed nearby houses torched. He believed it was to frighten the population and prevent them from returning.<sup>1839</sup> He testified that he heard shots and screams outside the compound during the night of 12 July 1995.<sup>1840</sup> During the same evening, VRS soldiers confiscated weapons and military gear from approximately 30 to 40 DutchBat soldiers including Koster, at gun point, as they attempted to guard refugees outside the compound.<sup>1841</sup>

640. On the morning of 13 July 1995, the loading of bus and truck convoys leaving Potočari resumed at about 07:00 hours.<sup>1842</sup> At about 15:00 hours, Belgrade journalist Zoran Petrović filmed one group of refugees preparing to board the buses.<sup>1843</sup> As shown by the video, the VRS was manning both the separation lines, and guarding access to the buses to ensure that military-aged Bosnian Muslim males did not board.<sup>1844</sup> By 20:00 hours on 13 July 1995, the removal of the Bosnian Muslim refugee population from the Potočari compound was complete.<sup>1845</sup> Ultimately, thousands of Bosnian Muslim civilian women, children and elderly men were bussed out of Potočari and other areas surrounding Srebrenica to non-Serb areas of BiH.<sup>1846</sup>

641. The buses transferred the women, children and the elderly from Potočari through Bratunac, along the Bratunac-Konjević Polje road, through Milići, Vlasenica to Tišća.<sup>1847</sup> At Tišća, the

<sup>1837</sup> Ex. P387, Video Clip; Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003 para. 4, regarding the intention to transport the Bosnian Muslim men to Bratunac. *See also* Richard Butler, T. 6605-6607, stating that the official reason for the detention of captured Bosnian Muslim men was to screen them for their potential involvement in war crimes against the Serbs, but that there is no evidence that an investigation was ever carried out among these men; Ex. P2353, Code Cable from Akashi, 12 July 1995, para. 2, referring to “about 4,000 males of draft age in Bratunac awaiting ‘screening’ by the ‘BSA’, their fate being of concern to everyone”; Ex. P83, Transcript of Miroslav Deronjić from *Prosecutor v. Krstić (Appeal)*, T. 128, 163, referring to the fact that Radovan Karadžić also insisted that if the VRS had information that men who might have committed war crimes were hiding among Muslim civilians, those men should be detained.

<sup>1838</sup> Ex. P387, Video Clip.

<sup>1839</sup> Ex. P429 (under seal), T. 994.

<sup>1840</sup> Ex. P429 (under seal), T. 995.

<sup>1841</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 42.

<sup>1842</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 47; Ex. P257, Intercepted Conversation at 07:00 Hours, in which Janković reported to General Milenko Živanović that 5,000 Muslims had been transferred and another 10,000 still needed to be transferred.

<sup>1843</sup> Ex. P387, Video Clip.

<sup>1844</sup> *Ibid.*

<sup>1845</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 48. *See also* Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 43-45.

<sup>1846</sup> Srebrenica Agreed Facts, 3.

<sup>1847</sup> Richard Butler, T. 6583-6584; Ex. P2397, Video, July 1995.

refugees disembarked and walked through a tunnel to Bosnian-Muslim controlled territory.<sup>1848</sup> Thereafter some of the refugees arrived at Bosnian Muslim-held territory in and around Kladanj.<sup>1849</sup>

(c) Column of Military-Aged Men

642. The refugees assembled at the UN compound in Potočari did not constitute all of the Bosnian Muslims at the enclave. From the evening of 10 July 1995, ABiH soldiers and Bosnian Muslim men began to assemble in an area located northwest of Srebrenica at the departure point for the most direct route to ABiH-held territory near Tuzla.<sup>1850</sup> Between 10,000 and 15,000 military-aged men, including both soldiers and civilians, formed a column and attempted to escape along this route.<sup>1851</sup> The column of the military-aged men heading towards Tuzla is shown on two videos.<sup>1852</sup>

643. On 12 July 1995, the column began to move through former ABiH smuggling routes.<sup>1853</sup> The Bosnian Serb military knew this route, and was therefore able to set up ambushes.<sup>1854</sup>

644. The largest number of Bosnian Muslim men from the column were captured on 13 July 1995 by MUP units along the Bratunac-Konjević Polje road, which ran through Glogova, Kravica and Sandići.<sup>1855</sup> Several thousand men were collected at, or near, the Sandici Meadow and the Nova Kasaba football field,<sup>1856</sup> at the intersection of Konjević Polje road and a meadow in Jagličići.<sup>1857</sup>

<sup>1848</sup> Richard Butler, T. 6584. In Tišća and Luke the final separation took place; all military-aged men were detained and brought to a school in Luke, Richard Butler, T. 6595. See also Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 50; Ex. P2397, Video, July 1995.

<sup>1849</sup> Richard Butler, T. 6600; Ex. P2397, Video, July 1995.

<sup>1850</sup> Richard Butler, T. 6615. This area covers the villages of Šušnjari and Jagličići, Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 38; Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 199.

<sup>1851</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 199; Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 38.

<sup>1852</sup> See Ex. P2388, Video, July 1995, at 09:47; Ex. P2389, Video, July 1995. See also Richard Butler, T. 6549-6550, 6553.

<sup>1853</sup> Richard Butler, T. 6551; Ex. P2388, Video, July 1995; Ex. P2389, Video, July 1995.

<sup>1854</sup> Richard Butler, T. 6551; Ex. P2388, Video, July 1995; Ex. P2389, Video, July 1995; Ex. P283, Intercepted Conversation at 13:45 Hours, in which two Drina Corps officers discuss movement around the area of Konjević Polje and indicate that General Krstić is the person in charge of the operation.

<sup>1855</sup> Richard Butler, T. 6610, 6615. See Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 9; Ex. P2388, Video, July 1995; Ex. P2389, Video, July 1995; Ex. P2517, Transcript of Momir Nikolić from *Prosecutor v. Popović et al.*, 22 April 2009, T. 32979, in which Nikolić testified that MUP forces were deployed along the Bratunac-Konjević Polje road.

<sup>1856</sup> Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, paras 7, 9. Richard Butler, T. 6611, 6636-6638; Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 60; Ex. P273, Intercepted Conversation at 16:02 Hours, stating that on 13 July 1995 1.500 prisoners were gathered at the stadium. An additional intercepted conversation seems to show the role of the VRS Chief of Security Beara in the detention and killing of the people in the soccer field in Nova Kasaba, Ex. P274, Intercepted Conversation at 10:09 Hours. See also Ex. P275, Intercepted Conversation at 10:09 Hours, in which Colonel Beara stated to Lukić that "400 *Balijas* have shown up in Konjević Polje", and to "shove them all on the playground". In light of the evidence, the Trial Chamber understands the term "playground" to mean the soccer field at Nova Kasaba.

645. According to Richard Butler, the Bosnian Serb military leadership assessed that one third of the column was armed,<sup>1858</sup> but it underestimated the size and the potential threat of this column.<sup>1859</sup> Therefore, on 15 and 16 July 1995, additional reinforcements were rushed to the Zvornik battlefield area.<sup>1860</sup> Nevertheless, on 16 July 1995, in accordance with a decision made by Colonel Pandurević, the Zvornik Brigade declared a cease-fire for 24 hours and allowed approximately 5,000 men from the column to pass through the VRS lines into Bosnian-Muslim held territory.<sup>1861</sup>

646. The 2<sup>nd</sup> Šekovići Detachment,<sup>1862</sup> which formed part of the MUP and was under the command of Borovčanin,<sup>1863</sup> as well as the 1<sup>st</sup> Special Police Units (“PJP”)<sup>1864</sup> and the 65<sup>th</sup> Protection Regiment, under the command of Major Zoran Malinić,<sup>1865</sup> were deployed along Bratunac-Konjević Polje road.<sup>1866</sup>

647. The VRS and the RS Police Units stole and used UN equipment,<sup>1867</sup> which may have caused men from the column to believe they were putting themselves into the custody of the UN when they were, in fact, surrendering to the Bosnian Serbs.<sup>1868</sup>

<sup>1857</sup> Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, paras 7, 9. According to an intercepted communication on 13 July 1995 at 17:30 hours between two unidentified individuals, “there [were] about 6,000 of them”; the participants further referred to the fact that there were three checkpoints along the road and that at each checkpoint, there were about 1,500 to 2,000 Muslim prisoners. The three references to checkpoints were: 1) “to the stadium” at Nova Kasaba, 2) “up there where the checkpoint at the intersection is”, and 3) “halfway between the checkpoint and the loading place”, Ex. P256, Notes of Intercepted Conversation at 17:30 Hours. *See also* Richard Butler, T. 6636.

<sup>1858</sup> Richard Butler, T. 6552.

<sup>1859</sup> Richard Butler, T. 6551. On 14 July 1995, the armed portion of the column broke through the VRS line around Snagovo, Richard Butler, T. 6643; Ex. P266, Notes of Intercepted Conversation at 21:02 Hours.

<sup>1860</sup> Richard Butler, T. 6726.

<sup>1861</sup> Richard Butler, T. 6552, 6624-6625, 6630, 6724. *See also* Ex. P2404, Interim Combat Report of the 1<sup>st</sup> Zvornik Brigade to the Command of the Drina Corps, 16 July 1995, in which Pandurević informed the Drina Corps Command about his decision.

<sup>1862</sup> Ex. P2401, Video, July 1995 at 01:45, showing two members of the 2<sup>nd</sup> Šekovići Detachment at the Sandići meadow. *See also* Richard Butler, T. 6612-6613, 6618; Ex. P2401, Video, July 1995 at 02:34; Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 9, referring to the presence of MUP forces along the road.

<sup>1863</sup> Richard Butler, T. 6612. Borovčanin himself was spotted at the area of the road, Ex. P2401, Video, July 1995 at 12:35, Richard Butler, T. 6619. *See also* Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 9.

<sup>1864</sup> Richard Butler, T. 6613. Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 9.

<sup>1865</sup> Richard Butler, T. 6638-6639, testifying that this unit was active in combat against the column between Konjević Polje and Nova Kasaba, as well as in capturing prisoners and holding them at the soccer field at Nova Kasaba.

<sup>1866</sup> Richard Butler, T. 6620.

<sup>1867</sup> Richard Butler, T. 6620; Ex. P2401, Video, at 2.50, 17.5.

<sup>1868</sup> *Ibid.*

## 7. Detention and Killings of Bosnian Muslim Men

### (a) General

648. The parties agreed that over a seven-day period from 12 July 1995 until approximately 19 July 1995, VRS and MUP forces participated in a planned and organised mass execution and burial of thousands of captured Bosnian Muslim men from the Srebrenica enclave. This organised killing operation occurred in several different locations in and around Srebrenica, Bratunac and Zvornik.<sup>1869</sup> Some Bosnian Muslim men were killed individually or in small groups by the soldiers who captured them and others were killed where they were temporarily detained.<sup>1870</sup> As will be analysed further below, the victims' bodies were buried in several areas, some of them close to the execution sites.

649. Between August 1995 and October 1995, the VRS reburied many victims of the mass executions in remote secondary locations to hide the evidence.<sup>1871</sup> This reburial operation was ordered by the VRS Main Staff, directed by Colonel Beara, Chief of Security of the Main Staff, and Lieutenant Colonel Popović, Assistant Commander for Security of the Drina Corps.<sup>1872</sup> On the ground, the operation was carried out by the Bratunac and Zvornik Brigades.<sup>1873</sup>

650. Within the Bratunac Brigade, Momir Nikolić, the Chief of Security and Intelligence, was tasked with organising the operation;<sup>1874</sup> while within the Zvornik Brigade, Assistant Commander for Security Drago Nikolić, was in charge of the reburials.<sup>1875</sup> The VRS Main Staff provided fuel to the Zvornik Brigade for the reburial operation and allocated the task of maintaining the records of fuel distribution to Captain Milorad Trbić, security officer in the Zvornik Brigade.<sup>1876</sup>

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<sup>1869</sup> Srebrenica Agreed Facts, 14. *See also* Ex. P259, Intercepted Conversation at 09:50 Hours, in which Obrenović told Krstić that a few more Muslim people were captured, and he responded with “kill them all”.

<sup>1870</sup> Srebrenica Agreed Facts, 15.

<sup>1871</sup> Srebrenica Agreed Facts, 2; Srebrenica Adjudicated Facts, 83; Richard Butler, T. 6656-6659. *See* Ex. P2410, Order of Ratko Mladić Approving Issuing Fuel for Engineering Works in the ZoR of the Drina Corps, 14 September 1995. *See also* Ex. P2411, Order of the Logistics Sector of the VRS Main Staff to Issue Fuel to the Drina Corps Command, 14 September 1995.

<sup>1872</sup> Srebrenica Adjudicated Facts, 84, 89, 104; Momir Nikolić, T. 7834.

<sup>1873</sup> Srebrenica Adjudicated Facts, 85. *See also* Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 13.

<sup>1874</sup> Srebrenica Adjudicated Facts, 86.

<sup>1875</sup> Srebrenica Adjudicated Facts, 87.

<sup>1876</sup> Srebrenica Adjudicated Facts, 88.

(b) Number of Missing Persons

651. Helge Brunborg, a demographer and expert witness, testified about the total number of missing persons involved with the fall of the enclave of Srebrenica.<sup>1877</sup> According to Brunborg, as of 21 November 2005, approximately 7,661 people were identified as missing based on reports from family members.<sup>1878</sup> Brunborg noted, however, that some were never reported by their relatives as missing, in some cases because the whole family was killed.<sup>1879</sup> It follows that the total number of missing people is probably higher.<sup>1880</sup> Based on DNA analysis, 2,694 persons were found and identified in mass graves in the area of Srebrenica.<sup>1881</sup> Brunborg removed 103 people from this list due to uncertainty as to the date they went missing.<sup>1882</sup> Ultimately, Brunborg concluded that there were 2,591 victims out of the total 7,661 people considered missing.<sup>1883</sup> The Trial Chamber finds Brunborg's conclusions regarding the number of missing people associated with the events in Srebrenica to be reliable.

652. The Trial Chamber will now turn to discuss the detention and killing of Bosnian Muslim men as charged in the Indictment.

8. Potočari Area (12–17 July 1995)(a) “Opportunistic” Killings near the UN Compound

653. The parties agreed that the bodies of nine men were discovered on 12 July 1995 in Budak, in a field near the river, on the west side of the main road, about 500 metres from the UN Compound.<sup>1884</sup> The parties further agreed that on the morning of the same day, an additional nine or ten male corpses were found approximately seven hundred meters from the UN Compound. The

<sup>1877</sup> Helge Brunborg, T. 2524-2525. *See also* Ex. P404, Report of Helge Brunborg and Henrik Urdal on the Number of Missing and Dead from Srebrenica, 12 February 2000. Brunborg used the following sources for his expert report: the ICRC database of missing persons on the territory of Bosnia and Herzegovina, the Ante Mortem database of Physicians for Human Rights, the 1991 census conducted in the former Yugoslavia, and the Voters' Registers for BiH for 1997 and 1998 prepared by the Organisation for Security and Cooperation in Europe, Helge Brunborg, T. 2526-2527. According to Brunborg, the 1991 census was primarily a “*de jure*” census, *i.e.* that it included people who were temporarily absent from the region in 1991, Helge Brunborg, T. 2526-2527, 2541.

<sup>1878</sup> Helge Brunborg, T. 2540.

<sup>1879</sup> Helge Brunborg, T. 2563-2564.

<sup>1880</sup> Ex. P404, Report of Helge Brunborg and Henrik Urdal on the Number of Missing and Dead from Srebrenica, 12 February 2000, pp 7-8.

<sup>1881</sup> Helge Brunborg, T. 2541-2542, 2573. *See also* Ex. P406, Addendum on the Number of Missing and Dead from Srebrenica, 12 April 2003.

<sup>1882</sup> Helge Brunborg, T. 2545, 2562-2563. *See also* Ex. P409, Report by Helge Brunborg, 16 November 2005, p. 2.

<sup>1883</sup> Helge Brunborg, T. 2545, 2562-2564. *See also* Ex. P409, Report by Helge Brunborg, 16 November 2005, p. 6.

<sup>1884</sup> Srebrenica Agreed Facts, 4.

bodies were located behind the “White House” in the vicinity of an electrical station near a creek.<sup>1885</sup>

654. The parties agreed that on 13 July 1995, the bodies of six Bosnian Muslim women and five Bosnian Muslim men were found in a stream near the Express Bus Company Compound in Potočari.<sup>1886</sup> The same day, one Bosnian Muslim man was taken behind a building near the “White House” and summarily executed.<sup>1887</sup>

655. The Trial Chamber recalls that members of the VRS and MUP were in Potočari between 12 and 13 July 1995 and carried out the separation of men from the women, children and elderly.<sup>1888</sup> The men were put inside a building called the “White House” before being transported to Bratunac.<sup>1889</sup> There is evidence that on 12 July 1995, VRS soldiers separated Bosnian Muslim men from the group in Potočari and they were never seen again.<sup>1890</sup> Shots and screams were also heard during the night of 12 July 1995.<sup>1891</sup> In light of the overall evidence, the Trial Chamber is satisfied beyond a reasonable doubt that VRS and/or MUP forces carried out killings of Bosnian Muslims near the UN Compound, in the area of Budak and near the “White House” building.

(b) Mass Execution near the Cinkara Zinc Factory

656. Witness MP-443, a Bosnian Muslim man, testified that on 12 July 1995, he watched the execution of approximately 80 to 100 Bosnian Muslim men, by decapitation, in the open area between the Cinkara Zinc factory and “Alija’s House”.<sup>1892</sup>

657. MP-443 testified that on 11 July 1995, he fled to Potočari when his village was attacked by, what he described as, “Chetniks”.<sup>1893</sup> He spent the first night together with his family and “thousands of people” in the Cinkara Zinc factory. The following day, 12 July 1995, the situation appeared to be calmer and people, including the witness, came out of the factory and went into the woods above Cinkara.<sup>1894</sup> At some point, the witness saw “Chetnik” soldiers in military camouflage uniform approaching.<sup>1895</sup> Many of the refugees fled to Cinkara and were followed by the

<sup>1885</sup> Srebrenica Agreed Facts, 5.

<sup>1886</sup> Srebrenica Agreed Facts, 6.

<sup>1887</sup> Srebrenica Agreed Facts, 7.

<sup>1888</sup> Ex. P383, Transcript of Eelco Koster from *Prosecutor v. Karadžić and Mladić* Rule 61 Hearing, T. 40-41; Eelco Koster, T. 2307, Ex. P387, Video Clip; Ex. P384, Transcript of Eelco Koster from *Prosecutor v. Popović et al.*, T. 3104. *See supra* paras 628-631, 633.

<sup>1889</sup> Eelco Koster, T. 2310; Richard Butler, T. 6605-6609.

<sup>1890</sup> Ex. P429 (under seal), T. 994.

<sup>1891</sup> Ex. P429 (under seal), T. 995.

<sup>1892</sup> MP-443, T. 8877-8878. *See* Indictment, Schedule D, para. 3.1.

<sup>1893</sup> MP-443, T. 8870.

<sup>1894</sup> MP-443, T. 8871.

<sup>1895</sup> MP-443, T. 8871-8872.

soldiers.<sup>1896</sup> MP-433, and another individual by the name of Džemal Karić, hid in a shed by “Alija’s House”.<sup>1897</sup>

658. From “Alija’s House”, MP-443 observed a group of seven to nine soldiers<sup>1898</sup> put planks together to resemble what he described as a “raft” in the compound between the Cinkara zinc factory and “Alija’s House”.<sup>1899</sup> The soldiers brought a group of four to seven people out of the factory to the raft.<sup>1900</sup> The soldiers forced their heads onto the raft and cut them off with axes.<sup>1901</sup> MP-443 counted the bodies as this was happening and arrived at a total of 83 people.<sup>1902</sup> The soldiers then piled the dead bodies onto a truck and covered them with hay.<sup>1903</sup> According to MP-443, two additional groups of people were taken out of the factory and executed after he and Karić stopped counting. MP-443 further stated that all the victims were civilians.<sup>1904</sup> The execution apparently came to an end when an officer arrived and admonished the soldiers for what they were doing.<sup>1905</sup>

659. MP-443 described the soldiers as wearing “multicolour” camouflage military uniforms, and that they were clean-shaven and belonged to the “Serbian” army.<sup>1906</sup> He further testified that: “I don’t know whether they were from Bosnia or Serbia. I didn’t come close to them...I didn’t know where they had come from. I didn’t come close to them, I couldn’t tell”.<sup>1907</sup>

660. In its Final Brief, the Defence argues that the Prosecution has failed to prove the allegation in paragraph 3.1 of Schedule D of the Indictment. The Defence submits that none of the forensic investigation and pathology reports related to sites in Srebrenica tendered by the Prosecution refer to decapitated heads or bodies and, therefore, that the testimony of MP-443 in this regard is not corroborated.<sup>1908</sup>

661. The Trial Chamber does not find that the fact that the forensic reports in evidence fail to mention decapitations at Srebrenica grave sites adversely affects this aspect of MP-443’s testimony. The evidence of a single witness on a material fact does not, as a matter of law, require

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<sup>1896</sup> MP-443, T. 8872.

<sup>1897</sup> MP-443, T. 8872, 8874, 8883-8884; Ex. P2687 (under seal).

<sup>1898</sup> MP-443, T. 8874.

<sup>1899</sup> MP-443, T. 8874, 8877.

<sup>1900</sup> MP-443, T. 8872, 8874, 8876-8878.

<sup>1901</sup> MP-443, T. 8874, 8876-8877.

<sup>1902</sup> MP-443, T. 8872. It is unclear exactly how the counting process worked. Apparently, the individual who was with the witness was noting on a pack of cigarettes how many people were in each of the groups the soldiers drove out of the factory to the execution point, MP-443, T. 8874-8876, 8878.

<sup>1903</sup> MP-443, T. 8874.

<sup>1904</sup> MP-443, T. 8877.

<sup>1905</sup> MP-443, T. 8878-8879. This was not witnessed by MP-443 directly, but he was told by his brother-in-law who was part of the last group of civilians brought to the execution point, MP-443, T. 8879.

<sup>1906</sup> MP-443, T. 8873.

<sup>1907</sup> *Ibid.*

corroboration.<sup>1909</sup> However, the Trial Chamber has carefully analysed such evidence before relying upon it to a decisive extent. The Trial Chamber finds that there is sufficient evidence to establish beyond a reasonable doubt that on 12 July 1995, at least 83 Bosnian Muslims were decapitated and executed by a group of soldiers between the Cinkara Zinc factory and Alija's House. However, based on MP-443's testimony which referred generally to "Chetnik" soldiers, as well as further evidence that paramilitary forces were in the area at this time,<sup>1910</sup> the Trial Chamber cannot conclude beyond a reasonable doubt that this group of soldiers were members of the VRS or the MUP.

#### 9. Bratunac Area (12-15 July 1995)

##### (a) General

662. On 12 and 13 July 1995, a large number of buses and trucks with detained Bosnian Muslims from several areas, including Potočari and Konjević Polje, arrived in Bratunac.<sup>1911</sup> This included men detained by the VRS at Potočari and along the Bratunac-Kravica-Konjević Polje road.<sup>1912</sup> The buses parked in the very centre of the town and the detained men were transferred to a stadium, a hangar and the Vuk Karadžić school.<sup>1913</sup> Once they were full, the rest of the detainees remained on the buses parked outside of these locations.<sup>1914</sup>

663. The Vuk Karadžić School and the various surrounding buildings were secured by several units of the VRS and the MUP, as well as members of paramilitary formations.<sup>1915</sup>

##### (b) Meetings in Bratunac on 13 July 1995 Discussing the Execution of Prisoners

664. On 13 July 1995, Dragomir Vasić, Head of the Public Security Centre in Zvornik, met with Miodrag Josipović, the Chief of the Bratunac Police, at the Bratunac police station. Josipović

<sup>1908</sup> Defence Final Brief, para. 583.

<sup>1909</sup> See *Tadić* Appeal Judgement, para. 65; *Aleksovski* Appeal Judgement, para. 62.

<sup>1910</sup> See Srebrenica Adjudicated Facts, 28, referring to the presence of paramilitary forces at the Vuk Karadžić School and surrounding areas.

<sup>1911</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 204; Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", p. 52. According to Deronjić, thousands of captured Muslims were brought into Bratunac from all areas, even from Milići, Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 205.

<sup>1912</sup> Ex. P2511, Transcript of Momir Nikolić from *Prosecutor v. Popović et al.*, 21 April 2009, T. 32928. The Bosnian Muslim men who had been separated from the women, children and the elderly in Potocari (numbering approximately 1,000) were transported to Bratunac and subsequently joined by Bosnian Muslim men captured from the column, Srebrenica Agreed Facts, 8.

<sup>1913</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 204.

<sup>1914</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", p. 65.



informed Vasić that a large group of Bosnian Muslims had surrendered to the VRS on the Bratunac-Konjević Polje road and had been brought to Bratunac.<sup>1916</sup> Josipović further informed Vasić that the VRS command had ordered that prisoners be put in the school, in the stadium and on buses.<sup>1917</sup> Josipović noted that there was a problem in guarding these prisoners and as such, they had assembled all men fit for military service in Bratunac to assist in securing prisoners.<sup>1918</sup>

665. Miroslav Deronjić stated that on the evening of 13 July 1995, Ljubiša Beara appeared in his office, accompanied by several soldiers.<sup>1919</sup> Beara stated something to the effect that he had come because of the captured Bosnian Muslims, and that they should all be killed.<sup>1920</sup> This evidence is corroborated by Momir Nikolić and Dragomir Vasić.<sup>1921</sup> In fact, Vasić testified that Beara informed him that he had received an order from Mladić, stating that all of the Bosnian Muslim prisoners should be killed.<sup>1922</sup> Nikolić also testified that when he asked Mladić on 13 July 1995 about the fate of the captured Bosnian Muslims, Mladić drew his hand across his chest in a gesture that Nikolić understood to mean that they should be killed.<sup>1923</sup>

666. Momir Nikolić also testified about the same meeting in Deronjić's office. He explained that on the evening of 13 July 1995, he accompanied Beara to the SDS party offices in Bratunac where Deronjić's office was located.<sup>1924</sup> Nikolić waited in one office while Deronjić, Beara and Vasić spoke in another.<sup>1925</sup>

667. The Trial Chamber notes that it has exercised caution in attributing weight to Miroslav Deronjić's evidence on this point because of Rule 92 *quater* procedures.<sup>1926</sup> By the same token, the

<sup>1915</sup> Srebrenica Adjudicated Facts, 28-29. Deronjić stated further that a large number of young and older men, who had been mobilised during the night, were given rifles and told to guard the buses, Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 204.

<sup>1916</sup> Dragomir Vasić, T. 6478.

<sup>1917</sup> Dragomir Vasić, T. 6479. *See also* Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 10.

<sup>1918</sup> Dragomir Vasić, T. 6479.

<sup>1919</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 208; Ex. P82, Transcript of Miroslav Deronjić from *Prosecutor v. S. Milošević*, T. 29795-29796; Ex. P83, Transcript of Miroslav Deronjić from *Prosecutor v. Krstić (Appeal)*, T. 119.

<sup>1920</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 209; Ex. P81, Transcript of Miroslav Deronjić from *Prosecutor v. S. Milošević*, T. 29705; Ex. P83, Transcript of Miroslav Deronjić from *Prosecutor v. Krstić (Appeal)*, T. 119.

<sup>1921</sup> Dragomir Vasić, T. 6481-6482; Ex. P2511, Transcript of Momir Nikolić from *Prosecutor v. Popović et al.*, 22 April 2009, T. 32933-32934; Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 10.

<sup>1922</sup> Dragomir Vasić, T. 6481-6482.

<sup>1923</sup> Ex. P2511, Transcript of Momir Nikolić from *Prosecutor v. Popović et al.*, 21 April 2009, T. 32933-32934.

<sup>1924</sup> Ex. P2511, Transcript of Momir Nikolić from *Prosecutor v. Popović et al.*, 21 April 2009 T. 32939-32942; Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 10.

<sup>1925</sup> Ex. P2511, Transcript of Momir Nikolić from *Prosecutor v. Popović et al.*, 21 April 2009, T. 32939-32942.

<sup>1926</sup> The Trial Chamber notes that in its decision pursuant to Rule 92 *quater*, it admitted Deronjić's evidence based, *inter alia*, on the fact that the Prosecution planned to bring other *viva voce* and Rule 92 *ter* witnesses to testify on the same matters as Deronjić and thus, his evidence would be corroborated. Taking a number of factors into account, the Trial Chamber found Deronjić's evidence to be reliable, relevant and of probative value, Decision

Trial Chamber has adopted a very prudent approach to the evidence of Momir Nikolić and Dragomir Vasić because of their involvement in the events in Srebrenica. However, unlike with Deronjić, the Trial Chamber had the benefit of hearing the testimony of Nikolić and Vasić. The evidence given by these three witnesses is mutually corroborative. Therefore, the Trial Chamber finds the evidence regarding the involvement of Mladić and Beara in deciding to kill the Bosnian Muslim prisoners in Bratunac to be credible and reliable.

(c) Vuk Karadžić School

668. The parties agreed that between 12 and 14 July 1995, more than 50 Bosnian Muslim men were summarily executed in and around the Vuk Karadžić School.<sup>1927</sup> The parties agreed that between 13 and 15 July 1995, a number of men were taken from the Vuk Karadžić School and murdered,<sup>1928</sup> and furthermore, that one mentally retarded Bosnian Muslim man, who was detained in a bus parked in front of the Vuk Karadžić School, was taken off the bus and executed on 13 July 1995.<sup>1929</sup>

669. MP-294, a detainee at the Vuk Karadžić School on 13 July 1995, testified about the events that took place there on 13 July 1995. He observed a Bosnian Muslim man being beaten with a rifle, after which he was taken away and executed.<sup>1930</sup> MP-294 also observed Bosnian Muslim men being removed from the school and heard crying outside, followed by gun shots.<sup>1931</sup>

670. The parties agreed that VRS and/or MUP forces planned organised killing operations in several different locations, including in Bratunac.<sup>1932</sup> Based on the foregoing evidence and considering that members of the VRS and MUP were among those guarding the Bosnian Muslims in the Bratunac area, the Trial Chamber finds beyond a reasonable doubt that members of the VRS and/or MUP participated in the detention and the summary execution of Bosnian Muslim men detained in and around Vuk Karadžić School.<sup>1933</sup>

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on Prosecution Motions for Admission of Evidence Pursuant to Rule 92 *quater*, 10 October 2008, (confidential) paras 47-53.

<sup>1927</sup> Srebrenica Agreed Facts, 10.

<sup>1928</sup> Srebrenica Agreed Facts, 12.

<sup>1929</sup> Srebrenica Agreed Facts, 11.

<sup>1930</sup> MP-294, T. 9060-9061.

<sup>1931</sup> *Ibid.*

<sup>1932</sup> Srebrenica Agreed Facts, 14.

<sup>1933</sup> See Indictment, Schedule D, paras 2, 2.1, 2.2, 2.3, 2.4.

(d) Jadar River (13 July 1995)

671. In relation to this incident,<sup>1934</sup> the Trial Chamber notes that no evidence was led as to the alleged killing of Bosnian Muslim men on the bank of the Jadar River. Moreover, in its Final Trial Brief, the Prosecution submits that it did not present evidence on this incident and therefore, no longer relies on it.<sup>1935</sup> Consequently, the Trial Chamber makes no finding in connection with this incident.

(e) Cerska Valley (13 July 1995)

672. The parties agreed that in the early afternoon on 13 July 1995, VRS and/or MUP forces transported approximately 150 Bosnian Muslim men to an area along a dirt road in the Cerska Valley, about three kilometres from Konjević Polje.<sup>1936</sup> There, they summarily executed the Bosnian Muslim men and, using heavy equipment, covered them with dirt.<sup>1937</sup> Intercepted VRS communications further show that a VRS officer requested a bulldozer or backhoe to be sent to Konjević Polje.<sup>1938</sup>

673. Forensic analysis was conducted at the Cerska mass grave, concluding that it contained the remains of 150 males, ranging in age from 14 to 50 years old; 147 of them were dressed in civilian clothes.<sup>1939</sup> Based on the autopsy results, 149 of the 150 victims died of gunshot wounds.<sup>1940</sup>

674. The Trial Chamber is satisfied beyond a reasonable doubt that on 13 July 1995, VRS and/or MUP members executed about 150 Bosnian Muslim men in an area along a dirt road in the Cerska Valley, and subsequently buried them in a mass grave.<sup>1941</sup>

(f) Nova Kasaba (13 July 1995)

675. A group of prisoners captured along the Bratunac-Konjević Polje road on 13 July 1995 was assembled at a football field at Nova Kasaba, approximately five kilometres south of Konjević

<sup>1934</sup> See Indictment, Schedule D, para. 3.2.

<sup>1935</sup> Prosecution Final Brief, para. 418.

<sup>1936</sup> Srebrenica Agreed Facts, 16.

<sup>1937</sup> *Ibid.*

<sup>1938</sup> Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", p. 59; Ex. P284, Intercepted Conversation at 13:55 Hours; Ex. P281, Intercepted Conversation at 15:53 Hours, showing that Colonel Milanović Polje was looking for a bulldozer and excavator and asked to send them to Konjević Polje.

<sup>1939</sup> Ex. P2651, Expert Report of William Haglund on Forensic Investigation of the Cerska Grave Site - Volume I, 15 June 1998, pp 8-9. Twenty-four of the victims were between 13 and 24 years old, while 126 victims were 25 years or older, Ex. P2633, Expert Report of Jose Pablo Baraybar on the Anthropology Examination of Human Remains from Eastern Bosnia in 2000, 2 February 2001, p. 5.

<sup>1940</sup> Ex. P2651, Expert Report of William Haglund on Forensic Investigation of the Cerska Grave Site - Volume I, 15 June 1998, p. 10.

<sup>1941</sup> See Indictment, Schedule D, para. 3.3.

Polje. They were guarded by soldiers of the Military Police Battalion of the VRS 65<sup>th</sup> Protection Regiment.<sup>1942</sup>

676. The Trial Chamber also received evidence that at a meeting in Pale on 14 July 1995, Deronjić provided Karadžić with his estimates of the number of men captured in Bratunac, as well as further information regarding his knowledge of “the killings in the school” and “other liquidations”<sup>1943</sup> on “the Konjević Polje – Kasaba road”.<sup>1944</sup> In particular, Deronjić stated that he observed a large number of Bosnian Muslims in Kasaba.<sup>1945</sup>

677. The Trial Chamber notes that Deronjić’s evidence with respect to these killings is corroborated by the exhumation and forensic analysis of 33 bodies found in this area. Specifically, on 27 July 1995, the United States Government took an aerial photograph of an area near Nova Kasaba, which showed the presence of disturbed earth in four distinct locations. Four undisturbed graves in the Nova Kasaba area were exhumed in July 1996. The graves, located in two fields, contained the bodies of 33 male victims. Twenty-seven of the men had their hands tied behind their backs.<sup>1946</sup>

678. In light of the foregoing, the Trial Chamber is satisfied beyond a reasonable doubt that the 33 Bosnian Muslim male victims found in the primary graves discovered in 1996 were part of the group of prisoners assembled at the football field at Nova Kasaba. The Trial Chamber is also satisfied beyond a reasonable doubt that they were killed by VRS and/or MUP personnel on 13 July 1995.

(g) Glogova (17–27 July 1995)

679. The parties agreed that in the year 2000, the bodies of 12 men were found in the “Glogova L” grave and that the victims had been tied together and shot.<sup>1947</sup> However, the Trial Chamber notes

<sup>1942</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 54; Ex. P273, Intercepted Conversation at 16:02 Hours, referring to a communication between unidentified parties “X” and “Y”. In the conversation, the two unidentified parties claim that 1500 Muslim males were gathered on the Nova Kasaba football field, where “Malinić’s unit is”. Butler explained that Major Zoran Malinić was the Commander of the Military Police Battalion of the 65<sup>th</sup> Protection Regiment at the time, Richard Butler, T. 6638.

<sup>1943</sup> Miroslav Deronjić states that by using the term “liquidate” or “liquidation”, he means “kill” or “killing”, Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 201.

<sup>1944</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 214.

<sup>1945</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 214; Ex. P83, Transcript of Miroslav Deronjić from *Prosecutor v. Krstić (Appeal)*, T. 125.

<sup>1946</sup> Srebrenica Agreed Facts, 27.

<sup>1947</sup> Srebrenica Agreed Facts, 28.

that no evidence was presented in the case with respect to this incident. Therefore, the Trial Chamber makes no finding in relation to this incident.<sup>1948</sup>

(h) Kravica Market (13–14 July 1995)

680. From the group of prisoners assembled at Nova Kasaba, a group of Bosnian Muslim men were placed on a large truck on 13 July 1995 and transported to Kravica along the main road between Konjević Polje and Bratunac.<sup>1949</sup> The parties agreed that in Kravica, trucks stopped at a supermarket on 13 July 1995, and that later, the soldiers guarding the truck started mistreating the detainees inside, hitting them through the canvas of the truck.<sup>1950</sup>

681. Richard Butler noted that the area in and around the municipality of Bratunac was under the zone of operation of the Bratunac Brigade.<sup>1951</sup> There was a significant MUP presence in the municipality, and particularly along the Bratunac-Sandići road to Konjević Polje.<sup>1952</sup>

682. In the Indictment, the Prosecution alleges that executions were perpetrated by the VRS and/or MUP personnel at Kravica Market.<sup>1953</sup> The Trial Chamber finds beyond a reasonable doubt that members of the VRS and/or MUP were responsible for the mistreatment of Bosnian Muslim detainees in Kravica Market on 13 and 14 July 1995. However, the Trial Chamber notes that no evidence was presented as to the fate of the Bosnian Muslim detainees at Kravica Market. Therefore, the Trial Chamber cannot find beyond a reasonable doubt that the detainees were executed by VRS and/or MUP personnel at Kravica Market on 13 and 14 July 1995.

(i) Kravica Warehouse (13 July 1995)

683. On 13 July 1995, the Bosnian Muslim men captured from the column and assembled at the Sandići meadow were brought to a large warehouse in the village of Kravica (“Kravica

<sup>1948</sup> See Indictment, Schedule D, para. 4.2.

<sup>1949</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, p. 54.

<sup>1950</sup> Srebrenica Agreed Facts, 29.

<sup>1951</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, pp 54, 56.

<sup>1952</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, pp 54, 56. As explained by Butler, the presence of police units along the Bratunac-Konjević Polje road 1995 is also detailed by reports of the CJB Chief Dragomir Vasić to the RS MUP as well as by reports of the Main Staff Commands, Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, pp 56-57. See also Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 9; Ex. P2517, Transcript of Momir Nikolić from *Prosecutor v. Popović et al.*, 22 April 2009, T. 32979, in which he testified that MUP forces were deployed along the Bratunac-Konjević Polje road.

<sup>1953</sup> See Indictment, Schedule D, para. 4.3.

warehouse”).<sup>1954</sup> Members of the MUP were responsible for transporting the prisoners.<sup>1955</sup> The executions at the Kravica warehouse complex started around 17:00 hours.<sup>1956</sup> The soldiers used automatic weapons, hand grenades and other weaponry to kill the Bosnian Muslims detained inside the warehouse.<sup>1957</sup> Over 1,000 Bosnian Muslim men were summarily executed.<sup>1958</sup> Between 14 and 16 July 1995, several trucks arrived and removed the victims’ bodies and placed them in two large mass graves in nearby villages, Glogova and Ravnice.<sup>1959</sup> Elements of the Bratunac Brigade, as well as members of the Engineering Company of the Zvornik Brigade, participated in the burial of the victims.<sup>1960</sup>

684. Moreover, Miroslav Deronjić received a report that a large number of Bosnian Muslims had been killed in an agricultural cooperative in Kravica.<sup>1961</sup> The Trial Chamber notes that the evidence given by Miroslav Deronjić on these killings is corroborated further by expert forensic reports based on exhumations of the burial sites, as follows.

685. Exhumations and forensic analysis were conducted both in Glogova and Ravnice. Glogova was found to be a complex of burial sites.<sup>1962</sup> In 1999, bodies were exhumed at five burial sites (“Glogova 2 to Glogova 6”); another burial site was exhumed in 2000 (“Glogova 1”); and finally, an additional three were exhumed in 2001 (“Glogova 7 to Glogova 9”).<sup>1963</sup> A secondary grave was found in Zeleni Jadar, a region south of Srebrenica, possibly containing at least some victims from

<sup>1954</sup> Richard Butler, T. 6621; Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, pp 59-60.

<sup>1955</sup> Richard Butler, T. 6621.

<sup>1956</sup> Ex. P2246, Expert Report of Richard Butler “Srebrenica Military Narrative (Revised) – Operation Krivaja 95”, 1 November 2000, p. 60.

<sup>1957</sup> Srebrenica Agreed Facts, 17.

<sup>1958</sup> Srebrenica Agreed Facts, 17. *See also* Ex. P2402, Video, July 1995, at 02:56, showing part of the execution.

<sup>1959</sup> Srebrenica Agreed Facts, 17. *See also* Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 228.

<sup>1960</sup> Srebrenica Adjudicated Facts, 45-46.

<sup>1961</sup> Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, paras 202, 214; Ex. P81, Transcript of Miroslav Deronjić from *Prosecutor v. S. Milošević*, T. 29716.

<sup>1962</sup> Ex. P2641, Expert Pathology Reports of John Clark on 1999 Exhumations, 1999 p. 20; Ex. P2643, Expert Report of John Clark on ICTY Operations in Bosnia-Herzegovina 2001 Season – Report of Chief Pathologist, 14 May 2003, p. 12.

<sup>1963</sup> Glogova 1 (which forensic expert, John Clark, divided into: “Grave C, E, F, H, K, and L”) contained 191 bodies and 288 body parts and the victims were between 12 and 75 years old, with the majority being between 30 and 35 years old; all but two of the identified bodies were males. It was also established that they were not wearing military clothing and almost a quarter of the victims showed signs of burning. In the Glogova 2 to Glogova 9 graves, 126 bodies and 197 body parts were recovered, and the victims were between 25 and 50 years old; all of the identified bodies were male. It was also established that most of the victims had clear signs of burning. The victims—to the extent it was possible to ascertain the cause of death—died as a result of gunshot or blast injuries. As for Glogova Grave L, 12 men were found, tied together in pairs by ligatures around their wrists. All of them had been killed by a single gunshot wound to the back or side of the head, Ex. P2643, Expert Report of John Clark on ICTY Operations in Bosnia-Herzegovina 2001 Season – Report of Chief Pathologist, 14 May 2003, pp 12-26. *See also* Srebrenica Agreed Facts, 28.

the Glogova primary site.<sup>1964</sup> In 2001, exhumations of secondary graves were conducted in Visoko.<sup>1965</sup>

686. Exhumations of secondary graves were conducted in Ravnice in 2000 and 2001.<sup>1966</sup> Ravnice was only a few kilometres away from the large grave at Glogova and differed from it in that the bodies in the Glogova grave were not buried in the ground, but rather spread out on a steep, wooded embankment running down to a stream below.<sup>1967</sup>

687. In addition, forensic expert Richard Wright visited a suspected mass grave just west of the main road at Konjević Polje and concluded that the evidence was consistent with there being a mass grave at this site.<sup>1968</sup> Wright also attended a site north of Srebrenica, east of a bus station in Potočari, and examined the area with a backhoe.<sup>1969</sup> He concluded that there had been a large hole dug in this area and later refilled. Although there were no human remains present, he found small patches of clay that had likely been in contact with putrefying flesh. Wright determined that although the evidence recovered from the scene was consistent with the theory that this was a grave that had been emptied and later refilled, it was not conclusive.<sup>1970</sup>

688. The Trial Chamber finds that sufficient evidence was presented to establish beyond a reasonable doubt that on 13 July 1995, over 1,000 Bosnian Muslim men were detained in a warehouse in Kravica and summarily executed by VRS and/or MUP members with automatic weapons, hand grenades and other weapons.<sup>1971</sup> In addition, the Trial Chamber finds beyond a reasonable doubt that the victims of the Kravica execution were buried in the Glogova and Ravnice mass graves, and in a secondary mass grave in Zeleni Jadar.

<sup>1964</sup> Ex. P2643, Expert Report of John Clark on ICTY Operations in Bosnia-Herzegovina 2001 Season – Report of Chief Pathologist, 14 May 2003, p. 23.

<sup>1965</sup> Ex. P2643, Expert Report of John Clark on ICTY Operations in Bosnia-Herzegovina 2001 Season – Report of Chief Pathologist, 14 May 2003, pp 23-24. One hundred and one bodies and 355 body parts were recovered from the secondary grave. The victims ranged in age from eight to 65 years old, and all but two of the victims were male. The cause of death for the majority of the victims was gunshot or blast injuries and in several cases, there was evidence of burning.

<sup>1966</sup> Ex. P2643, Expert Report of John Clark on ICTY Operations in Bosnia-Herzegovina 2001 Season – Report of Chief Pathologist, 14 May 2003, pp 6-8. During the exhumation in Ravnice in 2000 and 2001, 175 bodies and 324 body parts were recovered of victims potentially ranging in age from eight to 90 years old; all but five of the identifiable bodies were male. Most of the bodies (163 out of 175) showed evidence of gunshot wounds.

<sup>1967</sup> Ex. P2643, Expert Report of John Clark on ICTY Operations in Bosnia-Herzegovina 2001 Season – Report of Chief Pathologist, 14 May 2003, p. 6.

<sup>1968</sup> Ex. P2673, Expert Report of Richard Wright on Excavations and Exhumations at Kozluk in 1999, 2 February 2000, p. 16.

<sup>1969</sup> Ex. P2673, Expert Report of Richard Wright on Excavations and Exhumations at Kozluk in 1999, 2 February 2000, p. 17.

<sup>1970</sup> *Ibid.*

<sup>1971</sup> See Indictment, Schedule D, para. 3.4.

10. Zvornik Area(a) Transfer from Bratunac to the Zvornik Municipality

689. On the morning of 14 July 1995, Bosnian Muslim prisoners were transferred from Bratunac to Zvornik by members of the Bratunac Brigade Military Police.<sup>1972</sup> Momir Nikolić gave the instructions to the Military Police to escort the buses to Zvornik.<sup>1973</sup> The Zvornik Brigade was aware of plans to transport Bosnian Muslim prisoners into its zone of responsibility.<sup>1974</sup> According to Momir Nikolic, at some point during the evening of 13 July 1995, Colonel Beara ordered him to inform Drago Nikolić, the Assistant Commander for Security of the VRS Zvornik Brigade, that he should prepare for the reception and execution of captured Bosnian Muslim men in Zvornik.<sup>1975</sup>

690. On 14 July 1995, Drago Nikolić informed Dragan Obrenović that he had been instructed by Lieutenant Colonel Popović, Chief of Security of the Drina Corps, to prepare for the arrival of a large number of prisoners who were being transferred from Bratunac to Zvornik to be executed.<sup>1976</sup> Drago Nikolić said that this order came personally from General Mladić and that “everybody knew about it, including [the] commander [of the Zvornik Brigade], Lieutenant Pandurević”.<sup>1977</sup> The order to execute would be implemented by Colonel Beara and Lieutenant Colonel Popović, with the involvement of Drago Nikolić.<sup>1978</sup> Drago Nikolić then asked Dragan Obrenović to place the Zvornik Brigade Military Police at his disposal. After informing him that the Military Police were already deployed, Dragan Obrenović told him he would “see what [he] could do” about at least placing the Military Police commander and a platoon at Drago Nikolić’s disposal.<sup>1979</sup>

(b) Orahovac (14 July 1995)

691. In the early afternoon on 14 July 1995, members of the Bratunac Brigade Military Police participated in the transfer of hundreds of Bosnian Muslim males from Bratunac to the Grbavci

<sup>1972</sup> Srebrenica Adjudicated Facts, 30, 33; Srebrenica Agreed Facts, 13. Miroslav Deronjić also stated that when he returned to Bratunac, he saw that numerous buses carrying captives had driven away. He was told that they had been taken to Zvornik, Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 216.

<sup>1973</sup> Srebrenica Adjudicated Facts, 31. Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 10.

<sup>1974</sup> Srebrenica Adjudicated Facts, 32.

<sup>1975</sup> Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 10; Ex. P2511, Transcript of Momir Nikolić from *Prosecutor v. Popović et al.*, 22 April 2009, T. 32937.

<sup>1976</sup> Srebrenica Adjudicated Facts, 34.

<sup>1977</sup> Srebrenica Adjudicated Facts, 35, 98.

<sup>1978</sup> Srebrenica Adjudicated Facts, 36.

<sup>1979</sup> Srebrenica Adjudicated Facts, 37.



School in Orahovac.<sup>1980</sup> These Bosnian Muslim men had been captured from the column of men retreating from the Srebrenica enclave, or had been separated in Potočari.<sup>1981</sup>

692. Soldiers from the Zvornik Brigade command and the 4<sup>th</sup> Battalion of the Zvornik Brigade assisted in guarding the prisoners at the Grbavci School in Orahovac.<sup>1982</sup> Members of the military police company of the Zvornik Brigade were present immediately prior to the executions, presumably to guard the prisoners and then facilitate their transfer to the execution fields.<sup>1983</sup>

693. The parties agreed that on 14 July 1995, VRS personnel guarded and blindfolded the Bosnian Muslim males detained at Grbavci School and transported them to a nearby field; there, VRS personnel ordered the prisoners off the trucks and summarily executed them with automatic weapons.<sup>1984</sup> Members of the 4<sup>th</sup> Battalion, as well as members of the security organ of the Zvornik Brigade, were also present at Orahovac during the executions.<sup>1985</sup>

694. The parties agreed that approximately 1,000 Bosnian Muslim males were killed and that on 14 and 15 July 1995, VRS members of the Zvornik Brigade used heavy equipment to bury the bodies in mass graves at the execution site, while the executions continued.<sup>1986</sup> They used machinery and equipment belonging to the Engineers Company of the Zvornik Brigade to bury the bodies.<sup>1987</sup>

695. On 15 July 1995, Beara contacted General Živanović<sup>1988</sup> and General Krstić to request assistance in the Zvornik Brigade area for “3,500 parcels” that he “ha[d] to distribute and [had] no solution”.<sup>1989</sup>

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<sup>1980</sup> Srebrenica Agreed Facts, 18; Srebrenica Adjudicated Facts, 47.

<sup>1981</sup> Richard Butler, T. 6638-6639; Srebrenica Agreed Facts, 18.

<sup>1982</sup> Srebrenica Adjudicated Facts, 48.

<sup>1983</sup> Srebrenica Adjudicated Facts, 49.

<sup>1984</sup> Srebrenica Agreed Facts, 18. *See also* Srebrenica Adjudicated Facts, 53.

<sup>1985</sup> Srebrenica Adjudicated Facts, 52-54.

<sup>1986</sup> Srebrenica Agreed Facts, 18; Srebrenica Adjudicated Facts, 52, 56. *See also* Ex. P266, Intercepted Conversation at 21:02 Hours, wherein Major Dragan Jokić, the Duty Officer of the Zvornik Brigade and Chief of Engineering for the Zvornik Brigade, reported to Beara that there are huge problems in the Zvornik area “with the people, I mean, the parcel”. *See also* Ex. P2403, Interim Combat Report of the 1<sup>st</sup> Zvornik Brigade to the Command of the Drina Corps, 15 July 1995, wherein Zvornik Brigade commander Colonel Pandurević complained to the Drina Corps Command that: “[a]n additional burden for us is the large number of prisoners distributed throughout schools in the brigade area, as well as obligations of security and sanitary-technical measures in the field”, referring to guarding the prisoners and burying those who had been executed.

<sup>1987</sup> Srebrenica Adjudicated Facts, 55. Dragan Jokić, who at the time functioned as duty officer, told Cvijetin Ristanović, a member of the Zvornik Brigade Engineering Company, to go to Orahovac while the killings were ongoing; this was done in the presence of Slavko Bogičević, Deputy Commander of the Engineering Company, who subsequently instructed Ristanović as to the grave digging at Orahovac. Dragan Jokić knew that Ristanović was sent to Orahovac specifically in order to dig mass graves for victims of the executions. Moreover, Jokić provided assistance by telling Ristanović to take the excavator to Orahovac, Srebrenica Adjudicated Facts, 57-58.

<sup>1988</sup> Ex. P271, Intercepted Conversation at 09:52 Hours; Ex. P272, Intercepted Conversation at 09:54 Hours. These conversations showed that Beara was looking for General Živanović to assign men to assist with his task.

696. On 16 July 1995, Colonel Slobodan Čerović, Assistant Commander for Morale, Legal and religious affairs for the Drina Corps, and Colonel Ljubiša Beara, Chief of Security of the VRS Main Staff,<sup>1990</sup> discussed the fact that “trriage has to be done on the prisoners”.<sup>1991</sup> Expert witness Butler testified that the term “trriage” in that context is associated with the execution of the prisoners.<sup>1992</sup>

697. Deronjić also stated that it was “obvious to [him] that the Muslims who had been taken to Zvornik had been killed”.<sup>1993</sup> Based on these conversations, and in light of the general evidence showing the presence of thousands of Bosnian Muslim prisoners in the Zvornik Brigade area,<sup>1994</sup> the Trial Chamber is satisfied that Beara was referring to the execution of the Bosnian Muslim men in Orahovac.

698. The evidence before the Trial Chamber is corroborated by forensic evidence collected from the mass grave sites at: Lažete (Lažete 1 and Lažete 2),<sup>1995</sup> a location near Orahovac, and secondary graves located along the Hodžici road (Hodžici Road 3, 4, 5).<sup>1996</sup>

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Živanović replied that he “can’t order that anymore” and suggested that Beara contact General Krstić’s extension 385 at Zlatar. *See also* Ex. P264, Intercepted Conversation at 10:00 Hours; Ex. P268, Intercepted Conversation at 09:57 Hours.

<sup>1989</sup> *See* Ex. P258, Intercepted Conversation at 19:19 Hours; Ex. P264, Intercepted Conversation at 10:00 Hours; Ex. P268, Notes of intercepted conversation at 09:57 Hours. In the telephone conversations, Beara asked General Krstić to provide reinforcements (“30 men”) and to “give them back tonight”. *See also* Ex. P285, Intercepted Conversation at 15:17, referring to a “parcel” to be distributed. The intercept also seems to refer to General Popović, who is called “Pop”.

<sup>1990</sup> Richard Butler, T. 6649.

<sup>1991</sup> Ex. P269, Intercepted Conversation at 11:11 Hours, wherein Ljubiša Beara, Colonel Čerović and an unidentified person discussed the “trriage”.

<sup>1992</sup> Richard Butler, T. 6649.

<sup>1993</sup> At the request of a friend from Bratunac, Deronjić called one of the politicians in Zvornik, Jovan Mitrović, to find out what happened to a certain man who had been reportedly taken to Zvornik and killed. “They” informed Deronjić that it was too late and said something to the effect of: “Don’t ask us that, don’t ask me that, that’s finished [...]”, Ex. P80, Witness Statement of Miroslav Deronjić, 25 November 2003, para. 229.

<sup>1994</sup> *See* Ex. P2403, Interim Combat Report of the 1<sup>st</sup> Zvornik Brigade to the Command of the Drina Corps, 15 July 1995, referring to about 3,000 men in the Zvornik area. *See also* Richard Butler, T. 6647-6648; Ex. P264, Intercepted Conversation at 10:00 Hours.

<sup>1995</sup> During the exhumation of Lažete 1, 129 bodies and 14 body parts were recovered. The victims were between the ages of 15 to 85 years old and all were male. They were not wearing military clothing. Eighty-nine bodies had blindfolds with clear bullet holes through them, showing that they were blindfolded when killed. A majority of the bodies (48 out of 55) showed evidence of gunshot injury, primarily in the torso, followed by the legs, the head and the arms, Ex. P2642, Expert Report of John Clark on ICTY Operations in Bosnia-Herzegovina 2000 Season – Report of Chief Pathologist, 24 February 2001, pp 7-10; Ex. P2671, Expert Report of Fredy Peccerelli on Lažete 1 Bosnia and Herzegovina Excavation and Exhumation, pp 21-24. At the mass grave site at Lažete 2, 165 victims were found. A total of 104 victims (63%) were recovered with cloth blindfolds; the cause of death was gunshot wounds, Ex. P2646, Expert Report of William Haglund on Forensic Investigation of the Lazete 2 Grave Site, Volume I, 15 June 1998, pp 10-11. *See also* Ex. P2642, Expert Pathology Reports of John Clark on 1999 Exhumations, pp 14-16.

<sup>1996</sup> Ex. P2674, Expert Report of Richard Wright on Exhumations in Eastern Bosnia in 1998, 12 May 1999, p. 23, linking the secondary graves located at Hodžici road to Lažete 1 and 2; Ex. P2635, Expert Report of Jose Pablo Baraybar, January 2004, pp 2, 7-8; Ex. P2631, Expert Report of Jose Pablo Baraybar on the Anthropology Examination of Human Remains from Eastern Bosnia in 1999, 8 December 1999, pp 4, 8; Ex. P2671, Expert Report of Fredy Peccerelli on Lazete 1 Bosnia and Herzegovina Excavation and Exhumation, p. 3; Ex. P2665, Expert Report of Christopher Lawrence on Autopsies of Human Remains from Hodžici Road Site 3, October 1998, pp 2-3; Ex. P2666, Expert Report of Christopher Lawrence on Autopsies of Human Remains from Hodžici

699. The Trial Chamber is satisfied beyond a reasonable doubt that on 14 July 1995, over 1,000 Bosnian Muslim men were detained in Grbavci School near Orahovac, and subsequently blindfolded and transported to a nearby field, and later executed by VRS members. The Trial Chamber further finds beyond a reasonable doubt that on 14 and 15 July 1995, members of the VRS used heavy equipment to bury the bodies near the Lazete execution site. These remains were later moved to secondary graves along Hodžici Road.<sup>1997</sup>

(c) Petkovci School and the Dam (14 July 1995)

700. The parties agreed that on 14 July 1995, VRS and/or MUP personnel transported at least 1,000 Bosnian Muslim males from detention sites in and around Bratunac to the school at Petkovci. These Bosnian Muslim men had been captured from the column of men retreating from the Srebrenica enclave or separated in Potočari. On 14 July 1995, and in the early morning hours of 15 July 1995, VRS and/or MUP personnel struck, beat, assaulted and shot with automatic weapons some of the Bosnian Muslim males detained at the school.<sup>1998</sup>

701. The parties agreed that on or around the evening of 14 July 1995 and in the early morning hours of 15 July 1995, VRS personnel from the 6<sup>th</sup> Infantry Battalion (Zvornik Brigade) transported the remaining surviving members of the original group of 1,000 Bosnian Muslim males, from the school at Petkovci, to an area below the Dam near Petkovci.<sup>1999</sup> The men were then assembled below the Dam and summarily executed by VRS and/or MUP soldiers with automatic weapons.<sup>2000</sup> The parties further agreed that on the morning of 15 July 1995, VRS personnel used excavators and other heavy equipment to bury the victims.<sup>2001</sup> The Zvornik Brigade Engineer Company was assigned to work with earthmoving equipment to assist with the burial of the victims from the Petkovci Dam.<sup>2002</sup>

702. From April to May 1998, an exhumation was conducted at the “Petkovci Dam” site.<sup>2003</sup> Forensic evidence also linked five secondary mass graves along “Liplje Road” to the Petkovci Dam

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<sup>1997</sup> Road Site 4, October 1998, p. 6; Ex. P2667, Expert Report of Christopher Lawrence on Autopsies of Human Remains from Hodžici Road Site 5, October 1998, pp 2-3, 10.  
<sup>1998</sup> See Indictment, Schedule D, para. 3.5.  
<sup>1999</sup> Srebrenica Agreed Facts, 19.  
<sup>2000</sup> Srebrenica Agreed Facts, 20. Drivers and trucks from the 6<sup>th</sup> Infantry Battalion of the Zvornik Brigade were used to transport the prisoners from the detention site to the execution site at Petkovci Dam on 15 July 1995, Srebrenica Adjudicated Facts, 63.  
<sup>2001</sup> Srebrenica Agreed Facts, 20. See also Richard Butler, T. 6627, 6646.  
<sup>2002</sup> Srebrenica Agreed Facts, 20.  
<sup>2003</sup> Srebrenica Adjudicated Facts, 64.  
<sup>2003</sup> Ex Ex. P2662, Expert Report of Christopher Lawrence on Autopsies of Human Remains from the Dam Site June 1998, p. 3.

site.<sup>2004</sup> Autopsies were carried out in June 1998 on the remains; however, the bodies were largely fragmented,<sup>2005</sup> which is consistent with post-mortem tampering.<sup>2006</sup> The grave at the Petkovci Dam site contained the remains of at least 46 individuals, 15 of whom were identifiable as male.<sup>2007</sup> Because of the separation of the body parts, the remains were collected in 91 body bags.<sup>2008</sup> Some of the remains showed evidence of binding, as well as possible blindfolding.<sup>2009</sup>

703. Most of the bodies could not be reconstructed.<sup>2010</sup> According to the exhumation report from the site, the fact that 464 skull fragments and 211 shell casings were retrieved from the surface of the grave is consistent with a number of individuals being shot in the head.<sup>2011</sup> However, the forensic experts could not determine the cause of death for 81 of the body bags, as they contained incomplete or mixed skeletal remains.<sup>2012</sup>

704. The Trial Chamber is satisfied beyond a reasonable doubt that on 14 July 1995, VRS and/or MUP personnel transported at least 1,000 Bosnian Muslims from the detention sites in and around Bratunac to the school in Petkovci, and that on 14 and 15 July 1995, some of those men were shot with automatic weapons by VRS and/or MUP members.<sup>2013</sup> The Trial Chamber further finds beyond a reasonable doubt that between the evening of 14 July 1995 and the early morning on 15 July 1995, the remainder of the Bosnian Muslim men detained in the school were transported from the Petkovci School to the nearby Dam and were executed by VRS and/or MUP personnel with automatic weapons. The victims were then buried in mass graves near the Dam and later moved to secondary graves.<sup>2014</sup>

<sup>2004</sup> Ex. P2674, Expert Report of Richard Wright on Exhumations in Eastern Bosnia in 1998, 12 May 1999, p. 20. The Liplje 2 grave was about 14 kilometres from the Petkovci Dam site and contained the same type of rock found at the primary grave.

<sup>2005</sup> Ex. P2662, Expert Report of Christopher Lawrence on Autopsies of Human Remains from the Dam Site June 1998, pp 4, 8.

<sup>2006</sup> Ex. P2662, Expert Report of Christopher Lawrence on Autopsies of Human Remains from the Dam Site June 1998, p. 22.

<sup>2007</sup> Ex. P2662, Expert Report of Christopher Lawrence on Autopsies of Human Remains from the Dam Site June 1998, pp 8, 22.

<sup>2008</sup> *Ibid.*

<sup>2009</sup> Ex. P2662, Expert Report of Christopher Lawrence on Autopsies of Human Remains from the Dam Site June 1998, p. 20.

<sup>2010</sup> Ex. P2662, Expert Report of Christopher Lawrence on Autopsies of Human Remains from the Dam Site June 1998, pp 8, 22.

<sup>2011</sup> Ex. P2662, Expert Report of Christopher Lawrence on Autopsies of Human Remains from the Dam Site June 1998, pp 9, 22.

<sup>2012</sup> Ex. P2662, Expert Report of Christopher Lawrence on Autopsies of Human Remains from the Dam Site June 1998, p. 22.

<sup>2013</sup> See Indictment, Schedule D, para. 3.6.

<sup>2014</sup> See Indictment, Schedule D, para. 3.7.

(d) Pilica School (14–15 July 1995)

705. The parties agreed that on 14 and 15 July 1995, VRS and/or MUP personnel transported a number of Bosnian Muslim males from detention sites in Bratunac to Pilica School.<sup>2015</sup> These Bosnian Muslim men had been captured from the column of men retreating from the Srebrenica enclave or separated in Potočari.<sup>2016</sup> On or about 14 and 15 July 1995, VRS personnel shot and killed some of the Bosnian Muslim males who had arrived, or were being detained, at the school.<sup>2017</sup>

706. The Trial Chamber is satisfied beyond a reasonable doubt that on 14 and 15 July 1995, VRS personnel shot and killed a number of Bosnian Muslim males detained at Pilica School.<sup>2018</sup>

(e) Branjevo Military Farm (16 July 1995)

707. The parties agreed that on 14 July 1995, Bosnian Muslim prisoners from Bratunac were bussed to a school in the village of Pilica and detained there until 16 July 1995.<sup>2019</sup> They were then taken out of the school and loaded onto buses with their hands tied behind their backs and driven to the Branjevo Military Farm.<sup>2020</sup> Drina Corps Military Police were engaged in guarding the Bosnian Muslim prisoners in the buses that took them to the execution site at the Branjevo Military Farm.<sup>2021</sup> There, groups of ten men at a time were lined up and shot.<sup>2022</sup> In total, approximately 1,000 Bosnian Muslim men were executed.<sup>2023</sup> On 17 July 1995, members of the Zvornik Brigade Engineering Company participated in digging mass graves using its equipment.<sup>2024</sup>

708. The evidence reflects that Lieutenant Colonel Vujadin Popović was involved in organising the allocation of fuel to transfer the Bosnian Muslim prisoners to the execution site at Branjevo Farm.<sup>2025</sup> The Trial Chamber is satisfied that Popović's request for fuel and its subsequent delivery

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<sup>2015</sup> Srebrenica Agreed Facts, 21.

<sup>2016</sup> *Ibid.*

<sup>2017</sup> *Ibid.*

<sup>2018</sup> See Indictment, Schedule D, para. 3.8.

<sup>2019</sup> Srebrenica Agreed Facts, 22.

<sup>2020</sup> Srebrenica Agreed Facts, 22-23.

<sup>2021</sup> Srebrenica Agreed Facts, 24.

<sup>2022</sup> Srebrenica Agreed Facts, 23; Srebrenica Adjudicated Facts, 66. See also Richard Butler, T. 6649.

<sup>2023</sup> Srebrenica Adjudicated Facts, 72.

<sup>2024</sup> Srebrenica Adjudicated Facts, 71-72; Srebrenica Agreed Facts, 24.

<sup>2025</sup> Srebrenica Adjudicated Facts, 65. In an intercepted telephone conversation on 16 July 1995 with a Drina Corps officer, Popović requested 500 liters of fuel, threatening that otherwise, his "work will stop", Ex. P270, Intercepted Conversation at 13:58 Hours. A delivery form received by the Drina Corps Command shows that 500 liters of fuel were delivered to Popović on 16 July 1995, Ex. P2409, Delivery Sheet of 500 Litres of Fuel to the Drina Corps Command, 16 July 1995. See also Richard Butler, T. 6651-6652; Ex. P265, Intercepted Conversation at 21:16 Hours, in which Popović told Rašić that he has "finished the job"; Ex. P240, Intercepted Conversation at 13:58 Hours, 16 July 1995.

was related to the operation of executing and burying the Bosnian Muslim prisoners at Branjevo Farm.

709. Dražen Erdemović, a member of the VRS 10<sup>th</sup> Sabotage Detachment, testified about his participation in the mass execution, together with other members of his unit.<sup>2026</sup> His unit drove from Vlasenica to Zvornik,<sup>2027</sup> where they were ordered to follow a Lieutenant-Colonel (wearing a VRS uniform and rank insignia) and two policemen whom Erdemović assumed belonged to the Drina Corps.<sup>2028</sup> Several minutes after arriving at a farm near Pilica,<sup>2029</sup> which Erdemović later learned was Branjevo Military Farm,<sup>2030</sup> the Lieutenant-Colonel and the two policemen left and members of the 10<sup>th</sup> Sabotage Detachment were told by Brano Gojković that buses with individuals from Srebrenica would be arriving and that they would have to execute the detainees.<sup>2031</sup>

710. The first bus arrived at the farm between 10:00 and 11:00 hours on 16 July 1995, and was accompanied by two military policemen.<sup>2032</sup> The passengers consisted of civilian men between the ages of 15 and 65. All of them were blindfolded and had their hands bound behind their backs.<sup>2033</sup> Subsequently, between 15 and 20 buses arrived at the farm.<sup>2034</sup> Erdemović believed that all of the buses were full of passengers.<sup>2035</sup> The soldiers followed the same procedure with each bus.<sup>2036</sup> The civilians were taken in groups of ten from the bus to a field beyond the garage.<sup>2037</sup> There, they were lined up with their backs facing the soldiers and were shot.<sup>2038</sup> The military policemen stood at the door of the bus to prevent anyone from escaping.<sup>2039</sup>

<sup>2026</sup> Dražen Erdemović, T. 7961-7969; Srebrenica Adjudicated Facts, 68.

<sup>2027</sup> Ex. P2522, Map of the Area of Srebrenica Marked by Dražen Erdemović, which demonstrates the route. *See also* Dražen Erdemović, T. 7961.

<sup>2028</sup> Dražen Erdemović, T. 7961-7964; Ex. P2523, Photo of a Complex in Zvornik, shows the complex, where the witness's unit stopped.

<sup>2029</sup> Dražen Erdemović, T. 7964; Ex. P2525, Photograph of a Farm Near to Pilica; Ex. P2527, Photograph of a Farm Near to Pilica Marked by Dražen Erdemović. Both photographs show the farm, which consisted of two or three buildings. *See also* Dražen Erdemović, T. 7964-7965, 7970-7971. In a series of photographs, the witness marked the location where the buses were parked and where the mass execution took place, Dražen Erdemović, T. 7967; Ex. P2526, Photograph of a Farm Near to Pilica Marked by Dražen Erdemović; Ex. P2527, Photograph of a Farm near to Pilica Marked by Dražen Erdemović; Ex. P2528, Photograph of a Farm Near to Pilica Marked by Dražen Erdemović.

<sup>2030</sup> Dražen Erdemović, T. 7971. The Trial Chamber notes that Erdemović named the farm as "Branjevo Farm" while he was shown Ex. P2527, Photograph of a Farm Near to Pilica Marked by Dražen Erdemović, which states in big letters "Branjevo State Farm".

<sup>2031</sup> Dražen Erdemović, T. 7965.

<sup>2032</sup> Dražen Erdemović, T. 7966, 7969. The witness believed that the policemen were from the Drina Corps, but could not be sure as he did not pay attention to the insignia.

<sup>2033</sup> Dražen Erdemović, T. 7966.

<sup>2034</sup> Dražen Erdemović, T. 7967.

<sup>2035</sup> Dražen Erdemović, T. 7967-7968.

<sup>2036</sup> Dražen Erdemović, T. 7968.

<sup>2037</sup> *See* Ex. P2526, Photograph of a Farm Near to Pilica Marked by Dražen Erdemović.

<sup>2038</sup> Dražen Erdemović, T. 7968.

<sup>2039</sup> *Ibid.*

711. In the course of the day, six to ten members of the Bratunac Brigade joined the 10<sup>th</sup> Sabotage Detachment to help execute men from Srebrenica.<sup>2040</sup> Erdemović estimates that the executions lasted until the afternoon of 16 July 1995 and that approximately 1,000 men were executed.<sup>2041</sup>

712. MP-294, a survivor of the executions at Branjevo Military Farm, testified about what occurred there on 16 July 1995. MP-294 was transferred from Pilica to Branjevo on a bus with approximately 50 other men.<sup>2042</sup> After watching the soldiers execute the first group of men, MP-294 was led to the execution site with a second group.<sup>2043</sup> They were lined up with their backs to the soldiers, and then ordered to lie down. He heard shots, but was not hit by a bullet; he remained lying down and witnessed the executions of six or seven more columns of men.<sup>2044</sup> After the executions finished, MP-294 observed between 1,000 and 1,500 dead bodies lying in the field at Branjevo Military Farm.<sup>2045</sup>

713. In its Final Trial Brief, the Defence argues that the Prosecution has failed to prove the number of persons allegedly killed at Branjevo Military Farm on 16 July 1995 because it did not present any evidence to corroborate MP-294's testimony regarding the total number of bodies found at Branjevo Military Farm.<sup>2046</sup>

714. The Trial Chamber is satisfied that MP-294's evidence regarding the total number of Bosnian Muslim men killed at Branjevo Military Farm on 16 July 1995 was sufficiently corroborated by Erdemović's evidence, as well as by evidence of which the Trial Chamber took judicial notice.<sup>2047</sup> Therefore, the Trial Chamber finds beyond a reasonable doubt that on 16 July 1995, over 1,000 Bosnian Muslim men previously detained in the Pilica School were executed by VRS members at the Branjevo Military Farm, and buried in a mass grave nearby.

(f) Pilica Cultural Centre (16 July 1995)

715. The parties agreed that on 16 July 1995, VRS and/or MUP personnel, including members of the Bratunac Brigade, summarily executed approximately 500 Bosnian Muslim men with automatic

<sup>2040</sup> Dražen Erdemović, T. 7969. The men wore VRS uniforms; however, one wore U.S. Army pants. The witness identified them as being members of the Bratunac Brigade because other members of his unit from Vlasenica recognised them. In a video filmed on 12 July 1995, Erdemović recognised one of the members of the Bratunac Brigade who was present at the farm, Ex. P2393, Video, 12 July 1995 at 01:40 hours; Dražen Erdemović, T. 7970.

<sup>2041</sup> Dražen Erdemović, T. 7969.

<sup>2042</sup> MP-294, T. 9069.

<sup>2043</sup> MP-294, T. 9070-9071.

<sup>2044</sup> MP-294, T. 9071-9072.

<sup>2045</sup> MP-294, T. 9074.

<sup>2046</sup> Defence Final Brief, para. 584.

<sup>2047</sup> See Srebrenica Adjudicated Facts, 72; Dražen Erdemović, T. 7969.

weapons inside the Pilica Cultural Centre.<sup>2048</sup> These Bosnian Muslim men had been captured from the column of men retreating from the Srebrenica enclave or separated in Potočari.<sup>2049</sup> Dražen Erdemović testified that following the executions at Branjevo Military Farm, he and other members of the Bratunac Brigade were asked by his superior officer to participate in additional executions at the Pilica Culutral Centre.<sup>2050</sup> Erdemović declined and was taken to a café in Pilica across the road from the cultural hall.<sup>2051</sup> From the cafe, he saw several people in civilian clothes lying on the ground beside the cultural hall; then he heard gun-fire from the direction of the cultural hall and the sound of exploding hand-grenades.<sup>2052</sup> After the noise stopped, members of the Bratunac Brigade joined him at the café.<sup>2053</sup>

716. At 22:10 hours on 16 July 1995, the Zvornik Brigade's 1<sup>st</sup> Battalion, stationed at Branjevo Military Farm, requested a loader, an excavator and a dump truck to arrive in Pilica at 08:00 hours on 17 July 1995.<sup>2054</sup> On 17 July 1995, VRS personnel retrieved the bodies from the Pilica Cultural Centre and transferred them to Branjevo Military Farm, where they buried them in a mass grave.<sup>2055</sup> On that day, several conversations were intercepted involving Popović.<sup>2056</sup> In a conversation recorded at 16:22 hours, Popović tells an unknown interlocutor, whom he refers to as "boss", that "everything's OK, that job is done ... everything's been brought to an end, no problems [...]".<sup>2057</sup> The Trial Chamber is satisfied that the "job" which Popović referred to in this intercept was the killing and burying of Bosnian Muslim males in the Zvornik area.

717. The Trial Chamber is satisfied beyond a reasonable doubt that on 16 July 1995, approximately 500 men were summarily executed inside the Pilica Cultural Centre by VRS and/or MUP forces using automatic weapons. The Trial Chamber further finds beyond a reasonable doubt

<sup>2048</sup> Srebrenica Agreed Facts, 25.

<sup>2049</sup> *Ibid.*

<sup>2050</sup> Dražen Erdemović, T. 7976.

<sup>2051</sup> Dražen Erdemović, T. 7977-7980. Dražen Erdemović testified that after the executions at Branjevo Military Farm, he was ordered by Lieutenant-Colonel Milorad Pelemiš of the 10<sup>th</sup> Sabotage Detachment to go to the cultural hall in Pilica to execute another 500 men from Srebrenica. The members of the Bratunac Brigade followed the order, while the members of the 10<sup>th</sup> Sabotage Detachment refused to follow the order and drove – as instructed by a VRS Lieutenant-Colonel – to a café, across from the cultural hall in Pilica, Dražen Erdemović, T. 7976-7980. *See also* Ex. P2529, Photograph of Pilica Marked by Dražen Erdemović.

<sup>2052</sup> Dražen Erdemović, T. 7976-7977. *See also* Ex. P2645, Expert Report of Peter De Bruyn on Forensic Explosive Analysis on Samples from Different Sites in Srebrenica, 2 March 2000, pp 2-5, wherein in analysing the samples collected at the Pilica cultural hall, De Bruyn found the presence of explosive residue (TNT); Ex. P2677, Expert Report of A.D. Kloosterman on the Examination and Recovery of Evidence from Kravica Warehouse, 20 December 1999, p. 21, wherein the expert witness found the presence of human blood in at least a few of the samples taken from Pilica cultural hall.

<sup>2053</sup> Dražen Erdemović, T. 7980.

<sup>2054</sup> Srebrenica Adjudicated Facts, 73.

<sup>2055</sup> Srebrenica Agreed Facts, 25.

<sup>2056</sup> Ex. P276, Intercepted Conversation at 12:44 Hours; Ex. P278, Intercepted Conversation at 16:22 Hours.

<sup>2057</sup> Ex. P278, Intercepted Conversation at 16:22 Hours; Richard Butler, T. 6655. *See also* Ex. P245, Intercepted Conversation at 16:22 Hours; Ex. P279, Intercepted Conversation at 20:26 Hours, referring to the fact that Popović "went home".



that the bodies of the victims were then transported to Branjevo Military Farm, where they were buried in a mass grave.<sup>2058</sup>

(g) Kozluk (16 July 1995)

718. The parties agreed that on 15 or 16 July 1995, VRS and/or MUP forces transported approximately 500 Bosnian Muslim men to an isolated place near Kozluk, a rubbish dump for a bottling factory, where they were summarily executed with automatic weapons.<sup>2059</sup> These Bosnian Muslim men had been captured from the column of men retreating from the Srebrenica enclave or separated in Potočari.<sup>2060</sup> On 16 July 1995, VRS soldiers buried the victims of these executions in a mass grave nearby.<sup>2061</sup>

719. On 16 July 1995, Dragan Jokić sent members of the Zvornik Brigade Engineering Company, Miloš Mitrović and Nikola Ricanović, as well as an excavator, to report to the commander of the Zvornik Brigade Engineering Company's fortification platoon, Damjan Lazarević.<sup>2062</sup> Upon their arrival, Lazarević ordered Mitrović to cover bodies placed in already-dug graves with dirt. Mitrović worked in Kozluk until it was clear that his machine could not finish the task because it was only operating at 30% capacity and was, in fact, not designed for that type of work.<sup>2063</sup>

720. Forensic investigation and exhumation of bodies at the Kozluk site was conducted in 1999. The investigation covered four locations (KK1-KK4).<sup>2064</sup> As a result of the exhumation, 292 bodies and 233 body parts were recovered, totaling a minimum of 340 individuals based on anthropological calculations.<sup>2065</sup> Many of the victims were found with blindfolds and ligatures around their hands, and most of the bodies showed evidence of gunshot injury.<sup>2066</sup>

721. Forensic expert Richard Wright identified a secondary grave at Čančići Road 3, derived from a primary grave in Kozluk.<sup>2067</sup> The bodies of at least 160 individuals were exhumed from the Čančići Road 3 grave.<sup>2068</sup>

<sup>2058</sup> See Indictment, Schedule D, para. 3.10.

<sup>2059</sup> Srebrenica Agreed Facts, 26. See also Ex. P2641, Expert Pathology Reports of John Clark on 1999 Exhumations, 1999, p. 6.

<sup>2060</sup> Srebrenica Agreed Facts, 26.

<sup>2061</sup> *Ibid.*

<sup>2062</sup> Srebrenica Adjudicated Facts, 78.

<sup>2063</sup> Srebrenica Adjudicated Facts, 75, 77, 79.

<sup>2064</sup> Ex. P2641, Expert Pathology Reports of John Clark on 1999 Exhumations, 1999, p. 1.

<sup>2065</sup> Ex. P2641, Expert Pathology Reports of John Clark on 1999 Exhumations, 1999, pp 1, 6.

<sup>2066</sup> Ex. P2641, Expert Pathology Reports of John Clark on 1999 Exhumations, 1999, pp 7, 10.

<sup>2067</sup> Ex. P2674, Expert Report of Richard Wright on Exhumations in Eastern Bosnia in 1998, 12 May 1999, p. 8; Ex. P2673, Expert Report of Richard Wright on Excavations and Exhumations at Kozluk in 1999, 2 February 2000, pp 11-12.

722. Wright concluded that between 451 and 660 executions took place at Kozluk site.<sup>2069</sup> Wright also detailed his findings with respect to shell casings, ligatures, blindfolds and identifying papers.<sup>2070</sup> The presence of certain species of flowers and plants is consistent with the evidence that the executions occurred in the middle of July.<sup>2071</sup>

723. The Trial Chamber is satisfied beyond a reasonable doubt that on 15 or 16 July 1995, approximately 500 Bosnian Muslim males were transported to an isolated place near Kozluk, and were summarily executed by VRS and/or MUP forces with automatic weapons. The Trial Chamber further finds beyond a reasonable doubt that the remains were subsequently buried in a mass grave near the execution site, and were later moved to a secondary mass grave along Čančići Road.<sup>2072</sup>

(h) Nezuk (19 July 1995)

724. The parties agreed that on 19 July 1995, VRS personnel under the command of the Zvornik Brigade captured 11 Bosnian Muslim men from the column and summarily executed them with automatic weapons; ten of the 11 men were killed near Nezuk.<sup>2073</sup>

725. The Trial Chamber is satisfied beyond a reasonable doubt that VRS personnel killed 11 Bosnian Muslim men near Nezuk on 19 July 1995.<sup>2074</sup>

(i) 18 July–1 November 1995

726. Paragraph 5.2 of Schedule D of the Indictment alleges that “from 18 July through about 1 November, additional members of the Bosnian Muslim column were captured or killed in the Bratunac Brigade zone by the VRS and MUP forces”.<sup>2075</sup> In its Final Trial Brief, the Prosecution submits that the killings alleged in paragraph 5.2 of the Indictment were confirmed by Momir Nikolić.<sup>2076</sup> However, the Trial Chamber finds that the evidence provided by Nikolić is not

<sup>2068</sup> Ex. P2664, Expert Report of Christopher Lawrence on Autopsies of Human Remains from Cancari Road Site 3, August-September 1998, 2. There were 37 ligatures (wrist bindings), and eight blindfolds found. Most victims suffered gunshot wounds to the torso, followed by wounds to the legs, head and neck, Ex. P2664, Expert Report of Christopher Lawrence on Autopsies of Human Remains from Čančari Road Site 3, August-September 1998, 2.

<sup>2069</sup> Ex. P2673, Expert Report of Richard Wright on Excavations and Exhumations at Kozluk in 1999, 2 February 2000, p. 13.

<sup>2070</sup> Ex. P2673, Expert Report of Richard Wright on Excavations and Exhumations at Kozluk in 1999, 2 February 2000, pp 14-15.

<sup>2071</sup> Ex. P2673, Expert Report of Richard Wright on Excavations and Exhumations at Kozluk in 1999, 2 February 2000, p. 15.

<sup>2072</sup> See Indictment, Schedule D, para. 3.11.

<sup>2073</sup> Srebrenica Agreed Facts, 30. See also Srebrenica Adjudicated Facts, 82.

<sup>2074</sup> See Indictment, Schedule D, para. 5.1.

<sup>2075</sup> Indictment, Schedule D, para. 5.2.

<sup>2076</sup> Prosecution Final Brief, para. 435. In relevant part, Nikolić states that: “[f]rom 14 July through October 1995, Bratunac Brigade forces, working with the MUP and other VRS forces continued to capture and execute Muslim

sufficiently detailed for an allegation that covers such an extensive period. Therefore, without the benefit of additional corroborative evidence, the Trial Chamber finds that insufficient evidence was presented to establish beyond a reasonable doubt that between 18 July and 1 November 1995, members of the Bosnian Muslim column were captured or killed in the Bratunac Brigade zone by VRS and MUP forces.

#### 11. Identity of the Principal Perpetrators

727. The Trial Chamber finds that key VRS officers involved in the commission, planning, ordering, instigating, or aiding and abetting of the crimes in Srebrenica included: Ratko Mladić,<sup>2077</sup> Radivoje Miletić,<sup>2078</sup> Milan Gvero,<sup>2079</sup> Ljubiša Beara,<sup>2080</sup> Radislav Krstić,<sup>2081</sup> Vujadin Popović,<sup>2082</sup> Vidoje Blagojević,<sup>2083</sup> Vinko Pandurević,<sup>2084</sup> Dragan Obrenović,<sup>2085</sup> Drago Nikolić,<sup>2086</sup> Momir Nikolić<sup>2087</sup> and Dragan Jokić.<sup>2088</sup> The Trial Chamber is therefore satisfied that the VRS and/or MUP forces, under the effective control of the aforementioned key officers, committed the charged crimes.

#### 12. MUP Resubordination to the VRS

728. The Trial Chamber received evidence that RS law provided for the resubordination of the RS MUP to the VRS in times of war.<sup>2089</sup> This law formed the basis of Richard Butler's conclusion

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prisoners attempting to escape from the Srebrenica and Žepa areas", Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 12.

<sup>2077</sup> Srebrenica Adjudicated Facts, 91. *See supra* paras 665-667.

<sup>2078</sup> *See* Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 32; Miodrag Simić, T. 10247, identifying Miletić's position in the VRS and that he was directly subordinate to Mladić.

<sup>2079</sup> *See* Ex. P2246, Expert Report of Richard Butler "Srebrenica Military Narrative (Revised) – Operation Krivaja 95", 1 November 2000, p. 31; Petar Škrbić, T. 11603-11604, identifying Gvero's position in the VRS.

<sup>2080</sup> Srebrenica Adjudicated Facts, 84, 89, 104. *See supra* paras 649, 665-667, 689-690.

<sup>2081</sup> Srebrenica Adjudicated Facts, 94, 95, 96. *See supra* paras 629-631, 695.

<sup>2082</sup> Srebrenica Adjudicated Facts, 97. *See supra* paras 649, 708, 716.

<sup>2083</sup> Srebrenica Adjudicated Facts, 102, stating that "[o]n 25 May 1995, Blagojević was appointed as the Commander of the Bratunac Brigade. In July 1995, Blagojević held the rank of Colonel. He remained in this position until mid-1996 when he was re-assigned to the VRS Main Staff, later named the VRS General Staff"; Srebrenica Adjudicated Facts, 103, stating that "Colonel Blagojević remained in command and control of all units of the Bratunac Brigade, including those members of the security organ, as well as the Bratunac Brigade Military Police between 11 July 1995 and 1 November 1995".

<sup>2084</sup> Srebrenica Adjudicated Facts, 98, stating that in July 1995, Lieutenant Colonel Vinko Pandurević was the Commander of the Zvornik Brigade. *See supra* paras 689-690. *See also* P2403, Interim Combat Report of the 1st Zvornik Brigade to the Command of the Drina Corps, 15 July 1995.

<sup>2085</sup> Srebrenica Adjudicated Facts, 99, stating that Dragan Obrenović was the Chief of Staff of the Zvornik Brigade. *See supra* paras 689-690.

<sup>2086</sup> Srebrenica Adjudicated Facts, 87, 101. *See supra* paras 649-650, 690.

<sup>2087</sup> Srebrenica Adjudicated Facts, 86. *See also* Ex. P2512, Momir Nikolić Statement of Facts and Acceptance of Responsibility, 6 May 2003, para. 13. *See supra* paras 649-650, 689.

<sup>2088</sup> Srebrenica Adjudicated Facts, 100, stating that Dragan Jokić was the Chief of Engineering of the Zvornik Brigade and held the rank of Major between 11 July 1995 and 1 November 1995. *See supra* para. 719.

<sup>2089</sup> *See* Petar Škrbić, T. 11736-11737, who testified that based on RS law, RS armed forces during the war were composed of the VRS and MUP.

that the MUP was under the command of the VRS during the Srebrenica events.<sup>2090</sup> This conclusion is also corroborated by Momir Nikolić who testified that “all forces that were engaged in the Srebrenica operation [...] were commanded and controlled by the Chief of Staff General Krstić and the commander of the Drina Corps”.<sup>2091</sup> Based on the evidence before it, the Trial Chamber is satisfied that, in the area of Srebrenica, the RS MUP operated under the command of the VRS.

### 13. Legal Findings

729. The Indictment charges the Accused with murder as a violation of the laws or customs of war (Count 10) and murder, inhumane acts, persecutions and exterminations as crimes against humanity (Counts 9, 11, 12 and 13).

#### (a) General Requirements under Article 3

730. The Trial Chamber is satisfied that an armed conflict took place in Eastern Bosnia between the ABiH and the VRS during the Indictment period.<sup>2092</sup>

731. The alleged victims of the crimes in this case were Bosnian Muslims captured by VRS and/or MUP forces in the course, or aftermath, of combat activity.<sup>2093</sup> Based on the evidence set out above regarding the capture, detention and killing of Bosnian Muslims,<sup>2094</sup> the Trial Chamber finds that the underlying crimes alleged in the Indictment were closely related to the armed conflict.

732. The alleged victims of the crimes were persons taking no active part in hostilities at the time the relevant crimes were committed.<sup>2095</sup> Based on the evidence set out above regarding the capture, detention and killing of Bosnian Muslims, the Trial Chamber finds that this additional requirement under Common Article 3 is fulfilled.

733. The Trial Chamber therefore finds that the general requirements of Article 3 have been met.

#### (b) General Requirements under Article 5

734. The Trial Chamber finds that there was a widespread or systematic attack directed against the Bosnian Muslim civilian population in the area of Srebrenica. As the evidence shows, the attack

<sup>2090</sup> Richard Butler, T. 6740-6742.

<sup>2091</sup> Ex. P2511, Transcript of Momir Nikolić from *Prosecutor v. Popović et al.*, 21 April 2009, T. 32928.

<sup>2092</sup> *See supra* section III.

<sup>2093</sup> *See supra* paras 632, 648, 662-668, 670.

<sup>2094</sup> *Ibid.*

<sup>2095</sup> *Ibid.*

was of a large-scale, affecting approximately 35,000 people who lived in the area, and was organised in nature.<sup>2096</sup>

735. The attack was directed against United Nations enclaves, established specifically to protect civilians, and thus, there can be no doubt that the population of these enclaves was predominantly civilian. The Trial Chamber finds, therefore, that the attack was directed against a civilian population within the meaning of Article 5 of the Statute.

736. The Trial Chamber is also satisfied that the crimes committed by the VRS and/or MUP were part of that attack, and that the perpetrators knew of the attack and that their acts formed part of it.

737. The Trial Chamber therefore finds that the general requirements of Article 5 have been met.

(c) Murder

738. As the Trial Chamber previously noted, the elements of murder are the same under both Articles 3 and Article 5: the death of the victim, the causation of the death of the victim by the accused and the *mens rea* of the perpetrator.<sup>2097</sup>

739. Based on the entire evidence in this case, the Trial Chamber has already found that VRS and/or MUP personnel perpetrated the killings specifically enumerated in Schedule D of the Indictment, except for scheduled incidents 3.1, 3.2, 4.2, 4.3 and 5.2. 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. Hence, the victims of these killings did not take an active part in the hostilities at the time they were killed and this was apparent to those involved. The Trial Chamber is also satisfied that the killings were intentional.

740. The Trial Chamber is therefore satisfied beyond a reasonable doubt that the aforementioned killings constitute murder, both as a crime against humanity and a violation of the laws or customs of war. Accordingly, the Trial Chamber finds that the crime of murder under Counts 9 and 10 of the Indictment has been established for the scheduled incidents described in Schedule D, except for incidents 3.1, 3.2, 4.2, 4.3 and 5.2. The individual criminal responsibility of the Accused for these crimes is discussed in sections VII-VIII of the Judgement.

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<sup>2096</sup> See also *supra* paras 607, 617-618, 628-632, 648-650.

<sup>2097</sup> See *supra* paras 102-104.

(d) Inhumane Acts (Article 5(i))

741. Count 11 of the Indictment charges the Accused with inhumane acts, as crimes against humanity under Article 5(i) of the Statute, including inflicting serious injuries, wounding and forcible transfer.<sup>2098</sup>

(i) Inflicting Serious Injuries and Wounding

742. As the Trial Chamber previously noted, serious physical and mental injury or wounding are considered “inhumane acts” under Article 5(i) of the Statute.<sup>2099</sup> As shown by the factual findings detailed above, the Bosnian Muslims detained in Potočari and 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 on them serious mental and physical suffering and injury.<sup>2100</sup> Based on the factual findings detailed above, the Trial Chamber is satisfied beyond a reasonable doubt that Bosnian Muslims in the area of Srebrenica suffered serious bodily or mental harm while in detention or in other locations, and that VRS and/or MUP personnel intentionally inflicted this suffering.

(ii) Forcible Transfer

743. The parties agreed that from July 1995 onwards, the Bosnian Muslim civilians who were bussed out of Potočari were not making a free choice to leave the area of the enclave; rather, they were forcibly transferred from the enclave by the VRS.<sup>2101</sup> This is also confirmed by the evidence analysed above.<sup>2102</sup> The evidence is also clear that the perpetrators intended to forcibly transfer the Bosnian Muslim civilians from Potočari.

744. The Trial Chamber finds beyond reasonable doubt that the elements of the crime of forcible transfer with regard to the Bosnian Muslim civilians who were transported out of Potočari have been met and that the crime of forcible transfer was committed against them.

745. 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.

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<sup>2098</sup> See Indictment, Count 11.

<sup>2099</sup> See *supra* para. 111.

<sup>2100</sup> See *e.g.* Srebrenica Agreed Facts, 19, VRS and/or MUP personnel struck, beat, and assaulted Bosnian Muslim males detained at Petkovići School on 14 and 15 July 1995; Srebrenica Agreed Facts, 29, detailing the mistreatment by VRS and/or MUP personnel of Bosnian Muslim detainees at Kravica Market.

<sup>2101</sup> Srebrenica Agreed Facts, 3a.

<sup>2102</sup> See *e.g. supra* paras 605-607, 615-619, 624.

746. In conclusion, the Trial Chamber is satisfied beyond a reasonable doubt that the crime of inhumane acts, including inflicting serious injuries, wounding and forcible transfer, as alleged in Count 11 of the Indictment, has been established.

(c) Persecutions on Political, Racial or Religious Grounds

747. Count 12 of the Indictment charges the Accused with persecutions on political, racial and religious grounds, a crime against humanity in violation of Article 5(h) of the Statute, through the underlying acts of murder, cruel and inhumane treatment and forcible transfer.<sup>2103</sup> The underlying acts of murder and forcible transfer have also been charged as separate crimes, and the elements have been dealt with separately above. It is, however, still required to determine whether they meet the requisite criteria for the crime of persecutions.

(i) Underlying Acts

a. Murder

748. The Trial Chamber recalls that it found that between 12 July 1995 and approximately 19 July 1995, thousands of captured Bosnian Muslim males were killed by VRS and/or MUP forces in several different locations in and around Srebrenica, Bratunac, and Zvornik.<sup>2104</sup> Murder is enumerated in Article 5 of the Statute and by definition considered to be serious enough to amount to persecutions.

749. As to the specific intent of the crime of persecutions, the Trial Chamber has considered the massive scale of the murder operation aimed at only one ethnic group, the Bosnian Muslims and the systematic manner in which it was carried out. As such, the Trial Chamber finds that these killings were committed against the Bosnian Muslims with a discriminatory intent on political, racial or religious grounds.

b. Cruel and Inhumane Treatment

750. The Trial Chamber finds that, as described in detail above, the Bosnian Muslims detained in Potočari and elsewhere suffered serious bodily or mental harm caused by horrific and inhumane conditions, as well as physical assaults. The Trial Chamber further finds that this cruel and inhumane treatment is of equal gravity to the crimes listed in Article 5 and constitutes a blatant

<sup>2103</sup> See Indictment, Count 12.

<sup>2104</sup> See *supra* paras 648, 655, 670, 674, 678, 688, 699, 704, 706, 714, 717, 723, 725.

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 persecutions.

751. As to specific intent, the Trial Chamber finds that Bosnian Muslim 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 demonstrate that it was carried out with the intention to discriminate against the Bosnian Muslims on political, racial or religious grounds.

c. Forcible Transfer

752. The Trial Chamber recalls that it found that the crime of forcible transfer was committed by the VRS against thousands of Bosnian Muslim civilians who were transported out of Potočari in July 1995.<sup>2105</sup>

753. As to specific intent, considering the issuance of Directive 7 and the other circumstances surrounding the transfer of the Bosnian Muslim civilians, 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.

(ii) Conclusion

754. As noted above, the acts of murder, cruel and inhumane treatment and forcible transfer were committed against the Bosnian Muslims with a discriminatory intent. The Trial Chamber therefore concludes beyond a reasonable doubt that the underlying acts of murder, cruel and inhumane treatment and forcible transfer constitute persecutions 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. Accordingly, the Trial Chamber is satisfied beyond a reasonable doubt that the crimes of murder, cruel and inhumane treatment and forcible transfer as underlying acts of persecution, as alleged in Count 12 of the Indictment, have been established.

(f) Extermination

755. Count 13 of the Indictment charges the Accused with extermination, a crime against humanity, punishable under Article 5(b) of the Statute.<sup>2106</sup>

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<sup>2105</sup> See *supra* paras 743-746. See also Srebrenica Agreed Facts, 3a.

<sup>2106</sup> See Indictment, Count 13.



756. The Trial Chamber has found that VRS and/or MUP forces killed thousands of Bosnian Muslim able-bodied males in and around Srebrenica, Bratunac and Zvornik during the period of the Indictment.<sup>2107</sup> Furthermore, the parties agreed that over the course of the seven-day period between 12 July 1995 and approximately 19 July 1995, VRS and MUP forces participated in a planned and organised mass execution and burial of thousands of captured Bosnian Muslim men from the Srebrenica enclave.<sup>2108</sup>

757. The Trial Chamber therefore finds beyond a reasonable doubt that the crime of extermination, as alleged in Count 13 of the Indictment, was committed against the Bosnian Muslim men who had been separated at Potočari or had surrendered or been captured from the column of men retreating from the Srebrenica enclave. The Trial Chamber is also satisfied beyond a reasonable doubt that the VRS and/or MUP had the intent to kill on a massive scale.

758. In conclusion, the Trial Chamber is satisfied beyond a reasonable doubt that the crime of extermination, as alleged in Count 13 of the Indictment, has been established.

759. The Trial Chamber found that key VRS officers involved in the commission, planning, ordering, instigating, or aiding and abetting of the crimes in Srebrenica included: Ratko Mladić, Radivoje Miletić, Milan Gvero, Ljubiša Beara, Radislav Krstić, Vujadin Popović, Vidoje Blagojević, Vinko Pandurević, Dragan Obrenović, Drago Nikolić, Momir Nikolić and Dragan Jokić.<sup>2109</sup> The Trial Chamber therefore finds that the conduct of VRS and/or MUP forces, under the effective control of these key officers, constituted murder as a violation of the laws or customs of war (Count 10) and murder, inhumane acts, persecutions and exterminations as crimes against humanity (Counts 9, 11, 12 and 13). The Trial Chamber found that these key officers and their subordinates committed the charged crimes.

760. The issue of whether Perišić bears responsibility for these crimes will be addressed separately.

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<sup>2107</sup> See *supra* paras 740, 748-749.

<sup>2108</sup> Srebrenica Agreed Facts, 14.

<sup>2109</sup> See *supra* para. 727.

## VI. INDIVIDUAL CRIMINAL RESPONSIBILITY

### A. Personnel Assistance - 30<sup>th</sup> and 40<sup>th</sup> Personnel Centres

#### 1. Events Leading up to the Formation of the Personnel Centres

761. When the JNA withdrew from Croatia and BiH, a number of JNA military personnel remained behind to serve in the SVK and VRS.<sup>2110</sup> After the VJ was formed, additional personnel were dispatched by the VJ to the VRS and SVK.<sup>2111</sup> With respect to the military personnel who remained in BiH, or were sent there by the VJ, the Federal Secretariat of National Defence decided on 6 May 1992 that they would “retain all rights as other members of the [VJ]”.<sup>2112</sup>

762. Notwithstanding this order, the status and rights of these military personnel remained unregulated.<sup>2113</sup> In addition, there was no legal basis specifically regulating the transfer of VJ military personnel to the VRS and SVK. VJ members were reassigned to these armies pursuant to Article 271 of the Law on Service in the Armed Forces, which generally provided for the *temporary* assignment to other military units or institutions within the JNA.<sup>2114</sup> In March 1993, Mladić sent a letter to Panić, then serving as Chief of VJ General Staff, which illustrates the shortcomings of this arrangement. Mladić complained that military personnel were leaving the VRS to return to the VJ without authorisation from the VRS Main Staff, stating that their deployment to the VRS from the VJ was only temporary.<sup>2115</sup> In Mladić’s words:

<sup>2110</sup> Ex. P729, Order of the Federal Secretariat for National Defence on the Status of Military Personnel, 6 May 1992; Ex. D242, Letter from the Federal Secretariat of National Defence to the Presidency of the SFRY, 6 May 1992; Ex. P1872, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6544, p. 1; Ex. P1873, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6538, p. 1; Ex. D243, Proposals of the FRY MOD, 24 August 1993, p. 3; Ex. D245, Report of the Personnel Administration of the VJ General Staff, 24 August 1993, p. 2; Stamenko Nikolić, T. 10492-10494.

<sup>2111</sup> Ex. P1872, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6544, p. 1; Ex. P1873, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6538, p. 1; MP-5, T. 2366-2367, 2493-2494. *See also* Stojan Malčić, T. 11213-11214; Ex. D292, List of VJ Officers, 25 June 1992.

<sup>2112</sup> Ex. P729, Order of the Federal Secretariat for National Defence on the Status of Military Personnel, 6 May 1992; Ex. D242, Letter from the Federal Secretariat of National Defence to the Presidency of the SFRY, 6 May 1992; Stamenko Nikolić, T. 10475-10476.

<sup>2113</sup> Ex. P1872, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6544, p. 1; Ex. P1873, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6538, p. 1; Ex. D243, Proposals of the FRY MOD, 24 August 1993, p. 3; Ex. D245, Report of the Personnel Administration of the VJ General Staff, 24 August 1993, p. 2; Stamenko Nikolić, T. 10492-10494.

<sup>2114</sup> Ex. P2305, The Law on Service in the Armed Forces, 15 February 1985, Article 271; Stamenko Nikolić, T. 10527, 10533-10534, 10596, 10651, 10663-10667; Stojan Malčić, T. 11317-11318. *See also* Ex. D255, Order of the Commander of the SVK on Appointment of Milan Čeleketić, 27 September 1993; Ex. D113, Document from the VJ General Staff Relating to the Numerical Strength of Personnel Financed by the VJ, August 1993, p. 2. Documentary evidence shows that as of 19 May 1993, 1,607 former JNA officers remained in the VRS and 235 in the SVK. From 19 May until 8 October 1993, pursuant to Article 271 of the above mentioned law, additional 1,023 VJ officers were deployed to the VRS and 747 to the SVK, Ex. P1872, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6547.

<sup>2115</sup> Ex. P1529, Letter of Ratko Mladić to the Chief of the VJ General Staff, 31 March 1993, p. 1.

The Main Staff of the [VRS], since its establishment, believed that [...] the [SVK, VRS and VJ] were only separate elements of the combat disposition of a single army. We consider this assumption to be the legal basis for the obligatory engagement of members of the [VJ] regardless of their place of origin in the units of the [VRS] and its combat operations, and the engagement of those whose roots are in the [RS] a moral and patriotic act and an obligation.<sup>2116</sup>

Mladić therefore asked Panić to adopt “an enactment making it obligatory for all active military personnel who come from the former Bosnia and Herzegovina to join the [VRS] at the request of the Main Staff of the [VRS]”. He also proposed that “[a]ll those who refuse to comply with this request must be removed from the [VJ] in an appropriate procedure [...]”.<sup>2117</sup> He also lamented that military personnel from the former JNA or VJ already serving in the VRS, were penalised in terms of rights and benefits compared to VJ personnel that remained in the FRY and asked that instead they be guaranteed equal treatment.<sup>2118</sup> There is no evidence as to whether Panić took any steps in response to Mladić’s letter.

763. After replacing Panić as Chief of VJ General Staff, Perišić took official steps to answer Mladić’s request. In late September or early October 1993, Perišić sent a proposed order to Lilić regarding the regulation of the status and dispatch of military personnel to the VRS and SVK.<sup>2119</sup> The statement of reasons for this proposal expressly stated that since the withdrawal of the JNA from the territories of the Former Yugoslavia, three issues remained open: i) the legal status and rights of JNA military personnel who remained in the VRS and SVK; ii) the fact that there was no legal basis to temporarily dispatch VJ military personnel to the VRS and SVK; and iii) the enjoyment of rights (salaries, housing, promotions, personal record in the VJ, etc.) of all of the above personnel in the VJ and FRY.<sup>2120</sup> The statements of reasons also indicated that until then, the Chief of the VJ General Staff dealt with these issues based on temporary “standpoints”, “without any legal basis and in a semi legal manner”.<sup>2121</sup> The proposal also included termination of service as a sanction in case of refusal to comply with the transfer order.<sup>2122</sup> The proposed order – with a minor revision and a more detailed statement of reasons – was inserted in the agenda for discussion at the SDC session of 11 October 1993.<sup>2123</sup>

<sup>2116</sup> *Ibid.*

<sup>2117</sup> Ex. P1529, Letter of Ratko Mladić to the Chief of the VJ General Staff, 31 March 1993, p. 2.

<sup>2118</sup> *Ibid.*

<sup>2119</sup> Ex. P1873, Set of VJ General Staff and FRY MOD Documents, Doc IDs 0630-6535, 0630-6536. *See also* Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC, 30 August 1994, p. 66.

<sup>2120</sup> Ex. P1873, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6538, p. 1.

<sup>2121</sup> *Ibid.*

<sup>2122</sup> Ex. P1873, Set of VJ General Staff and FRY MOD Documents, Doc IDs 0630-6538, p. 2, 0630-6536, p. 2.

<sup>2123</sup> The revision was made at the proposal of the Administration for System and Status-Related Issues of the FRY MOD and concerned the addition of persons born in Bosnia and Croatia who had been dispatched from there to the JNA for trainings or service in the JNA to the list of those for whom the VJ General Staff had to keep record of, Ex. P1873, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6534, p. 1; Ex. P1872, Set of

764. In the new statement of reasons, Perišić reiterated that there was no “solid legal framework” for sending VJ personnel outside of the FRY without their consent. As a consequence, this could expose the VJ to potential litigation and exposure to the “local and foreign public”.<sup>2124</sup> In Perišić’s view, the proposed order therefore represented “the only possible solution [...] given the current circumstances, the position of the [FRY and VJ] and fulfilment of the request of the Main Staffs of the [VRS and SVK]”.<sup>2125</sup> He then described the mechanism through which VJ personnel would serve in the VRS and SVK:

The relevant officer in the [VJ] would make all these persons available and send them to a special organ of the [VJ] General Staff (Personnel Administration) based in Belgrade. Further procedure to organise and implement the departure of these persons and resolve their status in service while they are outside of the [VJ] will be taken over by the authorised organs of the Main Staff of the [VRS or SVK]. All the rights of these active servicemen and civilians would be fully protected and enjoyed in the same manner and scope as for other professionals in the [VJ].<sup>2126</sup>

The most contentious issue was the termination of service of those military personnel who refused redeployment to the VRS and SVK. As there was no direct legal basis for the said termination, Perišić proposed alternative means to achieve it, including early retirement, termination due to special needs of service and interests of the VJ or by order of a military disciplinary court for refusal to carry out an order.<sup>2127</sup>

765. During the SDC session of 11 October 1993, Perišić presented his proposed order to Zoran Lilić, Slobodan Milošević and Momir Bulatović:

These are personnel issues related to officers in the [VRS] and [SVK]. We have 3,612 people there whose status has not been regulated under the new law. In order to have a foothold, *we have paved the way for the President of the state, in his capacity as Supreme Commander, to issue an order regulating their status and that of officers here.* And in order to avoid having anyone criticise us, we have devised a temporary formation in the [VJ]. We appoint them here; they are not actually here but are performing their duties over where they are stationed. [...] We must create a stronghold so that the General Staff can work on these issues to a certain extent within the spirit of the law, even though this is not entirely in conformity with the law. But we cannot see a better solution.<sup>2128</sup>

766. Perišić then proceeded to explain the issue of ordering VJ officers to perform their duties in the VRS and SVK in order to meet these armies’ pressing requests for military personnel. According to Perišić, VJ soldiers who refused such a transfer order should be considered

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VJ General Staff and FRY MOD Documents, Doc ID 0630-6548, p. 1; Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, pp 2, 32.

<sup>2124</sup> Ex. P1872, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6544, p. 2.

<sup>2125</sup> *Ibid.*

<sup>2126</sup> *Ibid.*

<sup>2127</sup> Ex. P1872, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6544, pp 2-3.

<sup>2128</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, p. 32 (emphasis added).

deserters.<sup>2129</sup> Perišić also stated that he had found the appropriate solutions to deal with those who refused to respond to the call, including early retirement:

For instance, if someone doesn't want to go and has over 30 years of pensionable employment, we can give him early retirement so that we're not accepting this. We'll tell him that he is not performing his duties in a satisfactory manner and other things, but we won't write that he did not want to go there.<sup>2130</sup>

767. Momir Bulatović, though in favour of obligatory deployment, expressed concern that such a coercive method would become public and suggested that the order be revised in that regard.<sup>2131</sup> To meet this concern, Perišić amended the order and presented the new version at the following SDC session held on 10 November.<sup>2132</sup> Although the new version of the draft order did not contain any reference to the termination of service of VJ members who refused to transfer to the VRS or SVK, it suggested that such refusal would have an adverse impact on the future promotion of those soldiers within the VJ. Perišić eventually agreed to delete that part of the draft, accepting Milošević's remark that the addition was superfluous, as the power to refuse promotion was already within Perišić's purview.<sup>2133</sup>

768. The SDC members agreed that the order should be kept secret and that no mention should be made of the fact that "failure to go [to the VRS and SVK] meant termination of service in the [VJ]".<sup>2134</sup>

## 2. Legal Documents Establishing the Personnel Centres

769. The final version of the order was eventually signed by Lilić on 10 November 1993 and, in fact, contained no reference to coercive or punitive measures for those VJ military personnel who refused to be transferred.<sup>2135</sup>

770. The order, due to its importance for the present case, deserves to be quoted in its entirety:

<sup>2129</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, p. 33. *See also* Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, p. 5.

<sup>2130</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, p. 35. *See also* Ex. P1872, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6544, pp 2-3; Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, p. 18; Ex. P731, Presidential Order on the Formation of Special PCs, 10 November 1993.

<sup>2131</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, pp 33-36. Perišić stated "[j]ust so we do not have to wait for the next Council session, should I throw out everything that pertains to repressive actions – if they went go – and leave everything else in the order?"; Lilić responded that the matter would have to be discussed at the next Council session, *ibid.*, pp 35, 37.

<sup>2132</sup> Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, p. 17.

<sup>2133</sup> Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, p. 20; Ex. P744, Conclusions from the 15<sup>th</sup> Session of the SDC, 1 December 1993, p. 2.

<sup>2134</sup> Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, pp 18-21.

<sup>2135</sup> Ex. P731, Presidential Order on the Formation of Special PCs, 10 November 1993.

1. The General Staff of the [VJ] shall organise and keep a special record of the active-duty servicemen, contract servicemen and civilian employees of the former JNA [...] who remained in the territory of the [RS] and [RSK], and the professional servicemen and civilians employed in the [VJ] who were born in the former SFRY [...] republics of Croatia and Bosnia and Herzegovina and were admitted to military schools or joined the JNA from these republics.

The individuals mentioned in the previous paragraph shall be dispatched, assigned, transferred and appointed to appropriate posts by the competent officer in the [VJ], depending on the needs of service and the individual's abilities, as per establishment of personnel centres that will be set up by the Chief of the General Staff of the [VJ].

2. The General Staff of the [VJ] is under obligation to enable all the other professional servicemen of the [VJ] to be dispatched, assigned or transferred to the appropriate personnel centre at their request and with the approval of the head of the personnel centre, depending on the needs of service.
3. While performing their duties following the order on dispatch, assignment, transfer and appointment to a post at a personnel centre, individuals from items 1 and 2 of this Order shall carry out their professional duties in accordance with the special work plan of the personnel centre.

Throughout this period, these individuals shall retain all the rights pertaining to their rank and qualification and retain the salary they had in the post they occupied before the current assignment or they shall receive the salary envisaged for the new post, whichever is more favourable for the individual.

4. To ensure that the special personnel centres operate as planned, the Chief of the General Staff of the [VJ] shall determine: the organisation and establishment of special personnel centres; the manner of operation and a plan of activities, the number and makeup of professional servicemen and civilians who are dispatched, assigned and transferred to personnel centres; the manner procedure and period of engaging individuals (including professional officers whose appointment falls within the competence of the FRY President) according to this plan of activities, and the manner of and procedure for resolving situations that arise during service and the protection of rights arising from the service for individuals and members of their families.

The Chief of the General Staff may authorise other officers of the [VJ] to carry out some assignments from this Order.

5. For the implementation of all the assignments from this Order that fall within the competence of the [FRY MOD], ensure full coordination and cooperation between the General Staff of the [VJ] and this Ministry.<sup>2136</sup>

771. Subsequently on 12 November 1993, Perišić issued an order executing Lilić's order and delegating that the VJ General Staff Personnel Administration draft instructions on the functioning of the personnel centres.<sup>2137</sup> Perišić's order further delegated that the VJ General Staff Chief of the Personnel Administration issue orders on the dispatch, deployment, relocation and appointment of professional soldiers up to the rank of colonel and civilians.<sup>2138</sup> As for professional soldiers with the

<sup>2136</sup> *Ibid.*

<sup>2137</sup> Ex. P732, Order of the Chief of the VJ General Staff on the PCs, 12 November 1993, pp 2-3, points 3, 9. *See also* Stamenko Nikolić, T. 10542.

<sup>2138</sup> Ex. P732, Order of the Chief of the VJ General Staff on the PCs, 12 November 1993, p. 2, point 7. *See also* Miodrag Starčević, T. 5448-5450.

rank of general, as well as military judges and prosecutors, the Chief of the Personnel Administration had to submit his proposals to Perišić.<sup>2139</sup>

772. On 15 November 1993, the 30<sup>th</sup> and 40<sup>th</sup> Personnel Centres (“PCs”) were formally established.<sup>2140</sup> According to Starčević, the establishment of the 30<sup>th</sup> and 40<sup>th</sup> PCs was in accordance with Perišić’s authority as Chief of the General Staff to establish the organisation of the army and its units.<sup>2141</sup> The 30<sup>th</sup> PC was in charge of former JNA or VJ officers deployed to the VRS<sup>2142</sup> and the 40<sup>th</sup> PC managed the officers sent to the SVK.<sup>2143</sup> They were also known as Military Post 3001 and Military Post 4001, respectively,<sup>2144</sup> and were directly subordinated to the Head of the VJ General Staff Personnel Administration.<sup>2145</sup> The 30<sup>th</sup> and 40<sup>th</sup> PCs were located in the buildings of the VJ General Staff in Belgrade, on the premises of the Personnel Administration.<sup>2146</sup>

773. On 8 December 1993, the VJ General Staff Instructions on the Functioning and Programme of Activities of Special PCs (“Instructions”) signed by Perišić came into force.<sup>2147</sup> According to the Instructions, the PCs had to form and manage “precise records of status and any changes in the personal profile of professional soldiers and civilian personnel” in line with Lilić’s order of 10 November 1993.<sup>2148</sup> In addition, the PCs were also required to keep record of the personnel who refused to be transferred to the VRS and SVK.<sup>2149</sup>

<sup>2139</sup> Ex. P732, Order of the Chief of the VJ General Staff on the PCs, 12 November 1993, pp 2-3, point 7.

<sup>2140</sup> Ex. P733, Order of the Chief of the VJ General Staff, 15 November 1993.

<sup>2141</sup> Miodrag Starčević, T. 5445, testifying that Article 5, para. 2, item 1 of the Law on the VJ was the legal basis upon which new units - 30<sup>th</sup> and 40<sup>th</sup> PCs - were created within the VJ; Ex. P197, Law on the VJ, 18 May 1994. Article 5 of the Law on VJ defines the role and position of the General Staff of the VJ as the highest professional and staff organ for the preparation and use of the VJ in times of peace and war.

<sup>2142</sup> MP-5, T. 2424-2425; MP-14, T. 3507-3508 (closed session); Mladen Mihajlović, T. 3976; Branko Gajić, T. 10903-10904, 10987. *See also* Stojan Malčić, T. 11213-11214; Ex. D241, Order of the SFRY Presidency, 28 April 1992.

<sup>2143</sup> MP-5, T. 2424-2425; MP-14, T. 3507-3508 (closed session); Ex. P730, Decision of the FRY SDC, pp 1, 3-4; Stamenko Nikolić, T. 10503-10504.

<sup>2144</sup> Ex. P733, Order of the Chief of the VJ General Staff, 15 November 1993; MP-5, T. 2376-2377, 2424; MP-80, T. 8317 (closed session); Miodrag Starčević, T. 5449.

<sup>2145</sup> Ex. P733, Order of the Chief of the VJ General Staff, 15 November 1993, p. 2, point 3, also stating that the Head of Personnel Administration “will regulate assignments, deployment and all other issues related to the existence and functioning of [PCs] in collaboration with the VJ General Staff organs in charge”.

<sup>2146</sup> Mladen Mihajlović, T. 3924 (private session). It was a branch office of the VJ General Staff made up of about ten people including officers and civilians, MP-80, T. 8565 (closed session). *See* Stojan Malčić, T. 11244-11245.

<sup>2147</sup> Ex. P732, Order of the Chief of the VJ General Staff on the PCs, 12 November 1993, para. 9; Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993. *See also* Ex. P731, Presidential Order on the Formation of Special PCs, 10 November 1993, para. 4.

<sup>2148</sup> Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 14.

<sup>2149</sup> *Ibid.*

774. All of the records kept by the PCs, including the issues related to status, promotion or the exercise of the other service rights of members of the PCs, were regulated in line with the law applicable to the VJ.<sup>2150</sup>

775. The Instructions also regulated the “dispatch and transfer” of VJ professional soldiers and civilian personnel to the 30<sup>th</sup> and 40<sup>th</sup> PCs,<sup>2151</sup> establishing that while transferred, these servicemen would retain the position they held prior to their dispatch to the PCs.<sup>2152</sup> The Instructions equally provided that upon receipt of the transfer order, these personnel were to hand over duties and report “to the relevant [PC] officer [...], that is to say to report to any other destination stipulated in the call-up of the [VJ] General Staff Personnel Administration”.<sup>2153</sup>

776. Moreover, the Instructions clearly stated that all of the decisions or orders regulating the service of these personnel should only be issued orally to the individuals to whom they referred.<sup>2154</sup> They prohibited the personnel and command organs, as well as officers, to provide copies, photocopies or extracts from the decisions or orders to the personnel to whom they referred.<sup>2155</sup> Finally, the Instructions provided for the redeployment of professional soldiers and civilian personnel from the PCs to the VJ.<sup>2156</sup>

777. The Trial Chamber finds that Perišić had a decisive role in the creation of the PCs. The evidence set out above shows that he conceived and subsequently carefully implemented the idea to create such centres to: (i) regularise the status of all former JNA and VJ military personnel who remained in BiH and Croatia and (ii) to legalise, as far as possible, the deployment of VJ military personnel to the VRS and SVK. In doing so, Perišić intended to meet the requests for military personnel by the VRS and SVK Main Staffs. The statement of reasons accompanying the proposed order on the creation of the PCs, as well as the discussions held during the SDC sessions of 11 October and 10 November 1993,<sup>2157</sup> conclusively establish that Perišić designed the formation of the PCs. His role in this process was confirmed by Perišić himself, who at the SDC session of 30 August 1995 reminded the SDC members that he was the one who “*advocated*” for the idea of

<sup>2150</sup> Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, paras 4, 18, 25-32; Miodrag Starčević, T. 6921-6922. *See also* Stamenko Nikolić, T. 10543-10544.

<sup>2151</sup> Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, paras 19-24.

<sup>2152</sup> Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 21.

<sup>2153</sup> Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 23.

<sup>2154</sup> Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 12.

<sup>2155</sup> Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, paras 12-13.

<sup>2156</sup> Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 33. *See also* Miodrag Starčević, T. 6923-6924.

<sup>2157</sup> *See* Ex. P1872, Set of VJ General Staff and MOD Documents, Doc ID 0630-6544; Ex. P1873, Set of VJ General Staff and MOD Documents, Doc ID 0630-6538; Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993; Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993.



sending all those military personnel who originated from Croatia and the BiH to serve in the SVK and VRS.<sup>2158</sup>

### 3. The Role of the 30<sup>th</sup> and the 40<sup>th</sup> PCs and their Secrecy

778. According to the Prosecution, the structure and purpose of the PCs were an “elaborate deception”.<sup>2159</sup> In the Prosecution’s theory, Perišić created the PCs with the excuse of keeping a record of the members of the former JNA or VJ born in Croatia and Bosnia who joined the SVK or VRS, while his real purpose was to find a legal cover to dispatch VJ soldiers to participate in the war in Bosnia and Croatia. According to the Prosecution, it was vital to maintain secrecy over the true role of the PCs in order to conceal the VJ’s involvement in those conflicts from the local and international community.<sup>2160</sup>

779. The Defence instead contends that the PCs were “administrative bodies” established for the purpose of registering certain professional officers of the VRS and SVK and that their mandate was defined by an order of the President of the FRY, Lilić.<sup>2161</sup> As regards the secrecy surrounding the PCs, the Defence states it is normal for matters concerning the army and state security to be treated with the “highest level of secrecy” in order to safeguard state interests.<sup>2162</sup>

780. As detailed in the aforesaid Instructions and as stated by numerous witnesses, the PCs’ functions included the regulation of paperwork and maintenance of records of VJ personnel serving in the VRS and SVK.<sup>2163</sup> These functions allowed their members to enjoy all of the rights and entitlements of VJ officers and receive salaries commensurate to their ranks.<sup>2164</sup> As will be described in greater detail in the following paragraphs, through the PCs, members could, *inter alia*, apply for VJ pension plans, compensation for service in difficult conditions, housing benefits and education grants.<sup>2165</sup>

781. However, the Trial Chamber also received evidence showing that the main purpose of the PCs was to effectively enable the transfer and assignment of VJ officers to the SVK and VRS<sup>2166</sup>

<sup>2158</sup> Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC, 30 August 1994, p. 66.

<sup>2159</sup> Prosecution Opening Statement, T. 371.

<sup>2160</sup> Indictment, para. 11; Prosecution Opening Statement, T. 380-384 (partly closed session); Prosecution Final Brief, para. 151.

<sup>2161</sup> Defence Opening Statement, T. 9884. *See* Defence Final Brief, paras 249-261.

<sup>2162</sup> Defence Final Brief, para. 269.

<sup>2163</sup> Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, paras 14-18; MP-5, T. 2425-2426; Milenko Jevđević, T. 11077-11078; Stojan Malčić, T. 11243-11244, 11274, 11312, 11314; Dušan Kovačević, T. 12622.

<sup>2164</sup> Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, paras 14-18, 21; Stamenko Nikolić, T. 10535-10537.

<sup>2165</sup> *See infra* section VI.A.8.(b)-(f).

<sup>2166</sup> Rade Orlić, T. 5721; Rade Rašeta, T. 6026; MP-80, T. 8305 (closed session). *See also* Petar Škrbić, T. 11944.

and, if necessary, their subsequent redeployment to the VJ.<sup>2167</sup> When VJ officers were formally transferred to either the 30<sup>th</sup> or 40<sup>th</sup> PCs in Belgrade, they were, *in fact*, relocated to positions within the VRS and SVK respectively.<sup>2168</sup> Perišić himself explained that “[i]n our orders, for instance, we write to them: the commander of such and such a unit shall be deployed in a training corps which is supposed to be here, but in fact he is going over there”.<sup>2169</sup> Similarly, at the SDC session held on 10 November 1993, Perišić openly stated:

An officer is appointed there [to the PC] as per the formation elements and the like, like in our case but he in fact works in [RS]. We also have the [PC] which is for the [RSK]. They have all the rights as if they were in the [VJ] here, with regard to everything, except that they are physically absent, they’re on the front.<sup>2170</sup>

782. As a measure to maintain the secrecy of the VJ involvement in the transfer of VJ officers to the VRS and SVK from the local and international public, the deployment orders delivered to these officers would refer to deployment to the PCs in Belgrade, but would not mention the RS or the RSK.<sup>2171</sup>

783. A year later, during the SDC session held on 21 July 1994, Lilić commented: “[W]e have made very good decisions with regard to transferring officers born in [RS] and [RSK] and the 30<sup>th</sup> and 40<sup>th</sup> staff centre [*sic*] has been formed for that purpose. This has functioned very well in practice so far”.<sup>2172</sup> At the same session, Perišić reported:

As for the [VRS and SVK][...], about 6,800 officers there are taking care of the system, people and organisation, and fighting successfully. To date, at their request, we have sent a total of 3,795 more on permanent transfer and 187 on rotational basis.<sup>2173</sup>

784. Several witnesses testified about covert transfers to the VRS and SVK through the PCs. For instance, when commenting on Dragomir Milošević’s appointment to the 30<sup>th</sup> PC, Stamenko Nikolić stated that he “was not appointed to the personnel centre. He was sent or seconded to the VRS through the 30<sup>th</sup> PC, and that is something that the personnel centre does, and it is part of its

<sup>2167</sup> See *infra* section VI.A.7; Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 33; MP-5, T. 2462; Rade Rašeta, T. 6026.

<sup>2168</sup> MP-80, T. 8305, 8316-8318 (closed session); Petar Škrbić, T. 11553, 11944; MP-5, T. 2376-2378. MP-5’s military ID card states that when he was promoted, he was serving at the military post 3001 in Belgrade, whereas he was in fact working in BiH, MP-5, T. 2387-2388, 2432-2433 (partly private session); Ex. P397 (under seal), p. 5; Rade Orlić, T. 5721. See e.g. Ex. P1895, Order by VJ General Staff Personnel Administration, 15 February 1994; Ex. P1056, Documents Regarding Assignment of Officers to the VRS Drina Corps, December 1993; Ex. P2127, Order of the VJ Special Units Corps Command, 5 November 1993; Ex. P2128, Order by VJ General Staff Personnel Administration, 7 February 1994; Ex. P2129, Order by VJ General Staff Personnel Administration, 9 February 1994; Ex. P2112, Order by VJ General Staff Personnel Administration, 15 February 1994.

<sup>2169</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, p. 33.

<sup>2170</sup> Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, p. 19.

<sup>2171</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, pp 33-34, 36; Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, p. 21.

<sup>2172</sup> Ex. P785, Stenographic Transcript of the 23<sup>rd</sup> Session of the SDC, 21 July 1994, p. 20.

programme”.<sup>2174</sup> He also stated that reference to the PCs instead of the VRS or SVK was necessary, as that information needed to be secret.<sup>2175</sup>

785. The Trial Chamber further notes that Exhibit P1523 also illustrates this covert transfer of VJ officers through the PCs. Exhibit P1523 is an order of the Chief of the Personnel Administration of the VJ General Staff dated 15 February 1994 which appoints Bogdan Sladojević and Milan Čeleketić to the 11<sup>th</sup> and 18<sup>th</sup> Corps, respectively, of the 40<sup>th</sup> PC.<sup>2176</sup> On its face, the order seems to transfer the two officers to Belgrade-based garrisons, respectively numbered 683 and 669.<sup>2177</sup> Stamenko Nikolić explained that neither the 11<sup>th</sup> nor the 18<sup>th</sup> Corps ever existed in the VJ.<sup>2178</sup> Instead, both Corps were part of the SVK and the two garrison numbers mentioned in the order refer, in fact, to the 11<sup>th</sup> and 18<sup>th</sup> Corps command in the SVK and not to Belgrade garrisons.<sup>2179</sup> In addition, Nikolić commented on the date “101193” (10 November 1993) printed in relation to each officer’s appointment and explained that the date was a code for Lilić’s order of 10 November 1993 regarding the formation of the PCs.<sup>2180</sup> The witness added that Sladojević had been transferred to the SVK before 15 February 1994 and that, in his view, the Chief of Personnel Administration issued the order to bring previous transfer orders in line with Lilić’s order of 10 November 1993.<sup>2181</sup>

786. The fact that the PCs were not purely administrative bodies is equally evidenced by Lilić’s order of February 1994 that the VJ supply the 30<sup>th</sup> and 40<sup>th</sup> PCs with weapons and military equipment. To this end, the order further authorised the Chief of VJ General Staff to reconcile the needs of the PCs with the means of the VJ and to regulate the supply of weapons and military equipment to the PCs.<sup>2182</sup>

<sup>2173</sup> Ex. P785, Stenographic Transcript of the 23<sup>rd</sup> Session of the SDC, 21 July 1994, p. 19.

<sup>2174</sup> Stamenko Nikolić, T. 10667. *See* Stamenko Nikolić, T. 10604-10606, 10663-10666; Ex. P2113, Order by VJ General Staff Personnel Administration, 15 February 1994, p. 3. *See also* Rodojica Kadrijević, T. 13711; Ex. P798, Stenographic Transcript of the 44<sup>th</sup> Session of the SDC, 12 September 1995, p. 7; Ex. P1894, Order by VJ General Staff Personnel Administration, 26 September 1994; Ex. P1523, Order by VJ General Staff Personnel Administration, 15 February 1994; Petar Škrbić, T. 11552-11553, 11944, 11968-11969, 12025-12026; Ex. P1688, VJ Personnel File of Petar Škrbić, Doc ID 0611-5209, p. 5; Ex. P2115, Order by VJ General Staff Personnel Administration, 26 September 1994, p. 3; Ex. P2103, Drina Corps Order, 30 August 1995; Branko Gajić, T. 11006-11007; Ex. P2128, Order by VJ General Staff Personnel Administration, 7 February 1994, pp 1, 27-28; Ex. D305, Report on Taking Up Duties of Stojan Malčić, 7 February 1994; Stojan Malčić, T. 11273-11275, 11277-11278.

<sup>2175</sup> Stamenko Nikolić, T. 10560, 10638.

<sup>2176</sup> Ex. P1523, Order by VJ General Staff Personnel Administration, 15 February 1994, pp 2-3.

<sup>2177</sup> *Ibid.*

<sup>2178</sup> Stamenko Nikolić, T. 10604-10605.

<sup>2179</sup> Stamenko Nikolić, T. 10605-10606. *See also* MP-80, T. 8317 (closed session).

<sup>2180</sup> Stamenko Nikolić, T. 10604-10605; Ex. P1523, Order by VJ General Staff Personnel Administration, 15 February 1994, p. 2; Ex. P731, Presidential Order on the Formation of Special PCs, 10 November 1993. *See also supra* paras 763-770.

<sup>2181</sup> Stamenko Nikolić, T. 10606.

<sup>2182</sup> Ex. P1009, Order of the President of the FRY, 18 February 1994.

787. In conclusion, the Trial Chamber is satisfied that the PCs' main function was to regulate the status of all those former JNA/VJ officers who remained to serve in the SVK and VRS after the withdrawal of the JNA and to allow the VJ to secretly transfer VJ military personnel to the VRS and SVK, ensuring that they all continued to enjoy and exercise their rights in the VJ and FRY while serving in those armies. To this end, the PCs accessory function was to keep record of all former JNA and VJ personnel serving in the VRS and SVK. The Trial Chamber is equally satisfied that all the SDC members, as well as Perišić, intended to keep this function and the VJ involvement in the conflicts secret in order to avoid criticism or risking further sanctions from the international community. As described above, under the cover of a formal appointment to the PCs, VJ personnel were transferred directly to the VRS and SVK. The need and intention to keep this function secret was clearly expressed at the SDC session of 11 October 1993 while discussing the order on the establishment of the PCs. Perišić admitted that the establishment of the PCs had been devised in order to "avoid having anyone criticise us" for the number of former JNA and VJ personnel serving in the VRS and SVK.<sup>2183</sup> Momir Bulatović instead expressed his concern that, should the document fall into anybody's hands, the FRY would face sanctions "for ten years".<sup>2184</sup> Slobodan Milošević too stressed that only a single copy of the proposal should stay with Perišić.<sup>2185</sup> The need to ensure secrecy was stressed again at the following session of 10 November 1993, when the order was finalised and eventually signed. Bulatović stated that the order should remain confidential "because this is a very sensitive issue" to which Slobodan Milošević responded "[t]here is only one copy and General Momo has it".<sup>2186</sup>

#### 4. Appointment and Transfers to the VRS and SVK through the Personnel Centres

788. The Law on the VJ came into force in October 1993 and based on Article 152, Perišić and the commanding officers of the units or institutions designated by him had the authority to "appoint and transfer professional non-commissioned and commissioned officers up to and including the rank of colonel and issue decisions on their service".<sup>2187</sup> On 5 May 1994, Perišić authorised the Chief of the VJ General Staff Personnel Administration to:

[A]ppoint professional non-commissioned officers and professional officers up to the rank of Colonel according to the peacetime establishment and decide on their dismissal from duty;

transfer and assign professional non-commissioned officers and professional officers up to the rank of Lieutenant-Colonel if those individuals are being transferred or assigned to the military

<sup>2183</sup> Ex P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, p. 32.

<sup>2184</sup> Ex P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, p. 36.

<sup>2185</sup> Ex P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, p. 33.

<sup>2186</sup> Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, p. 21.

<sup>2187</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 152(4). The Law on the VJ passed and was published in the Official Gazette in May 1994. However, it was already in force legally since October 1993, when it was adopted by the Chamber of Citizens (lower house of Parliament), Miodrag Starčević, T. 5436-5437.

unit or military institution directly subordinate to the General Staff or the General Staff Organisation unit.<sup>2188</sup>

789. These provisions, together with Perišić's order of 12 November 1993,<sup>2189</sup> formed the basis of the orders of appointment and/or transfer of VJ officers to the VRS and SVK after the establishment of the PCs. These orders were issued by the Chief of the Personnel Administration of the VJ General Staff, to whom Perišić had delegated such authority, or by Perišić himself, and transferred and/or appointed VJ officers to positions within the 30<sup>th</sup> or 40<sup>th</sup> PCs.<sup>2190</sup> As explained above, these officers were in fact taking up positions in the VRS and SVK.<sup>2191</sup> A number of these orders were issued to harmonise the status and position of military personnel who remained or were deployed to the VRS and SVK before the establishment of the PCs.<sup>2192</sup>

790. The appointment and/or transfer orders were issued to meet pressing requests from the VRS and SVK to the VJ for personnel assistance. The evidence shows that the VRS Main Staff requested military personnel in general<sup>2193</sup> and occasionally requested specifically identified officers.<sup>2194</sup> For example, in April 1995, Mladić requested Perišić to send two VJ officers, Colonel Rade Katić and Lieutenant Colonel Radoslav Janković, to the VRS;<sup>2195</sup> in May 1995, Milovanović requested

<sup>2188</sup> Ex. D124, Order by Chief of the VJ General Staff, 5 May 1994, paras 7(4)-7(5).

<sup>2189</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 152; Ex. P732, Order of the Chief of the VJ General Staff on the PCs, 12 November 1993. *See* Ex. D124, Order by Chief of the VJ General Staff, 5 May 1994.

<sup>2190</sup> Ex. P732, Order of the Chief of the VJ General Staff on the PCs, 12 November 1993, para. 7; Miodrag Starčević, T. 5448-5450. *See also supra* paras 773-775; Ex. P1524, Order of the Chief of the VJ General Staff Redeploying Bogdan Sladojević, 5 October 1994; Ex. P1690, VJ Personnel File of Dušan Smiljanić, Doc ID 0611-7979, p. 1; Ex. P1691, VJ Personnel File of Stojan Španović, Doc ID 0611-6334, p. 2; Ex. P1686, VJ Personnel File of Dragan Šarac, Doc ID 0611-4956, p. 2; Ex. P1893, VJ Personnel File of Radislav Krstić, Doc ID 0422-8342, p. 1. *See further* for appointments and transfers to the 30<sup>th</sup> PC: Ex. P2128, Order by VJ General Staff Personnel Administration, 7 February 1994; Ex. P2129, Order by VJ General Staff Personnel Administration, 9 February 1994; Ex. P2113, Order by VJ General Staff Personnel Administration, 15 February 1994; Ex. P2114, Order by VJ General Staff Personnel Administration, 26 September 1994; Ex. P2115, Order by VJ General Staff Personnel Administration, 26 September 1994; Ex. P2116, Order by VJ General Staff Personnel Administration, 26 September 1994; Ex. P2117, Order by VJ General Staff Personnel Administration, 14 December 1994; Ex. P2118, Order by VJ General Staff Personnel Administration, 14 December 1994; Ex. P2121, Order by VJ General Staff Personnel Administration, 7 June 1994; Ex. P2122, Order by VJ General Staff Personnel Administration, 7 June 1994; Ex. P1894, Order by VJ General Staff Personnel Administration, 26 September 1994; Ex. P2125, Order by VJ General Staff Personnel Administration, 6 October 1995; Ex. P2126, Order by VJ General Staff Personnel Administration, 12 August 1995. For appointments and transfers to the 40<sup>th</sup> PC *see*: Ex. P1523, Order by VJ General Staff Personnel Administration, 15 February 1994; Ex. P1895, Order by VJ General Staff Personnel Administration, 15 February 1994; Ex. P2127, Order of the VJ Special Units Corps Command, 5 November 1993. *See also infra* para811.

<sup>2191</sup> *See supra* para. 787.

<sup>2192</sup> Ex. P2128, Order by VJ General Staff Personnel Administration, 7 February 1994; Ex. P2129, Order by VJ General Staff Personnel Administration, 9 February 1994; Ex. P2113, Order by VJ General Staff Personnel Administration, 15 February 1994. *See also* Stojan Malčić explaining that these orders were issued a few months after the official establishment of the PCs on 10 November 1993, as it took a couple of months to set up the necessary records of the active duty personnel, T. 11273-11274.

<sup>2193</sup> Ex. P2725, VRS Proposal for Authorisation to Admit Professional Contract Officers into the VRS, 12 June 1995. *See also* Ex. P785, Stenographic Transcript of the 23rd Session of the SDC, 21 July 1994, p. 19.

<sup>2194</sup> Ex. P2518, VRS Request for Secondment of Two Officers to the VRS, 23 May 1995; Ex. P2519, VRS Request for Secondment of Two Officers to the VRS, 25 April 1995.

<sup>2195</sup> Ex. P2519, VRS Request for Secondment of Two Officers to the VRS, 25 April 1995.

Lieutenant Colonel Svetozar Kosorić and Lieutenant Colonel Branko Karlica specifically.<sup>2196</sup> The evidence shows that Janković and Kosorić were indeed transferred to the VRS and were later involved in the attacks against Srebrenica of July 1995.<sup>2197</sup>

791. Similarly, in addition to general requests,<sup>2198</sup> the SVK also made specific requests to the VJ, including to Perišić personally, for specifically named officers.<sup>2199</sup> By way of example, in May 1994, Čeleketić requested the VJ General Staff to send 60 named officers.<sup>2200</sup> On 21 July 1994, Martić and Čeleketić requested 25 combat aviation pilots and 15 helicopter pilots.<sup>2201</sup> On 6 October 1995, Čeleketić requested six named VJ officers for the SVK 1<sup>st</sup> Light Infantry Brigade.<sup>2202</sup> On 8 October 1995, Lončar sent a request to Perišić personally for named VJ officers for the 11<sup>th</sup> Corps.<sup>2203</sup>

792. According to MP-80, about ten percent of the SVK officers had their status regulated through the 40<sup>th</sup> PC.<sup>2204</sup> Rade Rašeta, a JNA and VJ career officer serving in the SVK as a member of the 40<sup>th</sup> PC, stated that all members of the SVK Main Staff collegium, which was made up of *inter alia* the Chief of the Main Staff, Assistant for Logistics and Assistant for Morale, were officers assigned to the 40<sup>th</sup> PC.<sup>2205</sup>

793. As for the number of officers transferred to the VRS and SVK, the record of the SDC session of 11 October 1993 shows that at the time there were 3,612 VJ officers in the VRS and SVK.<sup>2206</sup> A report drafted in 2001 states that at the time of its establishment in 1993, the 30<sup>th</sup> PC was comprised of 4,183 men (2,461 professional servicemen and 1,722 civilians).<sup>2207</sup> On

<sup>2196</sup> Ex. P2518, Request From the VRS Main Staff to the VJ Chief of General Staff Personally for Secondment of two Officers to the VRS, 23 May 1995.

<sup>2197</sup> Ex. P2097, List of Professional Officers Who Reported for Duty in the Drina Corps, 24 August 1995; Ex. P2696, Excerpt of VJ Personnel File of Radoslav Janković, Doc ID 0422-2995, p. 2; Siniša Borović, T. 14132-14133; Ex. P437, Video Clip of Second Hotel “Fontana” Meeting, 11 July 1995; Richard Butler, T. 6569; Ex. P2518, VRS Request for Secondment of Two Officers to the VRS, 23 May 1995; Ex. P2519, VRS Request for Secondment of Two Officers to the VRS, 25 April 1995. *See supra* para. 625.

<sup>2198</sup> Ex. P1132, Request of the SVK for Military Personnel, 20 June 1993; Ex. D393, Note of the Chief of the VJ General Staff, 12 September 1993 (stating that the SVK request for volunteers from the VJ will be discussed by the SDC); Ex. P1152, Correspondence Between SVK and VJ Regarding Recruitment of Officers, 17 January 1994. *See* Ex. P712, Minutes from the 17<sup>th</sup> Session of the SDC, 14 January 1994, p. 2. *See also* Ex. P1149, Correspondence Between the SVK Commander and VJ General Staff on Recruitment of Volunteers on FRY Territory, 22 February 1995.

<sup>2199</sup> Ex. P1133, Request of the RSK President, 21 July 1994, Doc IDs 0118-5617, p. 1, 0118-5625. *See also* Ex. P2625, SVK Summary for the Coordination of Tasks in the VJ General Staff, 15 February 1994, p. 14; Ex. P2146, HV Intelligence Administration Report, 11 July 1995; Ex. P1456, Intelligence Note, 10 July 1995.

<sup>2200</sup> Ex. P875, SVK Request for Officers, 14 May 1994.

<sup>2201</sup> Ex. P1125, Request by the RSK President to the VJ for Assistance in Recruitment and Materiel, 21 July 1994. *See* MP-80, T. 8382-8383 (closed session).

<sup>2202</sup> Ex. P2620, SVK Request to VJ Chief of General Staff for Personnel Assistance, 6 October 1995.

<sup>2203</sup> Ex. P2779, SVK Request to VJ Chief of General Staff for Personnel Assistance, 8 October 1995.

<sup>2204</sup> MP-80, T. 8332 (closed session).

<sup>2205</sup> Rade Rašeta, T. 5928. *See also* Ex. P1132, Request of the SVK for Military Personnel, 20 June 1993.

<sup>2206</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, p. 32.

<sup>2207</sup> Ex. P737, Report of the VJ General Staff Regarding the 30<sup>th</sup> PC, 17 March 2001, pp 2-3, 17.

10 November 1993, there were 2,477 VJ officers in the VRS, with an additional 205 officers expected to join a few days later.<sup>2208</sup> In May 1994, the 30<sup>th</sup> PC counted 4,281 men (including civilian personnel);<sup>2209</sup> in June 1994, it counted 4,173 men (military and civilian personnel);<sup>2210</sup> in September 1994 - 4,614 men (including civilian personnel);<sup>2211</sup> whereas in 1995 - 4,346 men (including civilian personnel).<sup>2212</sup> By September 1996, the 30<sup>th</sup> PC counted 3,363 professional soldiers and 1,730 civilian personnel for a total of 5,093 men.<sup>2213</sup>

794. As for the 40<sup>th</sup> PC, the evidence shows that on 10 November 1993, there were 1,192 VJ officers in the SVK, with another 561 expected to be dispatched by 16 November 1993.<sup>2214</sup> In June 1994, the 40<sup>th</sup> PC counted 1,474 men (military and civilian personnel);<sup>2215</sup> and in 1995, 930 military personnel (excluding civilian personnel).<sup>2216</sup>

795. VJ officers who served in the VRS through the 30<sup>th</sup> PC included key personnel such as: Ratko Mladić,<sup>2217</sup> Manojlo Milovanović,<sup>2218</sup> Đorđe Đukić,<sup>2219</sup> Radivoje Miletić,<sup>2220</sup> Milan Gvero,<sup>2221</sup> Zdravko Tolimir,<sup>2222</sup> Milenko Živanović,<sup>2223</sup> Radislav Krstić,<sup>2224</sup> Vinko Pandurević,<sup>2225</sup>

<sup>2208</sup> Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, p. 5 (reporting that “2,477 are there, another 2,140 are here and 205 will be leaving on the 16<sup>th</sup>”).

<sup>2209</sup> Ex. P2765, VRS Questions for Coordination with the VJ General Staff, 17 May 1994, pp 5-7.

<sup>2210</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 46.

<sup>2211</sup> The number included 2,634 officers, 1,688 civilians and 292 contract soldiers, Ex. P792, Stenographic Transcript of the 27<sup>th</sup> Session of the SDC, 27 September 1994, p. 88.

<sup>2212</sup> The numbers included 2,664 professional commissioned and non-commissioned officers, Ex. P794, Stenographic Transcript of the 31<sup>st</sup> Session of the SDC, 18 January 1995, p. 45. *See also* Stamenko Nikolić, T. 10552-10554, 10678-10679; Ex. D246, Numerical Strength of Professional Soldiers in the 30<sup>th</sup> and the 40<sup>th</sup> PCs in May 1995; Petar Škrbić, T. 11835 (private session); Ex. D352 (under seal), 08:40-09:41.

<sup>2213</sup> Ex. P1867, Report by VJ Chief of General Staff to FRY President, 4 September 1996, p. 3. *See also* Ex. P734, List of Professional Soldiers from the 30<sup>th</sup> PC, undated, listing 1,445 professional soldiers who served in the 30<sup>th</sup> PC for the duration of the conflict, Bretton Randal, T. 4154-4155.

<sup>2214</sup> Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, p. 5.

<sup>2215</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 46.

<sup>2216</sup> Ex. D246, Numerical Strength of Professional Soldiers in the 30<sup>th</sup> and the 40<sup>th</sup> PCs in May 1995, p. 3. *See* Stamenko Nikolić, T. 10554-10555.

<sup>2217</sup> Ex. P1902, Decree of the FRY President, 16 June 1994. *See also* Ex. P1901, VJ Personnel File of Ratko Mladić, Doc IDs 0422-8234, p. 11, 0422-8331.

<sup>2218</sup> Ex. P1697, VJ Personnel File of Manojlo Milovanović, Doc. ID 0422-2599.

<sup>2219</sup> Ex. P1654, VJ Personnel Administration Documents Concerning Đorđe Đukić, Docs ID 0611-6883, 0611-6887, 0611-6903.

<sup>2220</sup> Ex. P1729, VJ Personnel File of Radivoje Miletić, Doc ID 0422-2361.

<sup>2221</sup> Ex. P1899, VJ Personnel File of Milan Gvero, Doc IDs 0422-3303, pp 10-16, 0422-3321.

<sup>2222</sup> Ex. P1787, Excerpt from VJ Personnel File of Zdravko Tolimir, Doc ID 0422-2463; Ex. P2128, Order by VJ General Staff Personnel Administration, 7 February 1994, p. 4.

<sup>2223</sup> Ex. P1696, Decision of FRY President, 10 October 1995.

<sup>2224</sup> Ex. P1893, VJ Personnel File of Radislav Krstić, Doc ID 0422-8341; Ex. P2114, Order by VJ General Staff Personnel Administration, 26 September 1994, p. 2; Ex. P2117, Order by VJ General Staff Personnel Administration, 14 December 1994, pp 2-3; Ex. P1894, Order by VJ General Staff Personnel Administration, 26 September 1994.

<sup>2225</sup> Ex. P1731, VJ Personnel File of Vinko Pandurević, Doc ID 0422-8476, pp 6-7; Ex. P1732, Order by VJ General Staff Personnel Administration, 7 June 1994; Ex. P2121, Order by VJ General Staff Personnel Administration, 7 June 1994, p. 2.

Vujadin Popović,<sup>2226</sup> Ljubiša Beara,<sup>2227</sup> Vidoje Blagojević,<sup>2228</sup> Dragan Jokić,<sup>2229</sup> Dragan Obrenović,<sup>2230</sup> Drago Nikolić,<sup>2231</sup> Svetozar Andrić,<sup>2232</sup> Stanislav Galić,<sup>2233</sup> Dragomir Milošević<sup>2234</sup> and Čedo Sladoje.<sup>2235</sup> In addition, the 30<sup>th</sup> PC regulated the status of Bogdan Subotić,<sup>2236</sup> and Dušan Kovačević, RS Minister of Defence from January 1993 until August 1994.<sup>2237</sup>

796. Similarly, key personnel who served in the SVK through the 40<sup>th</sup> PC included Mile Novaković,<sup>2238</sup> Milan Čeleketić,<sup>2239</sup> Borislav Đukić<sup>2240</sup> and Dušan Lončar.<sup>2241</sup>

##### 5. Appointment to SVK and VRS Positions and Temporary Transfers

797. The evidence shows that VJ officers were transferred and/or appointed to the 30<sup>th</sup> or 40<sup>th</sup> PCs by the VJ, whereas the VRS and SVK appointed these officers to specific posts within these armies.<sup>2242</sup> While accepting this as the general rule, the Prosecution argues that on occasion, the VJ would also appoint PC members to specific posts within the VRS. The prosecution relies on two orders of appointment, dated 12 August and 6 October 1995, regarding, *inter alia*, Vujadin Popović and Dragan Obrenović.<sup>2243</sup> The Prosecution points out that in these cases, the order of transfer and

<sup>2226</sup> Ex. P2115, Order by VJ General Staff Personnel Administration, 26 September 1994, p. 3; Ex. P2116, Order by VJ General Staff Personnel Administration, 26 September 1994, p. 15; Ex. P1934, VJ Personnel File of Vujadin Popović, Doc ID 0422-8609.

<sup>2227</sup> Ex. P1920, VJ Personnel File of Ljubiša Beara, Doc IDs 0603-0574, 0603-0644.

<sup>2228</sup> Ex. P2129, Order by VJ General Staff Personnel Administration, 9 February 1994, p. 37; Ex. P2138, Order on Promotion, 16 June 1995, p. 3.

<sup>2229</sup> Ex. P2129, Order by VJ General Staff Personnel Administration, 9 February 1994, pp 37-38; Ex. P1815, Order by VJ General Staff, 6 October 1995, pp 29-30.

<sup>2230</sup> Ex. P2129, Order by VJ General Staff Personnel Administration, 9 February 1994, p. 35; Ex. P2125, Order by VJ General Staff Personnel Administration, 6 October 1995, pp 2-3; Ex. P1815, Order by VJ General Staff, 6 October 1995, pp 25-26; Ex. P1897, VJ Personnel File of Dragan Obrenović, Doc ID 0611-8718, p. 3.

<sup>2231</sup> Ex. P1655, VJ Personnel File of Drago Nikolić, Doc IDs 0422-8711, 0422-8711.

<sup>2232</sup> Ex. P2105, Report on Transfer to the 30<sup>th</sup> PC, 22 March 1994.

<sup>2233</sup> Ex. P1770, Certificate by VRS Main Staff, 18 August 1994.

<sup>2234</sup> Ex. P2113, Order by VJ General Staff Personnel Administration, 15 February 1994, pp 3-4; Ex. P1754, Certificate by VJ General Staff, 13 February 1996; Ex. P1755, Certificate by VJ General Staff, 3 May 1996; Ex. P1752, Excerpt of VJ Personnel File of Dragomir Milošević.

<sup>2235</sup> Ex. P738, List of Professional Soldiers from the 30<sup>th</sup> PC, undated, p. 2; Ex. P1905, Decree of the FRY President, 16 June 2001, p. 2.

<sup>2236</sup> Ex. P1907, VJ Personnel File of Bogdan Subotić, Doc IDs 0611-5577, 0611-5588. *See also* Ex. D331, RS Presidential Decree, 15 June 1992.

<sup>2237</sup> Dušan Kovačević, T. 12531; Ex. P1906, VJ Personnel File of Dušan Kovačević, Doc IDs 0611-5812, 0611-5814, 0611-5816, 0611-5818, 0611-5832.

<sup>2238</sup> Ex. P1777, VJ Personnel File of Mile Novaković, Doc IDs 0611-7664, 0611-7677; Ex. P1912, Decree of the FRY President, 22 December 1994; Ex. P1921, Decision of the Military Post 4001 Belgrade, 5 May 1994.

<sup>2239</sup> Ex. P1911, VJ Personnel File of Milan Čeleketić, Doc IDs 0611-7931, 0611-7932.

<sup>2240</sup> Ex. P1652, VJ Personnel File of Borislav Đukić, Doc IDs 0611-4266, 0611-4274.

<sup>2241</sup> Ex. P1681, VJ Personnel File of Dušan Lončar, Doc IDs 0611-4838, 0611-4844.

<sup>2242</sup> Ex. P1873, Set of VJ General Staff and MOD Documents, Doc ID 0630-6538, p. 2; Ex. P1872, Set of VJ General Staff and MOD Documents, Doc ID 0630-6544, p. 2. In its closing arguments, the Prosecution did not dispute that the "VRS and the SVK made the majority of decisions as to assignment to duty within those armies", Prosecution Closing Arguments, T. 14689.

<sup>2243</sup> Prosecution Final Brief, para. 183, referring to Ex. P2126, Order by VJ General Staff Personnel Administration, 12 August 1995, pp 13-14; Ex. P1815, Order by VJ General Staff Personnel Administration, 6 October 1995, pp 25-26.



appointment of VJ military personnel to the VRS through the PCs included internal appointments to different units within those armies - namely to the positions of Corps Chief of Security Department, Security and Intelligence Affairs and Infantry Brigade Chief of Staff, respectively.<sup>2244</sup>

798. The Defence disputes the proposition that the VJ could decide on appointments within the VRS and SVK and submits that such decisions were independently made by these armies.<sup>2245</sup>

799. The Trial Chamber notes that both Popović and Obrenović held the positions of Corps Chief of Security Department, Security and Intelligence Affairs and Infantry Brigade Chief of Staff, respectively, before the VJ orders of appointment cited by the Prosecution were issued. The order of 12 August 1995 on Popović's appointment, states that the appointment was effective as of *1 February 1995*, "when he assumed duty".<sup>2246</sup> This is reflected in his VJ personnel file.<sup>2247</sup> Similarly, the appointment order of 6 October 1995 relating to Obrenović states that his appointment to Chief of Staff of the Infantry Brigade was effective as of *1 August 1995*, "when changes were effected in the unit establishment".<sup>2248</sup> In addition, Obrenović was already "transferred and appointed" to the same position by VJ order of 9 February 1994, effective as of 10 November 1993.<sup>2249</sup> As discussed above, these orders of February 1994, were issued to harmonise the status of VJ personnel already serving in the VRS or SVK with Lilić's order establishing the PCs.<sup>2250</sup> The evidence therefore shows that contrary to the Prosecution position, Popović and Obrenović were not appointed to those specific positions within the VRS by VJ order. The Trial Chamber therefore finds that while the VJ appointed VJ personnel to the 30<sup>th</sup> and 40<sup>th</sup> PCs, the appointment to specific posts within the VRS and SVK was done by those armies.

800. The Trial Chamber was also presented with evidence of instances in which VJ soldiers were appointed to the VRS or SVK on a temporary basis through the PCs. These appointments were made pursuant to Article 58 of the Law of the VJ,<sup>2251</sup> which notably states:

If duty so requires, a professional soldier may be temporarily assigned to another unit or institution for the purpose of carrying out specific tasks. The assignment may last up to a year in the course of a period of five years.<sup>2252</sup>

<sup>2244</sup> Prosecution Final Brief, para. 183.

<sup>2245</sup> Defence Final Brief, paras 272-301.

<sup>2246</sup> Ex. P2126, Order by VJ General Staff Personnel Administration, 12 August 1995, p. 14.

<sup>2247</sup> Ex. P1934, VJ Personnel File of Vujadin Popović, Doc ID 0422-8609, p. 2.

<sup>2248</sup> Ex. P1815, Order by VJ General Staff, 6 October 1995, p. 26.

<sup>2249</sup> Ex. P2129, Order by VJ General Staff Personnel Administration, 9 February 1994, p. 35.

<sup>2250</sup> See *supra* para. 785.

<sup>2251</sup> Ex. P1527, VJ Order on Temporary Assignments to the 30<sup>th</sup> PC, 3 July 1995, p. 1; Ex. P2518, VRS Request for Secondment of Two Officers to the VRS, 23 May 1995.

<sup>2252</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 58.

801. An example of such a temporary deployment is an order dated 3 July 1995, temporarily assigning Bogdan Sladojević and Momir Vranješ to the 30<sup>th</sup> PC. The document states that the transfers would last one year, in accordance with Article 58(3) of the Law on the VJ, and that upon termination the two officers were to return to the unit/institution from which they were transferred.<sup>2253</sup> In May 1995, VRS Main Staff requested Perišić to dispatch Svetozar Kosorić and Branko Karlica to the VRS pursuant to Article 58 of the Law on the VJ.<sup>2254</sup> Siniša Borović - the Chef de Cabinet of the Chief of the VJ General Staff from November 1994 until December 1996<sup>2255</sup> - testified that Kosorić was temporarily seconded to the VRS in accordance with the VRS request, and assigned to the Intelligence Department in the Drina Corps Command.<sup>2256</sup>

802. There is also evidence that some secondments were made directly to the VRS without going through the 30<sup>th</sup> PC. For example, in March 1994, Panić, the Commander of the Special Units Corps (“SUC”), agreed to send two sergeants to the VRS for one year pursuant to Article 58 of the Law on the VJ, with the understanding that the two soldiers were *not* appointed to the 30<sup>th</sup> PC and that they would return to the SUC before the expiration of the year in case of engagement of the SUC in combat.<sup>2257</sup> One of these officers was Milorad Pelemiš, who was later involved in the takeover of Srebrenica in July 1995 as acting Commander of the 10<sup>th</sup> Sabotage Detachment.<sup>2258</sup>

#### 6. VJ Officers who Refused to be Transferred to the VRS and SVK

803. As discussed earlier, the order establishing the PCs did not contain any provision on the termination of service of VJ members who refused to comply with a transfer order to the PCs. Perišić, however, made it clear that those VJ officers who refused to take up positions in the SVK or VRS would be in one way or another dismissed from the VJ.<sup>2259</sup> This policy did not change over time and Perišić addressed the issue during the SDC meeting of 21 July 1994. In discussing the potential deployment of 1,143 men to the VRS and SVK, Perišić stressed that he could “only persuade them and they go or force them out of the [VJ] in another way”.<sup>2260</sup> The subsequent discussion between the SDC members shows that they were concerned by possible complaints filed

<sup>2253</sup> Ex. P1527, VJ Order on Temporary Assignments to the 30<sup>th</sup> PC, 3 July 1995, p. 1.

<sup>2254</sup> Ex. P2518, VRS Request for Secondment of Two Officers to the VRS, 23 May 1995.

<sup>2255</sup> Siniša Borović, T. 13881.

<sup>2256</sup> Ex. P2518, VRS Request for Secondment of Two Officers to the VRS, 23 May 1995; Siniša Borović, T. 14153.

<sup>2257</sup> Ex. P2111, Temporary Deployment of VJ Soldiers to VRS, 2 March 1994.

<sup>2258</sup> Dražen Erdemović, T. 7940; Ex P2390, Video, 11 July 1995, at 13:47 hours (showing Lieutenant Pelemiš in Srebrenica, Dražen Erdemović, T. 7959). *See supra* para. 715, fn. 2051.

<sup>2259</sup> *See supra* paras 764-768. *See also* Ex. P2127, Order of the VJ Special Units Corps Command, 5 November 1993; Ex. P878, Tasks Set by Momčilo Perišić at the Supreme Staff Command Meeting of 27 September 1993, 27 October 1993, p. 3.

<sup>2260</sup> Ex. P785, Stenographic Transcript of the 23<sup>rd</sup> Session of the SDC, 21 July 1994, p. 20.

by the affected officers.<sup>2261</sup> The SDC finally decided that the deployment of VJ officers to the VRS and SVK should continue, while concluding that it was necessary to maintain the appearance that these officers were going on a voluntary basis and that Perišić would deal with those who refused.<sup>2262</sup>

804. The Trial Chamber notes that several witnesses contested that such practice in fact took shape. Siniša Borović commented on two requests from the VRS to Perišić, dated respectively April and May 1995, regarding the provision of specific VJ officers.<sup>2263</sup> Both requests bear a handwritten note by Perišić stating that a proposal for their deployment should be prepared only after consultation with the requested officers.<sup>2264</sup> Borović stated that no VJ officer was ever forced to go to the VRS.<sup>2265</sup> Petar Škrbić testified that in 1992, those JNA/VJ officers who did not leave for the VRS were “castigated” whereas those that did were “encouraged and respected by their peers”.<sup>2266</sup> However, he also testified that until the end of 1993, when he worked in the Administration for Information of the VJ General Staff, he had not heard of any VJ officer who had been coerced to join the VRS as a result of threats of punishment, such as early retirement.<sup>2267</sup> Branko Gajić also insisted that VJ personnel who joined the VRS and the SVK did so only on a voluntary basis.<sup>2268</sup>

805. The Trial Chamber, however, notes that contrary to the abovementioned testimony, the record contains a solid body of evidence showing that officers assigned to the 30<sup>th</sup> and 40<sup>th</sup> PCs in fact did not have much choice in whether they were transferred. For example, on 5 September 1994, the Chief of the VJ General Staff ordered the deployment of a number of VJ officers to the 40<sup>th</sup> PC, but a number of them either refused to obey the order or subsequently and deliberately left the units of the 40<sup>th</sup> PC.<sup>2269</sup> Documentary evidence shows that these officers were called for an interview with Perišić, following which the majority accepted to be deployed to the 40<sup>th</sup> PC, while a procedure for termination of service was initiated against two officers.<sup>2270</sup> The document continues to state that, should these two officers wish to avoid termination of their professional service, they

<sup>2261</sup> Ex. P786, Stenographic Transcript of the 37<sup>th</sup> Session of the SDC, 13 June 1995, p. 34. *See also* Ex. P785, Stenographic Transcript of the 23<sup>rd</sup> Session of the SDC, 21 July 1994, p. 20.

<sup>2262</sup> Ex. P785, Stenographic Transcript of the 23<sup>rd</sup> Session of the SDC, 21 July 1994, p. 20; Ex. P754, Minutes of the 23<sup>rd</sup> SDC Session held on 21 July 1994, pp 2-3; Ex. P786, Stenographic Transcript of the 37<sup>th</sup> Session of the SDC, 13 June 1995, pp 34-36.

<sup>2263</sup> Ex. P2518, VRS Request for Secondment of Two Officers to the VRS, 23 May 1995; Ex. P2519, VRS Request for Secondment of Two Officers to the VRS, 25 April 1995.

<sup>2264</sup> *Ibid.*

<sup>2265</sup> Siniša Borović, T. 14002. *See* Borivoje Tešić, T. 2001, 2035-2036; Mladen Mihajlović, T. 3976. *See also* Ex. P1704, Statement by Manojlo Milovanović on Assignment of Duty in BiH, 9 May 1992.

<sup>2266</sup> Petar Škrbić, T. 11592-11593.

<sup>2267</sup> Petar Škrbić, T. 11600.

<sup>2268</sup> Branko Gajić, T. 10918-10919, 10923-10924, 10949, 10987.

<sup>2269</sup> Ex. P2827, List of Officers who Disobeyed Transfer Orders to 40<sup>th</sup> PC, 26 September 1994; Ex. P1865, Order by VJ 3<sup>rd</sup> Army, 7 October 1994, p. 1; Ex. P2826, List of Officers who Disobeyed Transfer Orders to 40<sup>th</sup> PC, 30 September 1994.

<sup>2270</sup> Ex. P1865, Order by VJ 3<sup>rd</sup> Army, 7 October 1994.

should report to the units of the 40<sup>th</sup> PC.<sup>2271</sup> Nikolić testified that this suggested that the termination of their service was initiated because they refused to go to the SVK and the only way to avoid termination was to accept deployment to the SVK.<sup>2272</sup>

806. A letter sent from the Command of the VJ 1<sup>st</sup> Army to the VJ General Staff Personnel Administration dated 24 June 1996 is also illustrative of this policy.<sup>2273</sup> The letter reports that Dane Petrović's request for a regular promotion was denied twice because he had refused transfer to the 40<sup>th</sup> PC in March and June 1995,<sup>2274</sup> in line with the Chief of VJ General Staff opinion regarding the "decelerated movement in the service" of those active servicemen who refused assignments to the PCs.<sup>2275</sup> In July 1996, Perišić temporarily relieved Petrović from duty, as he had been declared partially unfit to perform his duties.<sup>2276</sup> Petrović appealed this decision to the Supreme Military Court in Belgrade but his appeal was rejected.<sup>2277</sup> He therefore decided to appeal to Slobodan Milošević directly on 24 December 1997.<sup>2278</sup> In this latest appeal, he stated that he had originally been temporarily deployed to the SVK for six months pursuant to Article 271 of the Law on the Armed Forces of the SFRY in June 1993. Upon his return to the VJ after six months, however, he found he had been "tricked and deceived" and that he had also been unlawfully denied promotion.<sup>2279</sup>

807. There is also evidence that VRS officer Lieutenant Colonel Erak filed a complaint in late 1994 to the Recruitment and Personnel Affairs Section of the Drina Corps Command regarding his transfer to the VRS. The complaint reads as follows:

- a) No one asked me for opinion regarding my transfer to the 30<sup>th</sup> Personnel Centre. I have been transferred 7 times so far, and I am of opinion that [...] I should not have been transferred to the VRS without my personal consent; I have refused /to be transferred/ and that is why I did not sign the report about taking charge of the duty [...].
- b) I have been transferred to the [VRS] in accordance with Article 58 of the Law on VJ, and on the same ground I should not have and could not have been transferred to the 30<sup>th</sup> [PC].<sup>2280</sup>

<sup>2271</sup> Ex. P1865, Order by VJ 3<sup>rd</sup> Army, 7 October 1994, 7 October 1994, p. 2.

<sup>2272</sup> Stamenko Nikolić, T. 10653-10654. *See also* Rade Rašeta, T. 5888-5889.

<sup>2273</sup> Ex. P2543, Proposal of 1<sup>st</sup> Army Command to VJ General Staff Concerning Dane Petrović, 24 June 1996.

<sup>2274</sup> Ex. P2543, Proposal of 1<sup>st</sup> Army Command to VJ General Staff Concerning Dane Petrović, 24 June 1996, p. 2; Ex. P2552, Appeal of Dane Petrović to Slobodan Milošević, 24 December 1997.

<sup>2275</sup> Ex. P2543, Proposal of 1<sup>st</sup> Army Command to VJ General Staff Concerning Dane Petrović, 24 June 1996, p. 2.

<sup>2276</sup> Ex. P2545, Order of VJ General Staff to Relieve Dane Petrović Temporarily of his Duties, 12 July 1996.

<sup>2277</sup> Ex. P2546, Charges of Dane Petrović before the Supreme Military Court in Belgrade against VJ General Staff, 26 September 1996; Ex. P2549, Judgement of the Supreme Military Court concerning Dane Petrović, 23 January 1997.

<sup>2278</sup> Ex. P2552, Appeal of Dane Petrović to Slobodan Milošević, 24 December 1997.

<sup>2279</sup> Ex. P2552, Appeal of Dane Petrović to Slobodan Milošević, 24 December 1997, pp 1-3, 6.

<sup>2280</sup> Ex. P1896, Minutes from a Meeting Concerning the Transfer of a Soldier to the VRS, 11 September 1994, p. 1.

Erak ultimately requested to be transferred back to his garrison in Zrenjanin.<sup>2281</sup> Petar Škrbić testified that Erak eventually left the VRS without authorisation and was thus considered a deserter.<sup>2282</sup>

808. MP-80 testified that he was not aware of any officers who directly refused to serve in the SVK or VRS, but many turned to “dishonorable” means to avoid service, such as getting medical certificates, sick leave or using connections.<sup>2283</sup> MP-14, on the other hand, testified that he was not given any choice in 1992 as to whether he wanted to remain with the JNA or serve in the VRS. In his words, he was “left [...] there without pay [...] and told [he] couldn’t go to Serbia”.<sup>2284</sup>

809. The Trial Chamber finds that although many VJ officers volunteered or readily accepted to be transferred to the VRS or SVK, those who refused or were reticent to go were pressured or coerced to do so by threats of early retirement or termination of service. The Trial Chamber also finds that the evidence on the creation of the PCs shows that Perišić intended the deployment of VJ officers to the VRS and SVK to be obligatory under threat of termination of service, but decided not to include any such clause in writing anywhere in order to avoid litigation that would expose the involvement of the VJ in the conflict in Croatia and BiH.<sup>2285</sup>

## 7. Redeployment to the VJ

810. The VJ General Staff Instructions, issued by Perišić on 8 December 1993, provided that VJ personnel sent to the VRS or SVK through the 30<sup>th</sup> and 40<sup>th</sup> PCs could be redeployed to the VJ. It stated:

In keeping with service requirements, professional soldiers and civilian personnel sent or transferred to the [PC] may be returned, assigned or transferred to the [VJ] units/institutions with the consent or on the recommendation of the [PC] Main Staff.<sup>2286</sup>

Such “consent or recommendations” were to be sent to the PC personnel department, which would then direct the person “to report to his previous unit/institution or transfer, assign or appoint them to a post (within the purview of the [Chief of the VJ General Staff] and President of the FRY [...]) in the [VJ]”.<sup>2287</sup>

<sup>2281</sup> Ex. P1896, Minutes from a Meeting Concerning the Transfer of a Soldier to the VRS, 11 September 1994, p. 2. See also Ex. P1858, Letter by VRS Main Staff to Drina Corps Command, 9 November 1994.

<sup>2282</sup> Petar Škrbić, T. 11698-11699.

<sup>2283</sup> MP-80, T. 8318-8319 (closed session). See also in relation to the 30<sup>th</sup> PC: Ex. P2561, Statement Concerning Failure to Report to 30<sup>th</sup> PC, 31 March 1995; Ex. P2562, Order of the VJ General Staff Concerning the Temporary Assignment to 30<sup>th</sup> PC, 3 July 1995; Ex. P2563, Official Note, 31 July 1995.

<sup>2284</sup> MP-14, T. 3507 (closed session).

<sup>2285</sup> See *supra* para. 764.

<sup>2286</sup> Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 33.

<sup>2287</sup> *Ibid.*

811. The Personnel Administration of the VJ General Staff also issued instructions specifically to the 40<sup>th</sup> PC Main Staff, explaining the procedure for the redeployment of members of the 40<sup>th</sup> PC to the VJ.<sup>2288</sup> According to the instructions, personnel transferred to the 40<sup>th</sup> PC could only return to the VJ in order to “meet needs of the service, or due to health requirements of the person or members of his family”.<sup>2289</sup> Furthermore, the requests for such transfer could be submitted “only through the 40<sup>th</sup> [PC] Main Staff and with the 40<sup>th</sup> [PC] Main Staff Commander’s signature”.<sup>2290</sup> However, transfers could “be executed only after [receipt] of response – approval from the [VJ] General Staff Personnel Administration”.<sup>2291</sup>

812. The Trial Chamber was presented with several personnel files which included orders from the VJ redeploying members from service in the PCs to the VJ. For example, Đuro Vojković was redeployed from temporary duty in the “11<sup>th</sup> Corps of the 40<sup>th</sup> [PC]” to duty in the VJ “due to special needs of service” by order of the VJ General Staff on 7 April 1994;<sup>2292</sup> Radislav Krstić was transferred from the 30<sup>th</sup> PC to the VJ Military Academy by the VJ General Staff on 18 January 1995;<sup>2293</sup> Stojan Spanović was transferred from his position in the 40<sup>th</sup> PC as Chief of Staff and Deputy Commander of the 11<sup>th</sup> Corps to the VJ 1<sup>st</sup> Army on 26 May 1996 by the VJ General Staff “in accordance with the needs of the service”;<sup>2294</sup> and Dragan Šarac was transferred by Perišić from his position in the 40<sup>th</sup> PC as SVK Main Staff Chief of Security to the VJ Military Academy in October 1994.<sup>2295</sup>

813. The Prosecution submits that officers moved fluidly between the VRS, SVK and VJ pursuant to Perišić’s orders and based on the needs of service of the VJ.<sup>2296</sup> The Prosecution acknowledges that, as stated in the VJ General Staff Instructions, officers’ requests to return to the VJ were reviewed by, and required the consent of the respective VRS or SVK commanders.<sup>2297</sup> It argues that such consent ensured that the needs of service of the VRS and SVK would be protected.<sup>2298</sup> Moreover, the Prosecution submits that this requirement essentially enabled the VRS

<sup>2288</sup> Ex. P2864, VJ General Staff Personnel Administration Document Sent to 40<sup>th</sup> PC, 20 April 1994.

<sup>2289</sup> *Ibid.*

<sup>2290</sup> *Ibid.*

<sup>2291</sup> Ex. P2864, VJ GS Personnel Admin Chief Gen. Zorić document sent to 40<sup>th</sup> PC, 20 April 1994. *But see* Miodrag Starčević stating that there was no provision under FRY law authorizing a VJ officer to redeploy an officer from a “different country serving in a different army”, Miodrag Starčević, T. 5489, 5493.

<sup>2292</sup> Ex. P1151, Correspondence Between VJ and SVK, 7 April 1994.

<sup>2293</sup> Ex. P1893, VJ Personnel File of Radislav Krstić, Doc ID 0422-8342, p. 1.

<sup>2294</sup> Ex. P1691, VJ Personnel File of Stojan Španović, Doc ID 0611-6334, p. 2.

<sup>2295</sup> Ex. P1686, VJ Personnel File of Dragan Šarac, Doc ID 0611-4956, p. 2.

<sup>2296</sup> Prosecution Final Brief, paras 190, 197-198.

<sup>2297</sup> Prosecution Closing Arguments, T. 14686-14687, discussing Ex. P1529, Letter of Ratko Mladić to the Chief of the VJ General Staff, 31 March 1993, pp 1-2, wherein Mladić highlighted the issue of personnel returning to the VJ without VRS consent, stating, in relevant part: “[e]very individual request to return to the [VJ] will be reviewed by the relevant commands and officers of the [VRS], who will issue the appropriate agreement”.

<sup>2298</sup> Prosecution Closing Arguments, T. 14687-14688, 14690.

and SVK commanders to act as “gatekeepers”, preventing the unauthorised return of officers to the FRY.<sup>2299</sup> However, the Prosecution asserts that the VJ, and Perišić personally, was the ultimate authority on whether an individual served in one of the PCs or in the FRY, and that where the needs of the VJ overrode those of the SVK or VRS, officers were required to return to the FRY.<sup>2300</sup>

814. The Defence argues that the VRS and SVK, not the VJ, made the final decisions regarding the redeployment of officers to the VJ.<sup>2301</sup> The Defence does not dispute that, in some instances, officers were permitted to return to the VJ at their own request, but maintains that individual requests by VRS and SVK officers to redeploy to the VJ were reviewed and decided upon by commanders of the VRS and SVK.<sup>2302</sup> The Defence further argues that Perišić played no role in these decisions and that there is no evidence to support the contention that he was able to influence or overrule the VRS or SVK in any decisions regarding redeployment.<sup>2303</sup>

(a) Requests for Redeployment

815. Evidence shows instances where members of the PCs requested permission to leave their positions in the VRS and SVK and be redeployed to the VJ. Moreover, at least some of these requests were sent directly to units within the VRS or SVK, not to the VJ. For example, on 16 August 1994, Miroslav Dadić sent a request to the Drina Corps Command to be redeployed from Military Post 7111 to his original unit in the VJ, wherein he explained that he went to the VRS voluntarily for a three-month period and was told that he would only be there on a “temporary basis”.<sup>2304</sup> Ljubiša Miličić instead sent his request to be returned from the Drina Corps to the VJ directly to Perišić.<sup>2305</sup> The request was however forwarded back to Miličić’s commanding officer in the 1<sup>st</sup> Zvornik Infantry Brigade Command of the Drina Corps, with a request that he “read it carefully [...] and to give [his] opinion and return to this Command as soon as possible”.<sup>2306</sup>

816. The Trial Chamber was presented with instances where the VRS approved such redeployment requests made by personnel before redeployment to the VJ could take effect. For example, on 18 April 1996, Mladić sent a letter “to the 30<sup>th</sup> PC”, approving the request to transfer Dragomir Milošević from his position as Commander of the SRK in the VRS to the VJ, stating that he should be “transferred and appointed according to the needs of the service to the [VJ]”.<sup>2307</sup>

<sup>2299</sup> Prosecution Closing Arguments, T. 14688.

<sup>2300</sup> Prosecution Final Brief, para. 192; Prosecution Closing Arguments, T. 14689.

<sup>2301</sup> Defence Final Brief, para. 309.

<sup>2302</sup> Defence Final Brief, paras 309-310, 322.

<sup>2303</sup> Defence Final Brief, para. 304.

<sup>2304</sup> Ex. P2825, Letter from Miroslav Dadić Requesting Transfer to VJ, 16 August 1994.

<sup>2305</sup> Ex. P1860, Letter by Drina Corps Command, 2 February 1995, p. 1.

<sup>2306</sup> *Ibid.*

<sup>2307</sup> Ex. D120 (under seal).

Similarly, on 25 December 1996, the VRS Main Staff sent a letter, signed by Škrbić, to Savo Jojić informing him that his “request for transfer to the VJ outside of the 30<sup>th</sup> [PC] was discussed at the Advisory Board” of the Commander of the VRS Main Staff. At the meeting, a decision was made to forward the request to the 30<sup>th</sup> PC “for deliberation with a proposal to the officer in charge to issue an order for transfer to the VJ outside the 30<sup>th</sup> [PC]”.<sup>2308</sup>

817. Regarding such requests by personnel for redeployment to the VJ, Škrbić testified that:

All the requests for transfer to the [VJ] were discussed at [...] the collegium meeting of the commander of the Main Staff. It was the commander who ultimately decided on such requests and for the most part they were denied. Only those requests involving individuals who were ill, seriously wounded, or had family difficulties were accepted.<sup>2309</sup>

Moreover, VRS involvement in the decisions to redeploy personnel to the VJ was referred to in a 4 November 1994 letter from Mladić regarding the status of VRS officers and soldiers.<sup>2310</sup> Due to dealing with other important combat issues at the time, Mladić stated that: “[p]recisely for this reason, we are not able to review and decide on requests for transfer to [the] VJ, except in emergency cases, *i.e.* personal sickness, or that of a family member”.<sup>2311</sup>

818. In other instances the VRS Main Staff denied requests from members of the 30<sup>th</sup> PC to be redeployed to the VJ, due to needs of the army or because adequate replacements were not available.<sup>2312</sup> A letter from the VRS Main Staff addressing one of these requests referred to the fact that “[t]he final decision to send back officers assigned under Article [58(3) of the Law on VJ] [...] shall be passed by the Commander of the [VRS Main Staff] [...] in agreement with the competent [VJ General Staff] officer [...]”.<sup>2313</sup>

819. The SVK also, at times, denied requests submitted by personnel in the SVK to be transferred back to the VJ. During a May 1994 coordination meeting of the VJ General Staff, Čeleketić reportedly stated that:

<sup>2308</sup> Ex. D335, VRS Main Staff Response to Request of Transfer to the VJ, 25 December 1996.

<sup>2309</sup> Petar Škrbić, T. 11696.

<sup>2310</sup> Ex. P2817, Letter from VRS Main Staff Sector for Organisation, Mobilization and Personnel, 4 November 1994.

<sup>2311</sup> Ex. P2817, Letter from VRS Main Staff Sector for Organisation, Mobilization and Personnel, 4 November 1994, p. 2.

<sup>2312</sup> Ex. D334, VRS Main Staff Reply to Requests for Reassignments of Rajko Knežević and Predrag Glišić, 23 May 1995; Ex. D336, VRS Main Staff Response to Request for Transfer to the VJ of Ljubislav Štrbac, 25 December 1996. *See* Ex. P2564, Response of the VRS Main Staff to the Request of Ostoja Popović Returning to his VJ Home Unit, 9 May 1996; Ex. P2568, Response of the VRS Main Staff to the Request of Ostoja Popović Concerning the Return to his VJ Home Unit, 22 June 1996.

<sup>2313</sup> Ex. P2564, Response of the VRS Main Staff to the Request of Ostoja Popović Returning to his VJ Home Unit, 9 May 1996.



[a]n increasing number of commanding officers, currently in [the] SVK, are demanding to return, that is, to be transferred to the VJ. Without adequate replacements, apart [from] exceptional cases (terminal illness), we won't be able to approve their return to the VJ.<sup>2314</sup>

Moreover, according to MP-80, Perišić supported Čeleketić's decision to only allow replacements or transfers from the SVK back to the VJ in exceptional cases.<sup>2315</sup>

(b) Perišić's Role in the Redeployment of Personnel

820. Witness MP-5 testified that transfers between the VRS and the VJ "worked in both directions".<sup>2316</sup> However, he admitted that "he never had a chance to find out" if any officer belonging to the 30<sup>th</sup> PC serving with the VRS was ever ordered by the VJ to go back to the VJ.<sup>2317</sup>

821. Defence witness Petar Škrbić testified that as VJ Chief of General Staff, Perišić could not order a VRS soldier to go back to the VJ and that redeployment orders were not issued without the consent of the VRS.<sup>2318</sup>

822. Škrbić also explained that, as in his own situation, members of the PCs could be placed "at the disposal of the VJ" if they had not accumulated sufficient years of service, and therefore, were not eligible for pension.<sup>2319</sup> As an example, Škrbić testified that he informed Plavšić that he no longer wished to remain in the VRS and requested to be put at the disposal of the VJ and that she approved his request.<sup>2320</sup>

823. As discussed above, the Trial Chamber was presented with several personnel files which included orders from the VJ General Staff redeploying personnel from service in the PCs to the VJ.<sup>2321</sup> In addition, the Trial Chamber received the following evidence regarding Perišić's personal involvement in redeploying personnel to the VJ.

<sup>2314</sup> Ex. P1798, Aide-Memoire for Coordination in the VJ General Staff, May 1994, p. 6. *See also* MP-80, T. 8326 (closed session).

<sup>2315</sup> MP-80, T. 8335-8337 (closed session).

<sup>2316</sup> MP-5, T. 2462.

<sup>2317</sup> *Ibid.*

<sup>2318</sup> Petar Škrbić, T. 11776.

<sup>2319</sup> Petar Škrbić, T. 11800-11802.

<sup>2320</sup> Petar Škrbić, T. 11800-11802. *See* Ex. D347, RS Presidential Decree Relieving Petar Škrbić of Duty in the VRS, 28 January 1997. *See also* Ex. D526, RS Presidential Decree Relieving Zdravko Tolimir of Duty, 28 January 1997; Ex. D527, RS Presidential Decree Relieving Radivoje Miletić of Duty, 28 January 1997; Ex. D528, RS Presidential Decree Relieving Grujo Borić of Duty, 9 January 1997; Ex. D529, RS Presidential Decree Relieving Milan Gvero of Duty, 9 January 1997. The Trial Chamber notes that in 1996, when Biljana Plavšić replaced Radovan Karadžić as the RS President, she issued a decree releasing Ratko Mladić and Manojlo Milovanović of their "up-to-date duty" as Commander of the VRS Main Staff and Deputy Commander of the VRS Main Staff, respectively, and placing them "at the disposal of the VRS General Staff", Ex. P2024, RS Presidential Decree, 8 November 1996. Škrbić testified that Mladić was never placed at the disposal of the VJ after being relieved of his duty as Commander of the VRS Main Staff; yet, he was never appointed to another position in the VRS either, Petar Škrbić, T. 11809.

<sup>2321</sup> *See supra* para. 812.

824. On 5 October 1994, Perišić issued an order redeploying Bogdan Sladojević from his position as Commander of the “11<sup>th</sup> Corps of the [VJ] General Staff 40<sup>th</sup> [PC]” to the Novi Sad Corps of the VJ.<sup>2322</sup> The 11<sup>th</sup> Corps was part of the SVK.<sup>2323</sup> Sladojević obeyed the order and took over the duty of Commander of the 12<sup>th</sup> Mechanized Brigade of the Novi Sad Corps of the VJ 1<sup>st</sup> Army on 1 November 1994.<sup>2324</sup> There is nothing in the order, nor in Sladojević’s personnel file, to suggest that there was any approval or other action taken by the SVK regarding Sladojević’s redeployment.<sup>2325</sup>

825. Additionally, the Office of the VJ Chief of General Staff ordered VJ Major General Branislav Petrović to return to duty in the VJ Air Force after serving with the Slavonia-Baranja Corps (“SBC”), the 11<sup>th</sup> Corps.<sup>2326</sup> On 24 October 1995, in a letter addressed to “Colonel General Perišić, personally”, the SBC Command requested that Branislav Petrović be allowed to remain in the SBC until the completion of operations.<sup>2327</sup> The following day, the Assistant Chief of the VJ Air Force responded to the Office of the Chief of General Staff that Petrović needed to return to duty in the VJ Air Force Administration because he had “completed preparations for [combat operations] of the 11<sup>th</sup> Corps, for which he was deployed”.<sup>2328</sup> On 26 October 1995, the Office of the VJ Chief of General Staff sent a telegram back to the SBC Command denying its request for Petrović to remain in the territory, requiring Petrović to return to duty in the VJ Air Force Administration.<sup>2329</sup> The Prosecution alleges that this example in particular shows that Perišić was the “ultimate arbiter” of whether an individual served in the PCs or returned to the FRY.<sup>2330</sup> The Trial Chamber notes that it does not have sufficient evidence to determine whether Branislav Petrović was a member of the 40<sup>th</sup> PC, or if he was, in fact, directly seconded to the SVK.

826. Two additional documents in evidence, related to VRS officer Tihomir Babić, demonstrate that the VJ General Staff issued orders on the redeployment of personnel and that those orders were

<sup>2322</sup> Ex. P1524, Order of the Chief of the VJ General Staff Redeploying Bogdan Sladojević, 5 October 1994, p. 1. *See also* Ex. P1522, Personnel File of Bogdan Sladojević, pp 6-7; Miodrag Starčević, T. 5484-5485.

<sup>2323</sup> Stamenko Nikolić, T. 10604-10606. *See supra* para. 301.

<sup>2324</sup> Ex. P1525, Report on Takeover of Duty by Bogdan Sladojević, 3 November 1994.

<sup>2325</sup> Ex. P1522, Personnel File of Bogdan Sladojević; Ex. P1524, Order of the Chief of the VJ General Staff Redeploying Bogdan Sladojević, 5 October 1994; Ex. P1525, Report on Takeover of Duty by Bogdan Sladojević, 3 November 1994.

<sup>2326</sup> Ex. P2754, Documents Regarding Request from SVK Slavonia-Baranja Corps to Perišić, 24-26 October 1995, Doc ID 0647-6990.

<sup>2327</sup> Ex. P2754, Documents Regarding Request from SVK Slavonia-Baranja Corps to Perišić, 24-26 October 1995, Doc ID 0647-6987.

<sup>2328</sup> Ex. P2754, Documents Regarding Request from SVK Slavonia-Baranja Corps to Perišić, 24-26 October 1995, Doc ID 0647-6989.

<sup>2329</sup> Ex. P2754, Documents Regarding Request from SVK Slavonia-Baranja Corps to Perišić, 24-26 October 1995, Doc ID 0647-6990.

<sup>2330</sup> Prosecution Final Brief, para. 192; Prosecution Closing Arguments, T. 14691-14692.

complied with by the VRS.<sup>2331</sup> The first document is an order issued by the VRS Main Staff on 14 August 1994 and sent to the Drina Corps Command. It ordered the transfer of Tihomir Babić from the 30<sup>th</sup> PC to the VJ, “pursuant to an order No. 5-193” of 17 June 1994,<sup>2332</sup> which was an order from the Chief of Personnel Administration of the VJ General Staff transferring Babić back to the VJ 1<sup>st</sup> Army.<sup>2333</sup> The reference to order “No. 5-193” shows that the VRS Main Staff executed an order by the VJ General Staff transferring Babić back to the VJ. The second document is the subsequent order from the Drina Corps Command dated 16 August 1994, transferring Babić from the VRS to the VJ 1<sup>st</sup> Army, in execution of order “No. 5-193” from the VJ General Staff.<sup>2334</sup>

827. Defence witness Petar Škrbić claimed that these orders failed to mention that VRS approval was required.<sup>2335</sup> He further testified that the Personnel Administration of the VJ General Staff would have issued the transfer order only after receiving approval from the Commander of the VRS Main Staff.<sup>2336</sup> Škrbić also insisted that the Drina Corps Command order was drafted incorrectly and that it should have been issued in execution of the order from the VRS Main Staff.<sup>2337</sup> He maintained that when he took up the position as Head of the Organisation, Mobilisation and Personnel section of the VRS Main Staff, “[they] executed things only on the approval of the Commander of the Main Staff of the VRS. Nobody else’s, you can be sure of that”.<sup>2338</sup> Defence witness Branko Gajić also testified that Babić could not have been redeployed to the VJ without previous authorisation from the VRS Main Staff.<sup>2339</sup>

828. The Prosecution submits that MP-80 confirmed that Perišić was the ultimate superior on issues of transfer for members of the 40<sup>th</sup> PC.<sup>2340</sup> However, the Trial Chamber notes that MP-80 stated that:

In issues of *transfer*, retirement, et cetera, the qualified person was General Perišić. Or, rather, let me correct that, the [FRY SDC] could send [a VJ general serving in the 40<sup>th</sup> PC] into retirement and that’s what they did.<sup>2341</sup>

829. The Trial Chamber finds that MP-80 is ambiguous on this point and that he generally referred to Perišić as the “qualified person” for transfer, although he then partially corrected himself by referring only to retirement and placing this authority higher on the ladder— on the SDC.<sup>2342</sup>

<sup>2331</sup> Ex. P2598, Order by VJ General Staff Personnel Administration, 17 June 1994, pp 9-10; Ex. P1856, Order of the VRS Main Staff to the Drina Corps, 14 August 1994.

<sup>2332</sup> Ex. P1856, Order of the VRS Main Staff to the Drina Corps, 14 August 1994; Petar Škrbić, T. 11953.

<sup>2333</sup> Ex. P2598, Order by VJ General Staff Personnel Administration, 17 June 1994, pp 9-10.

<sup>2334</sup> Ex. P1855, Letter by Drina Corps Command, 16 August 1994; Petar Škrbić, T. 11957-11958.

<sup>2335</sup> Petar Škrbić, T. 11950-11954.

<sup>2336</sup> Petar Škrbić, T. 11953.

<sup>2337</sup> Petar Škrbić, T. 11957-11958.

<sup>2338</sup> Petar Škrbić, T. 11958-11959.

<sup>2339</sup> Branko Gajić, T. 11008-11010.

(c) Final Findings

830. Based on the foregoing, the Trial Chamber finds that as a rule, personnel serving in the VRS and SVK through the 30<sup>th</sup> and 40<sup>th</sup> PCs could be redeployed to VJ units. The evidence clearly shows that when the request for redeployment came from the PC member himself, it was granted only if his superior in the VRS or SVK consented to such transfer; subsequently, the VJ would order the transfer. At the same time, the record contains some VJ orders of transfer initiated by the VJ, rather than by the PC member, transferring both 30<sup>th</sup> and 40<sup>th</sup> PC members back to the VJ, without evidence of prior approval from the VRS or the SVK. However, in light of the testimony of Škrbić and Gajić, the Trial Chamber cannot conclude beyond a reasonable doubt that these VJ orders for redeployment could be carried out without approval from the VRS and SVK.

831. The question of Perišić's ability to order the redeployment of members of the 30<sup>th</sup> and 40<sup>th</sup> PCs will be further discussed in the section devoted to his alleged effective control over the VRS and SVK under Article 7(3) of the Statute.<sup>2343</sup>

8. De Jure Status of Members of the Personnel Centres

832. Military personnel assigned to the PCs remained members of the VJ<sup>2344</sup> and exercised their rights in the FRY and the VJ through the 30<sup>th</sup> and 40<sup>th</sup> PCs.<sup>2345</sup>

833. As will be described in greater detail in the following paragraphs, members of the PCs received their salaries from the VJ and enjoyed benefits such as housing, health care (including for family members) and education benefits, like any other member of the VJ.<sup>2346</sup>

834. Perišić himself recognised that the soldiers assigned to the PCs possessed the status of VJ members. At the SDC session of 11 October 1993, Perišić explained that the purpose of the verification of promotions obtained in the VRS and SVK was necessary so that officers transferred there would continue to enjoy all the rights in the VJ with respect to "the ranks they acquire

<sup>2340</sup> Prosecution Final Brief, para. 194.

<sup>2341</sup> MP-80, T. 8853, 8855 (closed session) (emphasis added).

<sup>2342</sup> See also *supra* para. 819.

<sup>2343</sup> See *infra* section VIII.A.2.

<sup>2344</sup> Miodrag Starčević, T. 5454, 5489 (stating that members of the VJ assigned/appointed/transferred to the 30<sup>th</sup> and 40<sup>th</sup> PCs were members of the VJ according to the law), 5496-5500 (partly private session); Ex. P1870, Order by the VJ Chief of General Staff, 22 June 1993; Stamenko Nikolić, T. 10556; Ex. P1872, Set of VJ General Staff and FRY MOD Documents (*see* particularly Doc ID 0630-6548, p. 2, stating that all professional members of the VJ who are made available and reassigned to the Main Staffs of the VRS or the SVK will have and fully retain their personal legal status of VJ members); Ex P731, Presidential Order on the Formation of Special PCs, 10 November 1993, para. 3.

<sup>2345</sup> Stamenko Nikolić, T. 10543-10545; Rade Rašeta, T. 5883-5884; Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 4; Dušan Kovačević, T. 12591-12593.

<sup>2346</sup> See *infra* section VI.A.8.(b)-(f). See also MP-5, T. 2378; MP-14, T. 3507 (closed session).

there”.<sup>2347</sup> At the SDC session of 25 December 1993, Perišić summarised the number of VJ commissioned and non-commissioned officers and stated “[t]here are 7,233 of them in two personnel centres in [RS] and [RSK]. When planning any kind of welfare assistance these people should be included”.<sup>2348</sup> Similarly, when counting the total number of VJ officers during the subsequent SDC session, Perišić included those serving in the RS and RSK.<sup>2349</sup>

835. Several judgements issued by the Military Supreme Court in Belgrade in relation to claims filed by members of the 30<sup>th</sup> and 40<sup>th</sup> PCs for compensation of unused annual leave during the war confirmed that those members retained their status as VJ members while serving in the VRS and SVK.<sup>2350</sup> In all of these cases, the parties did not dispute that during the period for which compensation was sought, the officers, as VJ members, were serving outside the VJ on orders of a superior officer and that they did not use their annual leave. The Military Supreme Court reversed the decision of the PCs denying those claims and affirmed that because the claimants were professional soldiers of the VJ during the period in question, the provisions of the Law on the VJ applied to them.<sup>2351</sup> The Court went further to state that:

It is the legal understanding of the Court that the legal position of a serviceman whom the competent officer sent outside the [VJ] and who did not take his annual leave due to a raised level of combat readiness and engagement in combat operations, is to be brought in line with the position of a serviceman whose annual leave was suspended or cut short by the [Chief of the VJ General Staff] due to extraordinary needs of service.<sup>2352</sup>

836. The Military Supreme Court adopted the same reasoning in relation to a claim of a VJ professional soldier who had been deployed through the 40<sup>th</sup> PC to the RSK.<sup>2353</sup> The Federal Court,

<sup>2347</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, pp 37-38.

<sup>2348</sup> Ex. P781, Stenographic Transcript of the 16<sup>th</sup> Session of the SDC, 25 December 1993, p. 19.

<sup>2349</sup> Ex. P791, Stenographic Transcript of the 17<sup>th</sup> Session of the SDC, 10 January 1994, p. 52. *See also* Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 46; Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, pp 7-8; Ex. P785, Stenographic Transcript of the 23<sup>rd</sup> Session of the SDC, 21 July 1994, p. 19; Ex. P792, Stenographic Transcript of the 27<sup>th</sup> Session of the SDC, 27 September 1994, p. 88; Ex P794, Stenographic Transcript of the 31<sup>st</sup> Session of the SDC, 18 January 1995, p. 47.

<sup>2350</sup> Ex. P846, Supreme Military Court Judgement Reversing the Decision of the Military Post 3001 Belgrade, 22 February 2001, p. 2; Ex. P847, Supreme Military Court Judgement Reversing the Decision of the Military Post 3001 Belgrade, 29 January 2001, p. 2; Ex. P1072, Supreme Military Court Judgement Annuling the Decision of the Military Post 3001 Belgrade, 28 June 2001, p. 2; Ex. P1073, Supreme Military Court Judgement Annuling the Decision of the Military Post 3001 Belgrade, 29 May 2001, p. 2; Ex. P1074, Supreme Military Court Judgement Annuling the Decision of the Military Post 1790 Belgrade, 29 January 2001, p. 2; Ex. P1075, Supreme Military Court Judgement Annuling the Decision of the Military Post 3001 Belgrade, 27 September 2001, p. 2; Ex. P1076, Supreme Military Court Judgement Annuling the Decision of the Military Post 1122-1 Belgrade, 28 November 2002, p. 8; Ex. P1680, Supreme Military Court Judgement Annuling the Decision of the Military Post 3001 Belgrade, 28 June 2001, p. 2.

<sup>2351</sup> *Ibid.*

<sup>2352</sup> Ex. P1680, Supreme Military Court Judgement Annuling the Decision of the Military Post 3001 Belgrade, 28 June 2001, p. 2.

<sup>2353</sup> Ex. P1077 Supreme Military Court Judgement Annuling the Decision of the Military Post 4578 Belgrade, 22 April 1998, p. 2. That the plaintiff was serving in the RSK is clear from Ex. P1117, Dokmanović Reply to Motion for Extraordinary Review of the Judgement by the Supreme Military Court, 20 July 1998, p. 1.

seised of a request for extraordinary review, rejected the request and upheld the judgement of the Military Supreme Court.<sup>2354</sup>

837. In addition, the Trial Chamber particularly notes that the Second Municipal Court in Belgrade concluded that Dragomir Milošević retained the status as a VJ member throughout the period he served in the VRS. The case concerned a lawsuit filed by Dragomir Milošević against the FRY for compensation of non-material damages suffered following his wounding on the battlefield near Sarajevo on 17 May 1995.<sup>2355</sup> The FRY, represented by the Military Legal Office of the VJ, argued that Milošević did not have the passive legitimacy to make such a claim, because at the time of the wounding he was a member of the VRS and not of the VJ.<sup>2356</sup>

838. In addressing this objection the Court stated:

[The court is] of the opinion that this objection was not valid since, based on the evidence presented during the proceedings, it was established beyond reasonable doubt that the plaintiff was a professional officer of the [VJ] at the time of wounding and was on its payroll throughout that time and that his participation on the front in the general sector of Zlatište near Sarajevo was certainly in agreement with or with the knowledge of the General Staff of the [VJ]. Had that not been the case, an unauthorized arrival of the plaintiff as a professional officer of the [VJ] at the front in another, internationally recognized state would have resulted in the termination of his employment, and neither did his superior ever initiate such a measure against the plaintiff, nor was evidence to that effect presented before this court by the end of the proceedings.<sup>2357</sup>

839. The Municipal Court also established that even though Dragomir Milošević belonged to the 30<sup>th</sup> PC at the time of his wounding, he was a member of the JNA and VJ “without any interruptions” from 27 July 1960 until his retirement on 31 December 1996.<sup>2358</sup>

<sup>2354</sup> Ex. P1118, Military Post 4578 Motion for Extraordinary Review of the Judgement by the Supreme Military Court, 23 April 1998; Ex. P848, Federal Court Decision Denying Motion of Military Post 4578, 8 September 1998.

<sup>2355</sup> Ex. P821, Complaint of D. Milošević Against the FRY MOD for Compensation, 8 September 1995; Ex. P825, D. Milošević’s Submission for Compensation, 5 November 1996; Ex. P822, Judgement of the 2<sup>nd</sup> Municipal Court, Belgrade, 9 July 2001.

<sup>2356</sup> Ex. P822, Judgement of the 2<sup>nd</sup> Municipal Court, Belgrade, 9 July 2001, pp 1-2.

<sup>2357</sup> Ex. P822, Judgement of the 2<sup>nd</sup> Municipal Court, Belgrade, 9 July 2001, p. 8.

<sup>2358</sup> Ex. P822, Judgement of the 2<sup>nd</sup> Municipal Court, Belgrade, 9 July 2001, p. 2. *See also* Ex. P823, Submission of Information to the 2<sup>nd</sup> Municipal Court, 1997; Ex. P824, FRY Statement of Defence before the 2<sup>nd</sup> Municipal Court, 21 January 1997; Ex. P825, D. Milošević’s Submissions before the 2<sup>nd</sup> Municipal Court, 5 November 1996; Ex. P827, Record of Hearing in D. Milošević Case Held before the 2<sup>nd</sup> Municipal Court in Belgrade, 11 September 1997; Ex. P828, Request for Information from 2<sup>nd</sup> Municipal Court in Belgrade, 12 September 1997; Ex. P829, Brief of Arguments by the Accused, 29 September 1997; Ex. P830, Response to Request for Information from 2<sup>nd</sup> Municipal Court in Belgrade, 31 October 1997, 31 October 1997; Ex. P831, Request for Information from 2<sup>nd</sup> Municipal Court in Belgrade, 15 January 1998; Ex. P832, Certificate Issued by Military Post 7572-6, 8 August 1996; Ex. P833, Record of Hearing in D. Milošević Case Held before the 2<sup>nd</sup> Municipal Court in Belgrade, 19 March 1998; Ex. P834, Request for Information from 2<sup>nd</sup> Municipal Court in Belgrade, 30 March 1998; Ex. P835, Record of Hearing in D. Milošević Case Held before the 2<sup>nd</sup> Municipal Court in Belgrade, 17 April 1998; Ex. P836, Presidential Decree of FRY Placing D. Milošević at the Discretion of VJ General Staff 30<sup>th</sup> PC, undated; Ex. P837, Request for Information from 2<sup>nd</sup> Municipal Court in Belgrade, 23 April 1998; Ex. P838, Record of Hearing in D. Milošević Case Held before the 2<sup>nd</sup> Municipal Court in Belgrade, 21 September 1998; Ex. P839, Record of Hearing in D. Milošević Case Held Before the 2<sup>nd</sup> Municipal Court in Belgrade, 9 July 2001; Ex. P840, Request for Information from 2<sup>nd</sup> Municipal Court in Belgrade, 15 October

840. Based on the above, as well as on the evidence discussed in relation to the creation of the PCs, the Trial Chamber finds that the members of the 30<sup>th</sup> and 40<sup>th</sup> PCs remained *de jure* members of the VJ while serving in the VRS and SVK.

(a) Promotions

(i) Law on Promotions

841. According to the Law of the VRS, the President of the RS had the power to decide on the promotion of officers to the rank of major-general and higher<sup>2359</sup> and the Minister of Defence on the promotion of active and reserve commissioned and non-commissioned officers up to and including the rank of lieutenant-colonel.<sup>2360</sup> According to Article 370 of the Law on the VRS, the Minister of Defence could delegate such power (and others) to other officers,<sup>2361</sup> normally the VRS Commander and/or the Corps Commanders.<sup>2362</sup> The evidence shows, that in June 1992, the then Minister of Defence Bogdan Subotić, issued such delegation to the Commander of the VRS.<sup>2363</sup> Stojan Malčić testified that promotion orders in the VRS were final and took effect immediately.<sup>2364</sup> Petar Škrbić – Assistant Commander of Sector for Recruitment, Mobilisation and System Affairs in the VRS Main Staff from 1994 – stated that VRS promotions were made public and that promotion orders were transmitted to the individuals in question as soon as was practicable.<sup>2365</sup> The promotion procedure in the SVK was similar. The President of the RSK had the authority to decide on the promotion of officers to the rank of Major General and higher, upon the recommendation of the SDC.<sup>2366</sup> The Commander of the SVK had the authority to promote officers up to and including the rank of Colonel.<sup>2367</sup>

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1997; Ex. P841, Request of Military Post 1790 to D. Milošević Asking for Evidence, 3 November 1997; Ex. P842, Request from the Command of the 30<sup>th</sup> PC Regarding Evidence of D. Milošević's Wounds, 4 November 1997; Ex. P843, Request of Military Post 3001 to D. Milošević Asking for Evidence of his Wounds, 14 November 1997.

<sup>2359</sup> Ex. P191, Law on the VRS, 1 June 1992, Article 369.

<sup>2360</sup> Ex. P191, Law on the VRS, 1 June 1992, Article 370; Stamenko Nikolić, T. 10548; Petar Škrbić, T. 11682-11683.

<sup>2361</sup> *Ibid.*

<sup>2362</sup> Stamenko Nikolić, T. 10548.

<sup>2363</sup> Ex. D332, Minister of Defence Order on Determination of Competence and Authority of Commanding Officers, 16 June 1992, p. 3; Petar Škrbić, T. 11682-11683; Stamenko Nikolić, T. 10548. *See also* Ex. P191, Law on the VRS, 1 June 1992, Articles 31-40. According to the same order, the Corps commanders were authorised to promote non-commissioned officers in peace and wartime, Ex. D332, Minister of Defence Order on Determination of Competence and Authority of Commanding Officers, 16 June 1992, p. 2.

<sup>2364</sup> Stojan Malčić, T. 11291, 11294-11295. *See also* MP-5, T. 2472-2473 (private session).

<sup>2365</sup> Petar Škrbić, T. 11716-11717.

<sup>2366</sup> Ex. D170, Law on the SVK, 22 April 1993, Doc ID 1D21-0183, Article 153.

<sup>2367</sup> Ex. D170, Law on the SVK, 22 April 1993, Doc ID 1D21-0183, Articles 43, 46, 153, 154.

842. According to the Law on the VJ, officers were promoted to the rank of General and higher by the President of the FRY.<sup>2368</sup> Article 46 of the Law on the VJ empowers the President to exceptionally promote officers to the rank of General at the proposal of the Chief of the VJ General Staff.<sup>2369</sup> The Chief of the VJ General Staff could promote officers up to and including the rank of Colonel.<sup>2370</sup> He also had the authority to exceptionally promote to the rank immediately above the rank of Colonel.<sup>2371</sup>

(ii) The Procedure of Verification

843. The evidence shows that the promotions process for members of the 30<sup>th</sup> and 40<sup>th</sup> PCs entailed a dual procedure: PC members promoted in the VRS and SVK were later also promoted in the VJ after a “verification” process.<sup>2372</sup>

844. The statement of reasons attached to the proposed order on the creation of the PCs of 8 October 1993 already contained an indication of the dual promotion procedure. The relevant part reads that “[p]romotions to a higher rank [...] at the proposal or by decision of the President of the [RS] and [RSK][...] or military organ, would also be conducted in the [VJ] pursuant to the Law on the [VJ]”.<sup>2373</sup> During the SDC session of 11 October 1993, Perišić explained to the SDC members that the promotions granted by the VRS and SVK were valid in those armies, but not in the VJ. The verification process would be the means to enable these officers to enjoy in the FRY all the rights attached to the ranks they acquired in the SVK and VRS. He further emphasised that he was insisting that these officers should have the “same status as officers” in the VJ, so that they and their families could enjoy certain benefits.<sup>2374</sup>

845. Škrbić explained that once the promotions were granted in the VRS, the VRS Main Staff sent the list of the promoted persons to the 30<sup>th</sup> PC with a proposal that their new VRS rank be verified by the VJ.<sup>2375</sup> After the verification, the VJ issued its promotion order which was then published in the VJ’s Official Gazette.<sup>2376</sup> The officers concerned would receive an excerpt of the

<sup>2368</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 151; Ex. P1900, Decree of the FRY President, 14 June 1995.

<sup>2369</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 46.

<sup>2370</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 152.

<sup>2371</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 46. *See also* Petar Škrbić, T. 11704-11705; Miodrag Starčević, T. 5498; Ex. P1898, Order issued by Perišić exceptionally promoting Pejic, Obrenović and Gaborović, 7 January 1994.

<sup>2372</sup> MP-5, T. 2476-2477, 2507 (partly private session); Dušan Kovačević, T. 12732; Rade Rašeta, T. 6039-6040.

<sup>2373</sup> Ex. P1872, Set of VJ General Staff and FRY MOD Documents, Doc ID 0630-6544, p. 2.

<sup>2374</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, pp 38-39.

<sup>2375</sup> Petar Škrbić, T. 11720, 11855.

<sup>2376</sup> Ex. P2815, Excerpt of the Official Gazette of the FRY, 29 March 1994; Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, p. 22; MP-5, T. 2476, 2490.



Gazette bearing the date of the promotion.<sup>2377</sup> The Trial Chamber received evidence that a similar dual procedure of promotions applied to the SVK.<sup>2378</sup>

846. As an illustration of the procedure in the VRS, the Trial Chamber notes that on 23 June 1994, Vinko Pandurević and Dragan Obrenović, members of the 30<sup>th</sup> PC, were extraordinarily promoted to the ranks of Infantry Lieutenant Colonel and Major, respectively, by order of the VRS Main Staff Commander Ratko Mladić.<sup>2379</sup> They were then extraordinarily promoted to the same ranks in the VJ by order of the Chief of VJ General Staff of 16 June 1995.<sup>2380</sup> The VJ Personnel file of Pandurević further indicates that he was also extraordinarily promoted to the rank of Infantry Colonel on 31 December 1995 by order of Perišić.<sup>2381</sup>

847. As for promotions within the SVK, Rade Rašeta testified that while he was serving in the SVK he was promoted to a higher rank in the SVK, which was then reflected in his personnel file in the 40<sup>th</sup> PC.<sup>2382</sup> When Novaković was promoted to the rank of a Colonel-General in the SVK, this was then verified by a decree of the President of the FRY.<sup>2383</sup> Evidence also shows that Perišić exercised his authority to exceptionally promote members of the 40<sup>th</sup> PC serving in the SVK. For instance, Perišić exceptionally promoted both Bosanac and Krajnović on 3 February 1994 to the ranks of Lieutenant Colonels.<sup>2384</sup>

848. There is evidence, however, that not all promotions in the VRS were “verified” by the VJ. Malčić testified that for the promotions to the rank of General, it was a prerequisite in the VJ regulations that the officer had graduated from the School of the National Defence, whereas the

<sup>2377</sup> MP-5, T. 2490-2492.

<sup>2378</sup> Dušan Kovačević, T. 12732; Rade Rašeta, T. 6039-6040.

<sup>2379</sup> Ex. D122, Order of Mladić to Extraordinary Promotions within the VRS, 23 June 1994.

<sup>2380</sup> According to which they were serving in the VJ General Staff 30<sup>th</sup> PC, the document however shows a handwritten note besides their names, reading 1<sup>st</sup> Zvornik Infantry Brigade, Ex. P2137, Order on Promotion, 16 June 1995, pp 1, 3; Ex. P1731, VJ Personnel File of Vinko Pandurević, Doc ID 0422-8476, p. 1; Ex. P1897, VJ Personnel File of Dragan Obrenović, Doc ID 0611-8717, p. 1. *See* Ex. P2132, Order on Promotion of Dragan Obrenović, 31 December 1995; Ex. P2133, Order on Promotion of Milenko Kajtaž, 1 November 1995; Ex. P2134, Order on Promotion, 11 September 1995; Ex. P2135, Order on Promotion, 16 June 1995; Ex. P2136, Order on Promotion, 16 June 1995; Ex. P2137, Order on Promotion, 16 June 1995; Ex. P2138, Order on Promotion, 16 June 1995; Ex. P2139, Order on Promotion, 16 June 1995; Ex. P2140, Order on Promotion, 8 June 1995; Ex. P2141, Order on Promotion, 9 May 1995; Ex. P2142, Order on Promotion, 24 April 1995; Ex. P2143, Order on Promotion, 19 April 1995; Ex. P2144, Order on Promotion, 28 February 1995; Ex. P2145, Order on Promotion, 14 January 1994.

<sup>2381</sup> Ex. P1731, Personnel File of Vinko Pandurević, Doc ID 0422-8476.

<sup>2382</sup> Rade Rašeta, T. 6039.

<sup>2383</sup> Mile Novaković, T. 13271; Ex. P1777, VJ Personnel File of Mile Novaković, Doc ID 0611-7595, p. 1.

<sup>2384</sup> Ex. P2866, Excerpt from Promotion Order 3-43, 3 February 1994.

same prerequisite did not apply in the VRS.<sup>2385</sup> Consequently, not all of the promotions to the rank of General granted by the VRS were verified and granted by the VJ.<sup>2386</sup>

849. The Trial Chamber also notes that, for example, Živanović was promoted from the rank of Major General to that of Lieutenant General by RS Presidential decree of 12 July 1995.<sup>2387</sup> However, a 2001 decision from the 30<sup>th</sup> PC regarding his compensation for unused annual leave refers to him as “retired Major General”, suggesting that his promotion was not verified by the VJ.<sup>2388</sup> Similarly, the evidence shows that Galić’s VRS promotion of August 1994 to the rank of Lieutenant General by RS Presidential decree was not verified by the VJ.<sup>2389</sup> Rajko Petrović also testified that the 30<sup>th</sup> PC did not verify his promotion by the VRS Main Staff to the rank of Captain 1<sup>st</sup> Class.<sup>2390</sup>

850. The Trial Chamber notes that there were also instances in which the promotion in the VJ *preceded* the promotion in the VRS. For example, Ratko Mladić was exceptionally promoted to the rank of Colonel General by a FRY Presidential decree of 16 June 1995, in which he is identified as Commander of the Main Staff of the 30<sup>th</sup> PC. Then, on 28 June 1995, he was exceptionally promoted to the same rank in the VRS by RS Presidential decree. The decree refers to him as the Commander of the VRS Main Staff.<sup>2391</sup> Škrbić testified that he was aware of only one other occasion in which a VRS officer was promoted first in the FRY and only a couple of days later in the RS, the case of Radivoje Miletić.<sup>2392</sup>

(iii) The Effect of the “Verification”

851. Both Defence and Prosecution witnesses articulated the significance and effect of VJ verifications. Malčić testified that verification was a formal recognition of a VRS rank by the VJ, which was necessary for the calculation of the new salary:

[T]he basic idea was that officers should be appointed and promoted in accordance with the regulations of the Army of Republika Srpska. However, in order for them to receive salaries, this

<sup>2385</sup> Stojan Malčić, T. 11333-11339; Ex. P2135, Order on Promotion, 16 June 1995; Ex. P2140, Order on Promotion, 8 June 1995; Ex. P2141, Order on Promotion, 9 May 1995; Ex. P2142, Order on Promotion, 24 April 1995; Ex. P2143, Order on Promotion, 19 April 1995; Ex. P2144, Order on Promotion, 28 February 1995.

<sup>2386</sup> Stojan Malčić, T. 11337-11339.

<sup>2387</sup> Ex. D683, RS Presidential Decree on Extraordinary Promotion of Milenko Živanović, 12 July 1995.

<sup>2388</sup> Ex. P1892, Decision by Military Post 3001, 25 September 2001.

<sup>2389</sup> Ex. D705, RS Presidential Decree Extraordinarily Promoting Stanislav Galić to Lieutenant General, 7 August 1994; P1766, Excerpt from Stanislav Galić Personnel File; Ex. P1760, Record Regarding Retirement of Stanislav Galić, 12 August 1994; Ex. P1759, Letter by VRS Main Staff, 31 December 1996; Ex. P1765, Excerpt from Stanislav Galić Personnel File; Ex. P1879, Decision by Military Post 3001, 9 July 2001; Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, pp 45-47.

<sup>2390</sup> Rajko Petrović, T. 13732; Ex. D463, Order of VRS Commander on promotion of Petrovic Rajko, 7 January 1993.

<sup>2391</sup> Ex. P1902, Decree of the FRY President, 16 June 1994; Ex. P1903, Decree of the RS President, 28 June 1994.

<sup>2392</sup> Petar Škrbić, T. 11720; Ex. P1721, Excerpt from Radivoje Miletić’s VJ Personnel File.

had to be accorded with regulations in the Army of Yugoslavia. That is to say that we had two systems of laws, if I can put it that way, according to which we worked, the laws of Republika Srpska; and in order to have that verified, it had to be adjusted to the regulations in the Army of Yugoslavia so that it could be sent to the accounting centre so their salaries could be calculated.<sup>2393</sup>

852. Škrbić confirmed that a higher rank carried a higher salary and thus the new VRS rank needed to be verified by the VJ.<sup>2394</sup> Non-verification of a VRS rank by the VJ resulted in the newly promoted officer not receiving a salary in accordance with his new rank.<sup>2395</sup> However he was still allowed to display his new rank and command the VRS forces.<sup>2396</sup>

853. Milenko Jevđević stated that while he was serving in the VRS he was promoted twice, in 1993 and again in 1994, and each time the promotion required verification by the VJ under the auspices of the 30<sup>th</sup> PC, before the salary commensurate with the higher rank would be paid.<sup>2397</sup> Similarly, Milenko Živanović's promotion to Major General is reflected – after the VJ verification – in his FRY MOD payment slips for 1994 and 1995.<sup>2398</sup> Since Jevđević's promotion of 1994 to the rank of Major was not verified by the VJ until June of 1995, he did not receive the commensurate salary until that time.<sup>2399</sup>

854. The Trial Chamber also received evidence that Galić's exceptional promotion to the rank of Lieutenant General in the VRS was not verified in the VJ.<sup>2400</sup> A written request to verify Galić's rank was made by the VRS to the VJ on 31 December 1996, noting that the failure to confirm his new rank constituted "a great disservice to him".<sup>2401</sup>

855. In relation to the personal significance of the promotion verification, Novaković testified that the verification by the VJ "meant a lot to [him]".<sup>2402</sup>

<sup>2393</sup> Stojan Malčić, T. 11337-11338. *See also* Petar Škrbić, T. 11719.

<sup>2394</sup> Petar Škrbić, T. 11719. *See also* Milenko Jevđević, T. 11080.

<sup>2395</sup> Stojan Malčić, T. 11337; MP-5, T. 2475-2476; MP-5, T. 2491.

<sup>2396</sup> Stojan Malčić, T. 11337-11339; MP-14, T. 3507-3508 (closed session); MP-5, T. 2475-2476, 2491, 2507-2508 (partly private session). *See also* MP-14, T. 3682-3683.

<sup>2397</sup> Milenko Jevđević, T. 11080-11082.

<sup>2398</sup> Ex. P1594, MOD Payslip of Milenko Živanović for 1995, 16 January 1996; Ex. P1595, MOD Payslip of Milenko Živanović for 1994, 25 January 1995; Ex. P1596, MOD Payslip of Milenko Živanović for 1995, 6 July 1995; Ex. D682, RS Presidential Decree on Extraordinary Promotion of Milenko Živanović, 26 July 1993.

<sup>2399</sup> Milenko Jevđević, T. 11081-11082; Ex. P2135, Order on Promotion, 16 June 1995, p. 1; Ex. P2136, Order on Promotion, 16 June 1995.

<sup>2400</sup> Ex. D705, RS Presidential Decree Extraordinarily Promoting Stanislav Galić to Lieutenant General, 7 August 1994; Ex. P1766, Excerpt from Stanislav Galić Personnel File; Ex. P1760, Record of Retirement Procedure for General Galić, 12 August 1994.

<sup>2401</sup> Ex. P1759, Letter by VRS Main Staff, 31 December 1996.

<sup>2402</sup> Mile Novaković, T. 13271.

(iv) Role of Perišić in the “Verification” Process

856. The Prosecution submits that Perišić played an integral role in the promotion of officers serving in the VRS and SVK to equivalent ranks in the VJ; the purpose of which was to provide practical benefits, moral support and motivation to those officers.<sup>2403</sup>

857. The Defence instead maintains that the final determination as to whether to promote a particular officer fell within the purview of the VRS and SVK and was carried out and finalised within those armies.<sup>2404</sup> Perišić played neither a role in assessing the suitability of such promotions nor in the decisions taken by the VRS and SVK, but rather brought forward the proposals to the SDC.<sup>2405</sup> In particular, the Defence argues that Perišić was not privy to any assessments of the persons promoted by the VRS and SVK.<sup>2406</sup>

858. As stated above, the promotion and verification of personnel serving in the VRS and SVK was on the agenda for the SDC session of 11 October 1993. Perišić enumerated the names of officers proposed for promotion by the VRS and SVK, explaining that they requested these promotions to be verified in the VJ. These included the promotion within the VRS of Dušan Kovačević and Bodgan Subotić to the rank of Major General, and within the SVK of Mile Novaković and Borislav Đukić to the rank of Major General.<sup>2407</sup>

859. On this occasion, Perišić accepted Milošević’s suggestion to seek further information about these officers from Mladić before verifying the promotions. He stated that while he knew some of them, he had no basis for an opinion about “a large number of these people” and did not want to put the SDC in a position to “promot[e] certain people I don’t know”.<sup>2408</sup> At the following SDC session of 10 November 1993, Perišić confirmed that Mladić had “reported” back to him on the proposed

<sup>2403</sup> Prosecution Final Brief, paras 224, 227, 238.

<sup>2404</sup> Defence Final Brief, paras 380, 387-391.

<sup>2405</sup> Defence Final Brief, paras 384-385, 393, 421, 431-438.

<sup>2406</sup> Defence Final Brief, para. 437.

<sup>2407</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, pp 37-38; Ex. D558, RSK Presidential Decree Regarding Early Promotion of Brislav Đukić, 16 July 1992; Mile Novaković, T. 13010-13011; Ex. D702, RSK Presidential Decree Regarding Extraordinary Promotion of Mile Novaković to Major General of the SVK, 25 October 1992.

<sup>2408</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, pp 39-40.

officers and the verification of the promotions was accepted by the SDC.<sup>2409</sup> There is evidence that Mladić subsequently informed Kovačević that his promotion had been verified by the SDC.<sup>2410</sup>

860. In its Final Brief, the Defence argues that “a prior opinion or report from Mladić was neither a practice nor a systematic part of the verification process”<sup>2411</sup> and that Milošević’s request to Perišić at the SDC session of 11 October 1993 “to obtain the opinion of Mladić was formulated prior the formation of PCs where there was no mechanism in place to recognize the newly afforded rights that were attached to the new ranks”.<sup>2412</sup> The Trial Chamber notes that, indeed, the procedure used during the 11 October 1993 SDC meeting preceded the creation of the PCs and could very well be exceptional. At the same time, however, contrary to the Defence position that Perišić had no role in assessing the suitability of promotions, the Trial Chamber received extensive evidence of Perišić’s direct involvement in the verification process also after the creation of the PCs.

861. Illustratively, Milan Čeleketić was promoted by the SVK from the rank of a Colonel to the rank of Major-General in February 1994 and the “verification” of his promotion was discussed during the SDC session of 16 March 1994.<sup>2413</sup> On this occasion, Perišić suggested to wait until they could see how he would do in the new position, as he had just taken up duty. Čeleketić’s promotion therefore was not verified until June 1994.<sup>2414</sup> The further promotion of Milan Čeleketić to the rank of Lieutenant General and of Dušan Lončar to Major General was discussed at the SDC session on 13 June 1995.<sup>2415</sup> On this occasion, Perišić told the SDC that their promotions should not be recognised, as they were “guilty” for the situation in the RSK.<sup>2416</sup> The evidence shows that there are no promotions after the date of 16 June 1994, as noted in Čeleketić’s VJ personnel file.<sup>2417</sup>

862. Similarly, during the SDC session of 11 July 1994, the verification of promotions of VRS officers – including Manojlo Milovanović to the rank of Lieutenant General, and Milan Gvero and Dragomir Milošević to the rank of Major General – and the pensioning off of others were

<sup>2409</sup> Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, pp 21-23; Ex. P1777, Documents relating to Mile Novaković, Doc ID 0611-7595, p. 5 (VJ File of Novaković, document contains reference to the FRY Presidential Decree on his promotion); Mile Novaković, T. 13010-13011. *See also* Ex. P744, Conclusions from the 15<sup>th</sup> Session of the SDC, 1 December 1993, p. 2.

<sup>2410</sup> Dušan Kovačević, T. 12732; Ex. P1906, VJ Personnel File of Dušan Kovačević, Doc ID 0611-5691; Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, pp 39-40; Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, pp 21-23.

<sup>2411</sup> Defence Final Brief, paras 431-432.

<sup>2412</sup> Defence Final Brief, para. 434.

<sup>2413</sup> Ex. P1911, VJ Personnel File of Milan Čeleketić, Doc ID 0611-7831, p. 5; Ex. P783, Stenographic Transcript of the 19<sup>th</sup> Session of the SDC, 16 March 1994, p. 27.

<sup>2414</sup> MP-080, T. 8563-8564 (closed session); Ex. P783, Stenographic Transcript of the 19<sup>th</sup> Session of the SDC, 16 March 1994, p. 27; Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, pp 9, 13, 23; Ex. P753, Minutes from the 21<sup>st</sup> Session of the SDC held on 7 June 1994, p. 2; Ex. P1911, VJ Personnel File of Milan Čeleketić, Doc ID 0611-7831, p. 5.

<sup>2415</sup> Ex. P786, Minutes from the 37<sup>th</sup> Session of the SDC held on 13 June 1995, pp 31-32.

<sup>2416</sup> Ex. P786, Minutes from the 37<sup>th</sup> Session of the SDC held on 13 June 1995, p. 32.

<sup>2417</sup> Ex. P1911, VJ Personnel File of Milan Čeleketić, Doc ID 0611-7831, p. 5.

discussed.<sup>2418</sup> Perišić stated that he could give his opinion on each of the officers put forward for promotion and/or retirement.<sup>2419</sup> During this session, however, no promotions were verified.<sup>2420</sup> The SDC members questioned the verification process and Lilić insisted that the VRS should make promotions only if previously agreed on with Perišić.<sup>2421</sup> The Trial Chamber notes that the promotions of Milovanović to the rank of Lieutenant General and of Dragomir Milošević to Major General were verified by the SDC on 27 December 1995, almost one year and half later.<sup>2422</sup>

863. During the SDC session held on 13 June 1995, the promotion of 12 generals put forward by the 30<sup>th</sup> PC was up for discussion.<sup>2423</sup> Of the 12 generals put forward for promotion, Perišić proposed to verify the promotion of only six: Đukić, Gvero, Miletić, Tolimir, Marić and Novak.<sup>2424</sup> Perišić supported the promotion of Gvero, as he was “an extremely positive person who is a cohesive force between the Republika Srpska Army and us” and of Tolimir, as he had been “much criticized, primarily by President Karadžić, because he stands in their way of exercising their in-depth influence”.<sup>2425</sup> The promotions of Stevan Tomić, Dragomir Milošević and Budimir Gavrić were rejected by Perišić on the basis of their membership of the Serbian Democratic Party. Perišić did not give reasons for rejecting the promotions of Mićo Grubor, Mićo Vlajsavljević and Milutin Skočajić.<sup>2426</sup> The SDC accepted all of his proposals.<sup>2427</sup> The next day, the FRY President issued the decree whereby Milan Gvero was promoted to the rank of Lieutenant General, and Zdravko Tolimir and Radivoje Miletić to the rank of Major General. According to the decree, all three men were serving in the VJ General Staff 30<sup>th</sup> PC and their promotion was effective starting on 16 June 1995.<sup>2428</sup>

864. The Defence also argues that while VRS and SVK decisions to promote a particular individual were forwarded to Perišić with a request for verification, neither reason nor criteria for said promotions were provided by the VRS and the SVK.<sup>2429</sup> The Trial Chamber recalls Škrbić’s testimony that indeed the VRS Main Staff drew up statements of reasons and completed “promotion

<sup>2418</sup> Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, p. 45.

<sup>2419</sup> *Ibid.*

<sup>2420</sup> Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, pp 48-49, 51.

<sup>2421</sup> *Ibid.*

<sup>2422</sup> Ex. P748, Minutes from the 48<sup>th</sup> Session of the SDC held on 27 December 1995, p. 3; Ex. P1698, VJ Personnel File of Manojlo Milovanović, p. 1; Ex. P1751, Excerpt from D. Milošević VJ Personnel File.

<sup>2423</sup> Ex. P786, Stenographic Transcript of the 37<sup>th</sup> Session of the SDC, 7 June 1995, p. 31.

<sup>2424</sup> Ex. P786, Stenographic Transcript of the 37<sup>th</sup> Session of the SDC, 7 June 1995, p. 32.

<sup>2425</sup> Ex. P786, Stenographic Transcript of the 37<sup>th</sup> Session of the SDC, 7 June 1995, p. 31.

<sup>2426</sup> Ex. P762, Minutes from the 37<sup>th</sup> Session of the SDC held on 13 June 1995, p. 5; Ex. P1751, Excerpt from D. Milošević VJ Personnel File.

<sup>2427</sup> Ex. P786, Stenographic Transcript of the 37<sup>th</sup> Session of the SDC, 13 June 1995, pp 32-33; Ex. P762, Minutes from the 37<sup>th</sup> Session of the SDC held on 13 June 1995, p. 5.

<sup>2428</sup> Ex. P1900, Decree of the FRY President, 14 June 1995; Ex. P1721, Excerpt from Radivoje Miletić’s VJ Personnel File, p. 1; Ex. P1899, VJ Personnel File of Milan Gvero, Doc ID 0422-3207, p. 1; Ex. P1786, Excerpt from Personnel File of Zdravko Tolimir, p. 1.

<sup>2429</sup> Defence Final Brief, paras 431-438.

questionnaires” for all the promotions it granted, but none of these were provided to the 30<sup>th</sup> PC.<sup>2430</sup> However, the Trial Chamber also recalls that the PCs regulated the paperwork and kept record of VJ personnel serving in the VRS and SVK.<sup>2431</sup> This included ensuring a “timely entry of data [...] on promotions in the [VJ][...] [and] on assessment” of all personnel recorded in the PCs.<sup>2432</sup> Through the PCs, therefore, Perišić had at his disposal information on all personnel serving in the PCs. Against this backdrop and considering the SDC session records discussed above, the Trial Chamber finds that Perišić was personally aware of the character and performance of members of the PCs proposed for promotion verification. He therefore had information available that he would assess to decide whether those officers were suitable for a promotion within the VJ. After such assessment - for officers submitted for verification to the rank of General - Perišić would make proposals before the SDC on their suitability for promotion in the VJ.

865. In addition to the individuals discussed above, the Trial Chamber has received evidence on the promotion and verification of, inter alia, the following: Radivoje Miletić,<sup>2433</sup> Radislav Krstić,<sup>2434</sup> Vujadin Popović,<sup>2435</sup> Vidoje Blagojević,<sup>2436</sup> Dragan Jokić<sup>2437</sup> and Drago Nikolić.<sup>2438</sup>

(v) Final Findings

866. In sum, the Trial Chamber finds that as a general rule, promotions were first granted in the VRS and SVK in accordance with the laws of the RS and RSK, respectively. The VRS and SVK Main Staffs would then send a list of promotions to the VJ General Staff with a request that they be verified. The Trial Chamber is also satisfied that the verification and promotions within the VJ were made according to the Law on the VJ. Hence, Perišić retained the authority to promote members of the PCs up to and including the rank of Colonel and had the power of proposal to the FRY President for exceptional promotion to the rank of General. The Trial Chamber also finds that Perišić decided

<sup>2430</sup> Petar Škrbić, T. 11720. *See e.g.* Ex. P1907, VJ Personnel File of Bogdan Subotić, Doc ID 0611-5563 (Questionnaire for a Candidate for a Promotion to the Rank of Major General, 20 October 1993). But *see* Petar Škrbić, T. 11855, stating that “[i]t went without saying that this list should have been looked at by General Mladić and that we gave his opinion. As we saw in one of the exhibits, he put the word ‘no’ next to one of the name[s]. So this kind of list was then also submitted to the 30<sup>th</sup> [PC] for the sake of preparation of certain welfare documents”.

<sup>2431</sup> *See supra* paras 778-787.

<sup>2432</sup> Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 17.

<sup>2433</sup> Ex. P786, Stenographic Transcript of the 37<sup>th</sup> Session of the SDC, 7 June 1995, p. 32; Ex. P1729, VJ Personnel File of Radivoje Miletić, Doc ID 0422-2358; Ex. P1900, Decree of the FRY President, 14 June 1995, p. 2; Ex. P762, Minutes from the 37<sup>th</sup> Session of the SDC held on 13 June 1995, p. 5.

<sup>2434</sup> Ex. P748, Minutes from the 48<sup>th</sup> Session of the SDC held on 27 December 1995, p. 3; Ex. P1994, Excerpt of Radislav Krstić VJ Personnel File; Ex. P1999, Belgrade Military Post 1790 Certificate on the Promotion of Radislav Krstić, 21 August 1998.

<sup>2435</sup> Ex. P1934, VJ personnel file of Vujadin Popović, Doc ID 0422-8607; Ex. P2137, Order on Promotion, 16 June 1995, p. 3.

<sup>2436</sup> Ex. P2138, Order on Promotion, 16 June 1995, p. 3; Ex. P2139, Order on Promotion, 16 June 1995, p. 3.

<sup>2437</sup> Ex. P2143, Order on Promotion, 19 April 1995, p. 1.

whether a promotion in the VJ was merited based on his own assessment of character and performance of the members of the PCs proposed for promotion verification. Finally, the verification and corresponding promotion in the VJ allowed the PC members to enjoy the benefits and rights attached to the new rank, most importantly a commensurate salary.

(b) Salaries

867. Several witnesses testified that officers who served in the VRS or SVK through the 30<sup>th</sup> and 40<sup>th</sup> PCs received their salaries and other benefits from the VJ.<sup>2439</sup> Stamenko Nikolić estimated that between 4,000 and 4,700 military personnel in the VRS were entitled to a salary from the VJ,<sup>2440</sup>

<sup>2438</sup> Ex. P2142, Order on Promotion, 24 April 1995, p. 1; Ex. P1655, VJ Personnel File of Drago Nikolić, Doc ID 0422-8709.

<sup>2439</sup> Petar Škrbić, T. 11811; Rade Orlić, T. 5723-5724, 5739; Rade Rašeta, T. 5893, 6037; MP-14, T. 3507 (closed session); Stamenko Nikolić, T. 10520, 10680-10682; MP-5, T. 2395, 2419, 2423, 2456-2457, 2491, 2501, 2505-2506 (partly private session); MP-80, T. 8235, 8305-8306, 8364 (closed session); Stojan Malčić, T. 11329; Mile Novaković, T. 13047-13048, 13049, 13323; Rajko Petrović, T. 13741; Dušan Kovacević, T. 12775; Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, pp 2-3; Ex. P851, Coded Dispatch from the VJ Chief of the General Staff Signed by Perišić, 22 February 1995 (Perišić on payment of VRS salaries); Ex. P769, Minutes from the 58<sup>th</sup> Session of the SDC, 21 November 1996, p. 3; Ex. P1888, Decision by Military Post 3001, (the decision recognized Aleksander Đukić son of the deceased Đorđe Đukić rights to salaries and special compensation for unused leave); Ex. P1906, VJ Personnel File of Dušan Kovačević, Doc ID 0611-5812 (communication to the Accounting Centre of VJ GŠ on Kovačević's appointment to 30<sup>th</sup> PC for salary concern, 11 December 1995); Ex. P1911, VJ Personnel File of Milan Čeleketić, Doc ID 0611-7957, (certificate of Čeleketić's income from VJ during 12/10/91-30/12/94, 2 April 2003); Ex. P1918, Request of Milan Čeleketić to the Military Post 1790 Belgrade, 24 May 2003; Ex. P1920, VJ personnel file of Ljubiša Beara, Doc ID 0603-0644, (decision granting Beara right to redundancy in the amount equivalent to four times salary to be paid by RC VJ GŠ on the day his service in the 30<sup>th</sup> PC ceases, 25 November 1997); Ex. P1573, VJ Financial File of Manojlo Milovanović 1992-2002, Doc ID 0610-4494, (MOD record of salary payment for July - December 1996, 3 February 1997); Doc IDs 0610-4495 (MOD record of salary payment for 1995, 6 July 1995), 0610-4497 (MOD record of salary payment for 1994, 25 January 1995); Ex. P1574, Various Documents Concerning VJ Payments to Radivoje Miletić, 1992-2001, Doc ID 0622-3479-0622-3493 (MOD Accounting Centre Records of Miletić's salary payments between 1991 and 2000); Ex. P1586, MOD Payslip of Dragan Obrenović for 1992, 26 August 1992; Ex. P1585, MOD Payslip of Dragan Obrenović for 1994, 25 January 1995; Ex. P1584, MOD Payslip of Dragan Obrenović for 1995, 16 January 1995; Ex. P1583, MOD Payslip of Dragan Obrenović for 1995, 6 July 1995; Ex. P1883, VJ Personnel File of Milutin Skočajić, Doc ID 0611-7043 (Military Post 3001 Decision granting salary and special compensation for unused annual leave from 1992 to 1994, to be paid by the Accounting Centre of the MOD, 13 December 2001); Ex. P1884, VJ Personnel File of Lazo Babić, Doc ID 0611-7172 (Military Post 3001 Decision granting him salary and special compensation for unused annual leave for 1991-1995, to be made by the Accounting Centre of the VJ GŠ, 1 October 2001); Ex. P1885, VJ Personnel File of Grujo Borić, Doc ID 0611-7589 (Military Post 3001 Decision granting Borić the right to salary and special compensation for unused annual leave for 1991-1995, to be made by the Accounting Centre of the VJ GŠ, 21 May 2001); Ex. P1886, VJ Personnel File of Momir Talić, Doc ID 0611-8208 (Military Post 3001 Decision granting Talić salary and special compensation for 1991-1995, to be paid by the Accounting Centre of the MOD, 29 January 2002); Ex. P1887, VJ Personnel File of Božo Novak, Doc ID 0611-8549 (MP 3001 decision granting Novak salary and special compensation for unused annual leave for 1991-1995, to be paid by the Accounting Centre of the VJ GŠ, 8 March 2001); Ex. P1889, Decision by Military Post 3001, date unknown, (granting Stanislav Galić's entitlement to salary and special compensation for unused annual leave for 1991-1994, to be paid by the Recruitment Centre of the VJ GŠ); Ex. P1891, Decision by Military Post 3001, undated (granting Petar Salapura salary and special compensation for unused annual leave for 1992-1995, to be paid by the Accounting Centre of the MOD); Ex. P1892, Decision by Military Post 3001, 25 September 2001 (decision granting Milenko Živanović entitlement to salary and special compensation for unused annual leave for 1991-1995, to be paid by the VJ General Staff Accounting Centre); Ex. P1893, VJ Personnel File of Radislav Krstić, Doc ID 0422-8441, pp 10-11 (Military Post 3001 decision recognising his entitlement to receive salary and allowances for the period between 1/9/94 to 31/1/95, 9 January 2002).

<sup>2440</sup> Stamenko Nikolić, T. 10553; Ex. P769, Minutes from the 58<sup>th</sup> Session of the SDC held on 21 November 1996.



while in the SVK, this number never exceeded 4,000 persons.<sup>2441</sup> With particular emphasis on 1995, he testified that in that period 2,421 officers and contract soldiers received their salaries through the 30<sup>th</sup> PC and 930 through the 40<sup>th</sup> PC.<sup>2442</sup> There is also evidence that the payment of salaries for members of the 30<sup>th</sup> PC was suspended for six months.<sup>2443</sup> This interruption coincided with Serbia's imposition of sanctions on the RS when its leadership refused to sign the Vance-Owen peace plan.<sup>2444</sup>

868. The Defence submits that the Chief of the VJ General Staff was not involved in either the budget determinations, which were the responsibility of the MOD, or in the determination of salaries, which were the responsibility of the Federal Government.<sup>2445</sup> The Defence argues that, based on the Law on the VJ, the MOD was responsible for implementing regulations - approved by the Federal Government - related to salary and other forms of remuneration.<sup>2446</sup> Furthermore, the MOD, through its accounting centre, which collected the data related to VJ officers, calculated the salaries according to the regulations and issued the payments.<sup>2447</sup>

869. The Trial Chamber recalls that the MOD was responsible for the annual national defence budget that was eventually submitted to the FRY Assembly for approval.<sup>2448</sup> This annual budget included the budgetary needs for both the MOD and the VJ. The evidence shows that the VJ General Staff participated in the planning of the annual budget by submitting its plan for budgetary needs to the MOD, for its subsequent approval by the Minister of Defence and inclusion in the annual budget.<sup>2449</sup> It was a common practice for the VJ General Staff to also informally coordinate its efforts with the MOD in preparing a realistic budget proposal for the approval of the Minister.<sup>2450</sup>

<sup>2441</sup> Stamenko Nikolić, T. 10553.

<sup>2442</sup> Stamenko Nikolić, T. 10553-10555; Ex. D246, Numerical Strength of Professional Soldiers in the 30<sup>th</sup> and 40<sup>th</sup> PCs in May 1995.

<sup>2443</sup> MP-5, T. 2457, 2465 (MP-5 remained in the VRS during this period when he did not receive any salary, T. 2466); Stojan Malčić, T. 11321; Milenko Jevđević T. 11079; Petar Škrbić, T. 12044; Rajko Petrović, T. 13771, 13777. Rajko Petrović also stated that no one left the ranks of the VRS because of the lack of payment, Rajko Petrović, T. 13772. *See also* Stamenko Nikolić, T. 10558-10559, 10668-10669; Ex. P2817, Letter from VRS Main Staff Sector for Organisation, Mobilization and Personnel, 4 November 1994; Petar Škrbić, T. 11770-11771; Drago Čovilo, T. 13862; Ex. P1711, Request by Manojlo Milovanović, 31 March 2000; Ex. P2770, Response from Mladić to Perišić letter of 22 February 1995 regarding VJ salaries for September 1994, undated; Ex. D344, Excerpt from Mladić's Notebook (meeting with Perišić), 12 August 1994, pp 10-11; Petar Škrbić, T. 11765-11766.

<sup>2444</sup> MP-14, T. 3525; MP-80, T. 8649-8650 (closed session); Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, pp 2-3; MP-5, T. 2465-2466; Miodrag Simić, T. 10182-10183. *See also* Charles Kirudja, T. 2827-2829; Ex. P2372, Transcript of Michael Williams from *Prosecutor v. S. Milošević*, 24 June 2003, T. 22957; Dušan Kovačević, T. 12740-12741; Rajko Petrović, T. 13777.

<sup>2445</sup> Defence Final Brief, paras 346, 348, 355.

<sup>2446</sup> Defence Final Brief, paras 347, 355.

<sup>2447</sup> Defence Final Brief, para. 349.

<sup>2448</sup> Stamenko Nikolić, T. 10622, 10625.

<sup>2449</sup> Stamenko Nikolić, T. 10621-10624; Borivoje Jovanić, T. 11435, 11454.

<sup>2450</sup> Stamenko Nikolić, T. 10624-10625; Borivoje Jovanić, T. 11454. *See also supra* paras 232-234.

The largest expenditure within the VJ budget was for salaries<sup>2451</sup> and this included the necessary funds to pay members of the 30<sup>th</sup> and 40<sup>th</sup> PCs.<sup>2452</sup> The evidence shows that in the plan for budgetary needs, the VJ General Staff identified the total number of personnel entitled to a salary and its estimate of the total funds needed to cover the salaries.<sup>2453</sup>

870. Illustratively, at the 17<sup>th</sup> Session of the SDC held on 10 January 1994, Perišić justified the request of 88.75 million dollars<sup>2454</sup> in the budget proposal for the salary of military personnel in the following way:

We have a total of 16,000 officers, including those in the [RSK] and the [RS]. They had an average of 60.34 dollars [...].

We have 13,000 non-commissioned officers; 20,000 contract soldiers – now we have 12,000 of them. We plan to hire so many to make up for the soldiers we lack. [...]

We have 24,000 civilians – in all three states.

This means that the total paid active duty service personnel in the [RSK], [RS] and SRJ is 73,722.<sup>2455</sup>

871. At the SDC session of 7 June 1994, Perišić specified that:

[I]n [RS] we support and pay for 4,173 persons, or 7.42% from the [VJ], and in the [RSK] 1,474 persons or 2.62% from the [VJ]; that is a total of 5,647 persons. We allot around 14 million for them each year and we need the same amount for next year, and that's just for the salaries. That's a great help to them.<sup>2456</sup>

Those salaries were eventually paid by the Accounting Centre of the MOD with funds allocated to the VJ in the national defence budget.<sup>2457</sup>

872. However, the evidence also shows that in September 1994, while the payment of salaries had been interrupted in light of the sanctions on the RS, Perišić provided Mladić personally and

<sup>2451</sup> About 65% of the military budget was allocated to salaries and pensions, Stamenko Nikolić, T. 10620, 10623; Borivoje Jovanić, T. 11434-11435, 11437.

<sup>2452</sup> Borivoje Jovanić, T. 11456.

<sup>2453</sup> Borivoje Jovanić, T. 11454-11455.

<sup>2454</sup> Ex. P791, Stenographic Transcript of the 17<sup>th</sup> Session of the SDC, 10 January 1994, pp 3, 53.

<sup>2455</sup> Ex. P791, Stenographic Transcript of the 17<sup>th</sup> Session of the SDC, 10 January 1994, p. 52. *See* Ex. P783, Stenographic Transcript of the 19<sup>th</sup> Session of the SDC, 16 March 1994, pp 6, 22-24; Borivoje Jovanić, T. 11434-11435.

<sup>2456</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 46. *See also* Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, pp 7-8, 15 (stating that “together with the Krajinas there are around 55,000 [salaried soldiers]”); Ex. P792, Stenographic Transcript of the 27<sup>th</sup> Session of the SDC, 27 September 1994, pp 87-89; Petar Škrbić, T. 11765-11766, 11835; Ex. D352 (under seal), at 06:55-17:15; Ex. P231, Transcripts of the 53<sup>rd</sup> Session of the Bosnian Serb Assembly, 28 August 1995 (wherein Karadžić was recorded as stating “one should know that we took over personnel that is dependant on Yugoslavia and that is linked to Yugoslavia by its salaries and pensions and weapons and ammunition supply, etc. Although we have paid for a large amount of that, we were also given a large amount”, p. 73).

<sup>2457</sup> Borivoje Jovanić, T. 11415-11417, 11456.

directly with 500,000 Serb Dinars for the payment of salaries, without the involvement of the Accounting Centre of the MOD.<sup>2458</sup>

873. The Law on the VJ provided the legal framework for the determination of salary and other forms of remuneration of military personnel. It defined the different elements of the salary structure as well as the circumstances in which payments could be reduced or suspended. The salary of military personnel was calculated based on rank, position and length of service. The salary structure included the so-called “military supplement” or “army addition”, as well as compensations (such as compensation for service under special conditions).<sup>2459</sup>

874. The Law on the VJ established the general principles governing the payment of salaries and vested the Federal Government with the function of defining, by way of decree, the specifics necessary to calculate them. As Nikolić stated, the MOD was “responsible for regulations governing salaries, pecuniary allowances, and other sorts of remuneration in the army in accordance with the Law on the Army of Yugoslavia”.<sup>2460</sup>

875. Against this backdrop, the VJ was in charge of receiving the salary-related information from VJ soldiers.<sup>2461</sup> The VJ General Staff Personnel Administration processed that information and sent it to the Accounting Centre of the MOD, which was in charge of paying these salaries.<sup>2462</sup>

876. Stojan Malčić explained how the salaries for members of the 30<sup>th</sup> PC were calculated. The information necessary to calculate the salary was contained in the appointment orders.<sup>2463</sup> On the basis of these orders, the Personnel Department of the VRS Main Staff drew up reports on hand-over of duty which were sent to the 30<sup>th</sup> PC. Once verified, the reports were transmitted to the Accounting Centre of the MOD which then issued the payment.<sup>2464</sup> The salary was only paid if

<sup>2458</sup> Stamenko Nikolić, T. 10680-10682; Ex. P851, Coded Dispatch from the VJ Chief of the General Staff Signed by Perišić, 22 February 1995; Ex. P2770, Response from Mladić to Perišić letter of 22 February 1995 Regarding VJ Salaries for September 1994, undated. *See also* Rajko Petrović, T. 13775-13776, 13793, 13796-13797.

<sup>2459</sup> Bojivoje Jovanić, T. 11430-11431; Stojan Malčić T. 11231-11232; Stamenko Nikolić, T. 10449; Ex. P197, Law on the VJ, 18 May 1994, Article 71.

<sup>2460</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 87; Stamenko Nikolić, T. 10417-10418.

<sup>2461</sup> Stojan Malčić, T. 11302-11308 (private session); Ex. D311 (under seal); Ex. D312 (under seal); Ex. D313 (under seal); Ex. D314 (under seal).

<sup>2462</sup> Borivoje Jovanić, T. 11456, 11462.

<sup>2463</sup> Stojan Malčić, T. 11231, 11233, 11237, 11251. *See also* MP-5, T. 2513-2514.

<sup>2464</sup> Stojan Malčić, T. 11277-11279, 11284-11285 (partly private session), 11234-11235, 11237-11238, 11242, 11246, 11251, 11339; Ex. D305, Report on Taking Up of Duty by Stojan Malčić, 7 February 1994; Ex. P1810, Decision by Military Post 3001, 12 May 1994; Ex. P2128, Order by VJ General Staff Personnel Administration, 7 February 1994; Ex. D306 (under seal); Ex. P1893, VJ Personnel File of Radislav Kristić, Doc ID 0422-8441, pp 8-9 (report on hand over duties as Chief of Staff of the Land Forces in the 30<sup>th</sup> PC, signed by Kristić, 30 October 1994); Ex. P1897, VJ Personnel File of Dragan Obrenović, Doc ID 0611-8778. Before the establishment of the PCs, the report on hand-over of duty was sent directly from the VRS Main Staff to the accounting centre of the MOD in Belgrade, Stojan Malčić, T. 11263-11264; Ex. D294, Decree on Transfer and Appointment of Stanislav Galić, 31 August 1992; Ex. D299, Report on Handover of Duty, 30 May 1992; Ex. P1573, VJ Financial File of Manojlo Milovanović 1992-2002, Doc IDs 0610-4554, 0610-4559; Ex. P1899, VJ Personnel File of Milan Gvero, Doc ID 0422-3303, pp 3-5.

appointments within the VRS were in compliance with the VJ rules.<sup>2465</sup> The same procedure applied to the officers serving in the SVK via the 40<sup>th</sup> PC.<sup>2466</sup>

877. Stojan Malčić testified that former JNA military personnel who remained in BiH to serve in the VRS received salaries as if they continued to serve with the JNA.<sup>2467</sup> Stamenko Nikolić also testified that former members of the JNA who had remained to serve in the VRS and SVK continued to receive their salaries from the FRY with the “cycle never [being] broken”.<sup>2468</sup>

878. The Trial Chamber was presented with evidence in relation to the payment of salaries to, *inter alia*, Ratko Mladić,<sup>2469</sup> Milan Čeleketić,<sup>2470</sup> Manojlo Milovanović,<sup>2471</sup> Radislav Krstić,<sup>2472</sup> Milenko Živanović,<sup>2473</sup> Vujadin Popović,<sup>2474</sup> Dragan Obrenović,<sup>2475</sup> Đorđe Đukić,<sup>2476</sup> Mile

<sup>2465</sup> Stojan Malčić, T. 11239-11240, 11266, 11268, 11271-11272; Ex. D304, Decision in Relation to Allowance for Stojan Malčić, 8 December 1993.

<sup>2466</sup> Rade Rašeta, T. 5893-5894.

<sup>2467</sup> Stojan Malčić, T. 11225-11226, 11328-11329, 11373-11375. *See also* Milenko Jevđević, T. 11078-11079. Pyers Tucker also testified that Bosnian Serb officers “gossiped” that Belgrade continued to pay them, which was corroborated by intelligence he saw in 1996 at the UK crisis management headquarters in Northward, confirming that “Bosnian Serb senior officers [...] salaries were being paid from Belgrade”, Pyers Tucker, T. 9170.

<sup>2468</sup> Stamenko Nikolić, T. 10520. *See also* Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, pp 2-3; Ex. P149, Analysis of the Combat Readiness and Activities of the VRS in 1992, April 1993, p. 128; Rajko Petrović, T. 13745.

<sup>2469</sup> Ex. P1571, MOD Payslip of Ratko Mladić for 1994, 25 January 1995; Ex. P1613, Payslip of Ratko Mladić for 1994, 1 August 1994; Ex. P1570, MOD Payslip of Ratko Mladić for the First Half of 1995, 6 July 1995; Ex. P1569, MOD Payslip of Ratko Mladić for 1996, 3 February 1997; Ex. P1568, MOD Payslip of Ratko Mladić for the First Half of 1997, 25 August 1997; Ex. P1614, MOD Payslip of Ratko Mladić for 1995, 16 January 1996; Ex. P1615, MOD Payslip of Ratko Mladić for 1996, 15 July 1996; Ex. P1616, MOD Payslip of Ratko Mladić for 1997, 20 February 1998; Ex. P1567, MOD Payslip of Ratko Mladić for 1998, 12 January 1999; Ex. P1566, MOD Payslip of Ratko Mladić for 1999, 9 February 2000; Ex. P1565, MOD Payslip of Ratko Mladić for 2000, 23 January 2001; Ex. P1572, MOD Payslip of Ratko Mladić for 2002, 12 March 2002.

<sup>2470</sup> Ex. P1911, VJ Personnel File of Milan Čeleketić, Doc IDs 0611-7955, 0611-7957 (Certification of Čeleketić’s income from 12 October 1991 to 30 December 1994).

<sup>2471</sup> Ex. P1573, VJ Financial File of Manojlo Milovanović 1992-2002, Doc IDs 0610-4498 (1994), 0610-4497 (1994), 0610-4495 (1995), 0610-4493 (1996), 0610-4494 (1996), 0610-4491 (1997), 0610-4490 (1998), 0610-4489 (1999), 0610-4488 (2000), 0610-4487 (2001), 0610-4486 (2002).

<sup>2472</sup> Ex. P2014, Decision of Military Post 3001 recognizing Krstić’s entitlement to receive salaries, 9 January 2002; Ex. P2013, VJ Financial File of Radislav Krstić, Doc IDs 0622-6134 (1994), 0622-6133 (1995), 0622-6132 (1995), 0622-6131 (1996), 0622-6128 (1997), 0622-6129 (1997), 0622-6127 (1998), 0622-6126 (1999), 0622-6123 (2001).

<sup>2473</sup> Ex. P1595, MOD Payslip of Milenko Živanović for 1994, 25 January 1995; Ex. P1596, MOD Payslip of Milenko Živanović for 1995, 6 July 1995; Ex. P1594, MOD Payslip of Milenko Živanović for 1995, 16 January 1996.

<sup>2474</sup> *See* Ex. P2077, Set of Documents Regarding Vujadin Popović, pp 68-71.

<sup>2475</sup> Ex. P1587, MOD Payslip of Dragan Obrenović for 1992, 26 August 1992; Ex. P1586, MOD Payslip of Dragan Obrenović for 1992, 26 August 1992; Ex. P1585, MOD Payslip of Dragan Obrenović for 1995, 25 January 1995; Ex. P1583, MOD Payslip of Dragan Obrenović for 1995, 6 July 1995; Ex. P1584, MOD Payslip of Dragan Obrenović for 1995, 16 January 1995; Ex. P1582, MOD Payslip of Dragan Obrenović for 1996, 3 February 1997; Ex. P1580, MOD Payslip of Dragan Obrenović for 1997, 25 August 1997; Ex. P1581, MOD Payslip of Dragan Obrenović for 1998, 12 January 1999; Ex. P1578, MOD Payslip of Dragan Obrenović for 1999, 9 February 1999; Ex. P1577, MOD Payslip of Dragan Obrenović for 2000, 23 January 2001; Ex. P1576, MOD Payslip of Dragan Obrenović for 2001, 7 August 2001.

<sup>2476</sup> Ex. P1592, MOD Payslip of Đorđe Đukić for 1992, August 1992; Ex. P1593, MOD Payslip of Đorđe Đukić for 1992, 31 August 1992; Ex. P1591, MOD Payslip of Đorđe Đukić for 1994, August 1994; Ex. P1590, MOD Payslip of Đorđe Đukić for 1994, 25 January 1995; Ex. P1589, MOD Payslip of Đorđe Đukić for 1995, 6 July 1995; Ex. P1588, MOD Payslip of Đorđe Đukić for 1995, 16 January 1996.

Novaković,<sup>2477</sup> Bogdan Sladojević,<sup>2478</sup> Radivoje Miletić,<sup>2479</sup> Milan Gvero,<sup>2480</sup> Zdravko Tolimir,<sup>2481</sup> Stanislav Galić<sup>2482</sup> and Dragomir Milošević.<sup>2483</sup>

879. In addition to a salary, members of the PCs received “special payments” for service at the time of their retirement. The Accounting Centre of the VJ General Staff was in charge of making these payments. For example, at the time of his retirement in 2000, Mladić received special payments for his service in the 30<sup>th</sup> PC.<sup>2484</sup> Two decisions issued by the 30<sup>th</sup> PC, on 11 October 2000 and 3 March 2000, stated that the payment Mladić was entitled to for his service with the 30<sup>th</sup> PC “shall be made by the Accounting Centre of the VJ/Yugoslav Army/GŠ/ General Staff”.<sup>2485</sup> Likewise, a decision of 20 September 2000 declared that Tolimir was entitled to payments for his service at the 30<sup>th</sup> PC “by the Accounting Centre of the VJ GŠ”.<sup>2486</sup>

880. The Trial Chamber is therefore satisfied that Perišić was directly involved in determining the funds needed for the payment of salaries for military personnel, including members of the 30<sup>th</sup> and 40<sup>th</sup> PCs.<sup>2487</sup> The Trial Chamber is further satisfied that the material payment of the salaries was made by the Accounting Centre of the MOD, with the funds that were allocated to the VJ in the national defence budget. In addition, the Trial Chamber is satisfied that the PCs, or the Personnel

<sup>2477</sup> Ex. P1611, Payslip of Mile Novaković for 1992, 24 June 1992; Ex. P1612, Payslip of Mile Novaković for 1992, 2 September 1995; Ex. P1609, Payslip of Mile Novaković for 1993, undated; Ex. P1610, Payslip of Mile Novaković for 1994, 20 January 1995.

<sup>2478</sup> Ex. P1608, Pay Record of Bogdan Sladojević for 1991, 8 January 1992; Ex. P1607, Pay Record of Bogdan Sladojević for 1991, 15 January 1992; Ex. P1606, Pay Record of Bogdan Sladojević for 1992, 8 October 1992; Ex. P1605, Pay Record of Bogdan Sladojević for 1992, 8 October 1992; Ex. P1597, Pay Record of Bogdan Sladojević for 1993, undated; Ex. P1604, Pay Record of Bogdan Sladojević for 1994, 2 July 1994; Ex. P1603, Pay Record of Bogdan Sladojević for 1994, 23 January 1995; Ex. P1602, Pay Record of Bogdan Sladojević for 1997, 17 February 1998; Ex. P1601, Pay Record of Bogdan Sladojević for 1998, 12 January 1999; Ex. P1600, Pay Record of Bogdan Sladojević for 2000, date illegible; Ex. P1599, Pay Record of Bogdan Sladojević for 2001, 2 February 2005; Ex. P1598, Pay Record of Bogdan Sladojević for 2004, date illegible.

<sup>2479</sup> Ex. P1574, VJ Personnel File of Radivoje Miletić, Doc IDs 0622-3493 (1991), 0622-3489 (1994), 0622-3488 (1994), 0622-3487 (1995), 0622-3486 (1995), 0622-3484 (1996), 0622-3483 (1997), 0622-3482 (1997), 0622-3481 (1998), 0622-3480 (1999), 0622-3479 (2000).

<sup>2480</sup> Ex. P1987, VJ Financial File of Milan Gvero, Doc IDs 0622-5175 (1991), 0622-5173 (1992), 0622-5172 (1992), 0622-5171 (1992), 0622-5169 (1994), 0622-5170 (1994), 0622-5167 (1995), 0622-5168 (1995), 0622-5165 (1996), 0622-5166 (1996), 0622-5164 (1997).

<sup>2481</sup> Ex. P1796, VJ Financial File of Zlatko Tolimir, Doc IDs 0622-3564 (1994), 0622-3563 (1994), 0622-3562 (1995), 0622-3561 (1995), 0622-3560 (1996), 0622-3559 (1996), 0622-3558 (1997), 0622-3556 (1998), 0622-3555 (1999), 0622-3554 (2000).

<sup>2482</sup> See Ex. P1774, Request by Stanislav Galić, 10 April 2000.

<sup>2483</sup> Ex. P822, Judgement of the 2<sup>nd</sup> Municipal Court, Belgrade, 9 July 2001, p. 8; Ex. P833, Record of Hearing in D. Milošević case held before the 2<sup>nd</sup> Municipal Court in Belgrade, 19 March 1998, p. 6.

<sup>2484</sup> Ex. P1919, Decision of Military Post 3001, Decision Granting Mladić Salaries and Relevant Compensation for the Period from 01/09/94-31/01/95, 11 October 2000.

<sup>2485</sup> Ex. P1919, Decision of Military Post 3001, Decision Granting Mladić Salaries and Relevant Compensation for the Period from 01/09/94-31/01/95, 11 October 2000; Ex. P1924, Decision of the Military Post 3001 Belgrade, 3 March 2000.

<sup>2486</sup> Ex. P1791, Order by the VJ Personnel Administration, 20 September 2000.

<sup>2487</sup> The Trial Chamber notes that the Defence does not seem to dispute that the General Staff of the VJ calculated the total sum required to pay all officers and servicemen in the VJ, Defence Final Brief, para. 360.

Administration of the VJ General Staff, provided the Accounting Centre of the MOD with all of the records and information necessary to calculate the salaries of the members of the 30<sup>th</sup> and 40<sup>th</sup> PCs.

(c) Pensions

881. Several witnesses testified that members of the 30<sup>th</sup> and 40<sup>th</sup> PCs continued to be part of the VJ retirement plan, although they had served in the VRS and the SVK.<sup>2488</sup>

882. The VJ retirement plan was financed partly by contributions made by VJ military personnel, including members of the 30<sup>th</sup> and 40<sup>th</sup> PCs, during their service, and partly by funds allocated for this purpose within the yearly military budget.<sup>2489</sup> Both Nikolić and Jovanić testified that about 60 to 65% of the VJ military budget was allocated to pensions and salaries.<sup>2490</sup> Different estimates were provided, however, as to the portion of this sum allocated to pensions: 40%, according to Nikolić and about 20% according to Jovanić.<sup>2491</sup>

883. Service in the VRS and SVK by members of the 30<sup>th</sup> and 40<sup>th</sup> PCs, respectively, was counted by the VJ as continuous service time for the calculation of pensions.<sup>2492</sup> Illustratively, MP-14, a JNA career officer who served with the VRS as a member of the 30<sup>th</sup> PC, testified that upon his retirement from the VRS, his years of service both with the JNA and the VRS were added together for the calculation of his pension.<sup>2493</sup> The Trial Chamber heard that a similar pension regime applied to the SVK. Rade Rašeta explained that upon his retirement, his years of service with the SVK were added to his years of service with the JNA/VJ.<sup>2494</sup>

884. Articles 264 to 267 of the Law on the VJ provided for various regimes to calculate the pensionable service for professional soldiers.<sup>2495</sup> Pursuant to Article 264, those who participated in armed activities after 17 August 1990 as members of the VJ would have their time in service counted as double for the purpose of pension calculation.<sup>2496</sup> For those professional soldiers who carried out especially hard work or tasks that were hazardous to their health, the length of the pensionable service was calculated on an increased basis, depending on the “degree of hardship and

<sup>2488</sup> Petar Škrbić, T. 11799; MP-5, T. 2388-2389; Rade Rašeta, T. 6037; MP-14, T. 3508-3509 (closed session); Miodrag Starčević, T. 6784-6785.

<sup>2489</sup> Petar Škrbić, T. 11799; Borivoje Jovanić, T. 11433-11434.

<sup>2490</sup> Stamenko Nikolić, T. 10620, 10764-10765; Borivoje Jovanić, T. 11434.

<sup>2491</sup> Stamenko Nikolić, T. 10764-10765; Borivoje Jovanić, T. 11437.

<sup>2492</sup> Miodrag Starčević, T. 6784; Milenko Jevđević, T. 11162.

<sup>2493</sup> MP-14, T. 3508-3509 (closed session).

<sup>2494</sup> Rade Rašeta, T. 5874-5875, 5947, 6037.

<sup>2495</sup> Ex. P197, Law on the VJ, 18 May 1994, pp 68-70.

<sup>2496</sup> Ex. P197, Law on the VJ, 18 May 1994, p. 68; Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 16.

harmfulness or the nature of work”.<sup>2497</sup> For example, 12 months spent on a certain duty could be counted as 15, 16 or 18 months for pensionable purposes.<sup>2498</sup>

885. Petar Škrbić testified as to the procedure for the provision of pensions for members of the 30<sup>th</sup> PC. He stated that the Sector for Recruitment, Mobilisation and System Affairs in the VRS Main Staff sent a list of the VRS retired servicemen to the 30<sup>th</sup> PC office in Belgrade.<sup>2499</sup> In turn, the 30<sup>th</sup> PC issued a decision in relation to their pensions based on the Law on the VJ.<sup>2500</sup> Illustratively, on 15 November 1995, Petar Škrbić issued a certificate stating that in 1992, General Manojlo Milovanović was transferred to Military Post 7572 in Sarajevo to help regulate Milovanović’s “accelerated pension plan” in accordance with Article 264 of the Law on the VJ.<sup>2501</sup> On 15 December 1995, the VJ General Staff Personnel Administration recognised Milovanović’s right to an accelerated pension plan.<sup>2502</sup> Similarly, the VJ Personnel Administration decided on 9 December 1994 that Colonel Jovo Kundačina was “entitled to have his service calculated as double as of 20 May 1992” for pension purposes.<sup>2503</sup> The VJ Personnel Administration also granted requests from Zdravko Tolimir to calculate as double his years of service with the VRS from 1990 until 1995.<sup>2504</sup> Witness Milenko Jevđević provided a similar account in relation to the calculations of his pensionable years of service.<sup>2505</sup>

886. The Trial Chamber received evidence that the calculation of double years of pensionable service in the VJ for wartime service in the VRS also applied to Ratko Mladić,<sup>2506</sup> Dragomir Milošević,<sup>2507</sup> Vinko Pandurević,<sup>2508</sup> Drago Nikolić,<sup>2509</sup> Vujadin Popović,<sup>2510</sup> Bogdan Subotić<sup>2511</sup>

<sup>2497</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 266, p. 69.

<sup>2498</sup> Ex. P197, Law on the VJ, 18 May 1994, Articles 266-267, pp 69-70.

<sup>2499</sup> Petar Škrbić, T. 11799.

<sup>2500</sup> *Ibid.*

<sup>2501</sup> Ex. P1702, Certificate of Transfer of Manojlo Milovanović, 15 November 1995. *See also* Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 16.

<sup>2502</sup> Ex. P1707, VJ General Staff Decision on Accelerated Pension for Manojlo Milovanović, 15 December 1995. *See also* Ex. P1706, VJ General Staff Decision on Accelerated Pension for Manojlo Milovanović, 25 March 1998.

<sup>2503</sup> Ex. P402, Decision of the Sector for Recruitment, Mobilisation, and Systems Issues of the General Staff of the VJ, 9 December 1994. *See also* MP-5, T. 2409-2410.

<sup>2504</sup> Ex. P1790, Decision by VJ Personnel Administration, 2 June 1998. *See also* Ex. P401, Decision of the Sector for Recruitment, Mobilisation, and Systems Issues of the General Staff of the VJ, undated; Ex. P1706, VJ General Staff Decision on Accelerated Pension for Manojlo Milovanović, 25 March 1998; Ex. P1707, VJ General Staff Decision on Accelerated Pension for Manojlo Milovanović, 15 December 1995.

<sup>2505</sup> Milenko Jevđević T. 11162. *See also* the similar account of MP-5, T. 2390, 2480-2482 (partly private session); Ex. P398 (under seal), p. 1.

<sup>2506</sup> Ex. P2015, VJ Military Post 3001 Decision On Ratko Mladić’s Pensionable Service, 28 February 2002; Ex. P1924, Decision of the Military Post 3001 Belgrade, 3 March 2000; Ex. P2016, Request for Recognition of Administrative Pension from Ratko Mladić to VJ Military Post 3001, 28 February 2002; Ex. P2019, VJ Military Post 3001 Decision On Ratko Mladić’s Pensionable Service, 28 February 2002.

<sup>2507</sup> Ex. P1758, Decision by VJ Personnel Administration, 20 December 1996.

<sup>2508</sup> Ex. P1739, Decision of the VJ General Staff Personnel Administration, 30 September 1994; Ex. P401, Decision of the Sector for Recruitment, Mobilisation, and Systems Issues of the General Staff of the VJ, undated.

<sup>2509</sup> Ex. P1668, VJ Documents Relating to the Pension Procedures in Regard to Drago Nikolić; Ex. P1662, VJ Documents Relating to Termination of Military Services of Drago Nilokić, 19 May 1995.

and Ljubiša Beara.<sup>2512</sup> The Trial Chamber also notes that, on 30 August 2002, the Military Social Insurance Fund in Belgrade granted Ratko Mladić's personal request to an administrative pension.<sup>2513</sup>

887. The same procedure applied to members of the 40<sup>th</sup> PC. Rade Rašeta's years of service with the SVK were similarly considered as double for the purpose of calculating his pension.<sup>2514</sup> Perišić himself granted Mile Mrkšić's right to double his years of pensionable employment "after assessing the evidence and facts".<sup>2515</sup> The right to double years of service was also granted to Čeleketić on 27 June 1994 by the VJ General Staff Personnel Administration.<sup>2516</sup> Rade Orlić's years of service in the SVK, instead, were calculated based on the accelerated length of service at the rate of 12/15<sup>2517</sup> months, which lowered his retirement age by two years.<sup>2518</sup>

888. Stamenko Nikolić testified that it was the Military Social Insurance Fund ("SOVO") – not the VJ General Staff - that calculated and distributed the pensions.<sup>2519</sup> Based on the foregoing evidence, the Trial Chamber understood Stamenko Nikolić to say that while the General Staff decided on the provision of pensions for members of the 30<sup>th</sup> and 40<sup>th</sup> PCs, the material calculation and distribution thereof were carried out by the SOVO.

889. In sum, the Trial Chamber finds that the PCs decided on the recognition of pensionable years of service and on the provision of pensions, which were then paid by the SOVO.

(d) Housing

890. On 17 August 1994, Perišić ordered that housing matters for members of the 30<sup>th</sup> and 40<sup>th</sup> PCs should be regulated in the same manner as other VJ members.<sup>2520</sup> According to this order, requests for housing of members of the 30<sup>th</sup> and 40<sup>th</sup> PCs had to be certified by the respective PC.

<sup>2510</sup> Ex. P2072, Request of Vujadin Popović to Military Post 3001, 27 August 1994; Ex. P2073, VJ General Staff Personnel Administration Decision, 30 September 1994; Ex. P2075, Military Post 3001 Decision, 24 March 1995; Ex. P2076, Military Post 3001 Decision, 6 October 1999; Ex. P2077, Set of Documents Regarding Vujadin Popović, pp 17-18 (Military Post 3001 Decision of 30 March 2000), 23-24 (Military Post 3001 Decision of 9 February 2001); Ex. P2079, Military Post 3001 Decision, 28 November 2001.

<sup>2511</sup> Ex. P1907, VJ Personnel File of Bogdan Subotić.

<sup>2512</sup> Ex. P1960, VJ General Staff Personnel Administration Decision, 17 February 1995; Ex. P1969, VJ General Staff Personnel Administration Decision, 27 July 1994.

<sup>2513</sup> Ex. P2016, Request for Recognition of Administrative Pension from Ratko Mladić to VJ Military Post 3001, 28 February 2002; Ex. P2023, VJ Military Social Insurance Fund, 23 June 2002.

<sup>2514</sup> Rade Rašeta, T. 5947-5948.

<sup>2515</sup> Ex. P1916, VJ Personnel File of Mile Mrkšić, Doc ID 0422-2973.

<sup>2516</sup> Ex. P1970, VJ Personnel Administration Decision, 27 June 1994.

<sup>2517</sup> The term 12/15 means that 12 months of service were recognised as 15 months, Ex. P197, Law on the VJ, 18 May 1994, Article 267.

<sup>2518</sup> Ex. P1683, Military Post 3001 Decision, 13 February 2001, Doc ID 0611-4935; Rade Orlić, T. 5771-5773.

<sup>2519</sup> Stamenko Nikolić, T. 10764.

<sup>2520</sup> Ex. P1871, Order by VJ General Staff, 17 August 1994; Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 29.



Once certified, the applications were transmitted to the garrison from which the soldiers were dispatched.<sup>2521</sup> The Trial Chamber notes that the housing certificates in evidence demonstrate that a soldier's periods of service in different units were considered as one continuous period of service.<sup>2522</sup> For example, a housing certificate issued to Veljko Bosanac in 1998 stipulated that he served continuously in the JNA/VJ from 1971 until 1996, despite the fact that he was transferred to the 40<sup>th</sup> PC in 1994 and served at the Novi Sad Garrison in 1995.<sup>2523</sup>

891. The Trial Chamber was presented with evidence showing that the housing needs of soldiers serving in the 30<sup>th</sup> and 40<sup>th</sup> PCs were addressed either by (i) the issuance of a housing certificate or by (ii) the provision of a family separation allowance.<sup>2524</sup> Witness MP-5, a 30<sup>th</sup> PC officer who served in the VRS, testified that personnel serving in the VRS through the 30<sup>th</sup> PC were provided with accommodation in the RS, or in the alternative, were financially compensated by the 30<sup>th</sup> PC.<sup>2525</sup> Stamenko Nikolić also testified that a soldier was entitled to have a housing facility provided to both him and his family by the VJ for the duration of his service.<sup>2526</sup> Likewise, Mile Novaković testified that when the JNA left Croatia, the soldiers who decided to stay in Krajina were still treated as being part of the JNA and were entitled to housing. They were asked to choose in which garrison in FRY territory they wanted to have an apartment allocated to them.<sup>2527</sup> If that accommodation was not available, they were financially compensated and such compensation was regulated through and paid for by the PCs.<sup>2528</sup>

892. Additionally, the Trial Chamber received evidence that soldiers were required to inform the VJ of any change in their housing situation.<sup>2529</sup>

893. Soldiers who were not provided housing at their garrison of service were entitled to a family allowance from the VJ.<sup>2530</sup> Defence witness Stojan Malčić testified that soldiers "were entitled to an allowance if [they] did not live in the same garrison with [their] families".<sup>2531</sup> By way of example,

<sup>2521</sup> Ex. P1871, Order by VJ General Staff, 17 August 1994.

<sup>2522</sup> Ex. P1649, VJ Personnel File of Veljko Bosanac, the file contains a Certificate Issued by the Sector for Recruitment, Mobilization and Systems Issues, Personnel Administration of the VJ General Staff, 16 July 1998.

<sup>2523</sup> Ex. P1649, VJ Personnel File of Veljko Bosanac.

<sup>2524</sup> Stojan Malčić, T. 11263-11264; Ex. P1650, VJ Personnel File of Ljubomir Cvjetan, containing a Decision to grant Family Separation Allowance by the 40<sup>th</sup> PC, 10 November 1993; Ex. P1731, VJ Personnel File of Vinko Pandurević; Ex. P2044, Request of Recognition of Compensatory Entitlements from Ratko Mladić to VJ Military Post 3001, 8 April 1994; Ex. P2040, VJ Military Post 3001 Certificate, 18 May 1994; Ex. P2039, VJ Military Post 3001 Decision, 18 May 1994.

<sup>2525</sup> MP-5, T. 2424, 2462-2463.

<sup>2526</sup> Stamenko Nikolić, T. 10453.

<sup>2527</sup> Mile Novaković, T. 13051-13052.

<sup>2528</sup> MP-5, T. 2423-2424; Mile Novaković, T. 13051, 13324; Borivoje Jovanić, T. 11458-11459.

<sup>2529</sup> Ex. P1929, Decision of Military Post 2102 Belgrade on Vinko Pandurević, 7 August 1998; Ex. P1930, Indictment of the VJ Military Disciplinary Prosecutor against Vinko Pandurević, 19 March 1999; Ex. P1932, Judgement against Vinko Pandurević of the VJ Military Disciplinary Court, 14 October 1999.

<sup>2530</sup> Ex. P1650, VJ Personnel File of Ljubomir Cvjetan; MP-5, T. 2424, 2462-2463.

<sup>2531</sup> Stojan Malčić, T. 11263.

the Trial Chamber notes a decision from the Military Post 4001, signed by General Milan Čeleketić, granting Ljubomir Cvjetan a family separation allowance in accordance with the Rules of Procedure on Travel and Other Expenses in the VJ. The decision stated that Cvjetan did not have free accommodation in the Knin area and shared a household with his family in Belgrade, and thus, was entitled to the allowance.<sup>2532</sup>

894. Additionally, on 3 November 1999, the Military Post at Bijeljina BiH issued a decision granting Vinko Pandurević a family separation allowance in accordance with the Regulation of Travel and Other Allowances in the VJ. The decision states, in relevant part, that a “professional soldier [...] who is supporting the family he is living with in common household, and who has an apartment on the territory of FRY, *i.e.* on the territory of the republics of the former SFRY [...] has a right to separation allowance *if at the service post he has no apartment*”.<sup>2533</sup>

895. Further evidence suggests that some members of the PCs, such as General Ratko Mladić in particular, received both housing and a family separation allowance from the VJ.<sup>2534</sup> Specifically, on 18 May 1994 and later, on 8 April 1997, Mladić was granted compensation for “expenses incurred for living apart from his family”.<sup>2535</sup> The decision of 8 April 1997 refers specifically to the fact that although Mladić was not provided an “official apartment at his place of service”, he was provided with accommodation at the military facility at Han Pijesak garrison where he was serving.<sup>2536</sup> Additionally, both decisions confirm that Mladić had a separate family residence in Belgrade, while the 8 April 1997 decision further indicates that Mladić was “relocated from the Belgrade Garrison, *where he had a settled housing issue/permanent housing provided*/, to the Han Pijesak Garrison [...]”.<sup>2537</sup> Therefore, it appears that Mladić was provided with both an accommodation in Belgrade, as well as multiple family separation allowances from the VJ, at least for a period of time in 1994 and 1997.

896. In conclusion, in relation to housing, the Trial Chamber finds that members of the PCs were treated in the same manner as other VJ soldiers. The Trial Chamber is also satisfied that Perišić

<sup>2532</sup> Ex. P1650, VJ Personnel File of Ljubomir Cvjetan.

<sup>2533</sup> Ex. P1731, VJ Personnel File of Vinko Pandurević, Doc ID 0422-8574, pp 6-7.

<sup>2534</sup> Ex. P2044, Request of Recognition of Compensatory Entitlements from Ratko Mladić to VJ Military Post 3001, 8 April 1994; Ex. P2040, VJ Military Post 3001 Certificate, 18 May 1994; Ex. P2039, VJ Military Post 3001 Decision, 18 May 1994; Ex. P2035, Request of Separation Allowance from Ratko Mladić to VJ Military Post 3001, 12 March 1997; Ex. P2036, Military Post 7403 Certificate, 12 March 1997; Ex. P2045, Military Post 7403 Decision, 8 April 1997.

<sup>2535</sup> Ex. P2039, VJ Military Post 3001 Decision, 18 May 1994; Ex. P2045, Military Post 7403 Decision, 8 April 1997.

<sup>2536</sup> Ex. P2045, Military Post 7403 Decision, 8 April 1997; Ex. P2035, Request of Separation Allowance from Ratko Mladić to VJ Military Post 3001, 12 March 1997; Ex. P2036, Military Post 7403 Certificate, 12 March 1997.

<sup>2537</sup> Ex. P2045, Military Post 7403 Decision, 8 April 1997 (emphasis added); Ex. P2039, VJ Military Post 3001 Decision, 18 May 1994.

took an active role in regulating the housing entitlements for VJ members deployed to the VRS and SVK through the PCs.<sup>2538</sup>

(e) Medical Assistance

897. Members of the 30<sup>th</sup> and 40<sup>th</sup> PCs serving in the VRS and the SVK were entitled to medical insurance in the FRY and were treated in VJ medical facilities located in the territory of the FRY.<sup>2539</sup>

898. For example, Dragomir Milošević was treated in the Military Medical Academy Hospital (“VMA”) in Belgrade after being wounded during combat activities near Sarajevo in August 1995.<sup>2540</sup> Similarly, Radislav Krstić was treated at the VMA for the wounds he sustained in the field.<sup>2541</sup> Witness MP-80 testified that the medical centres in the territory of RSK had a relatively low capacity to treat and rehabilitate the seriously injured.<sup>2542</sup> Consequently, seriously wounded SVK soldiers were treated in the VMA in Belgrade and some of them were sent for treatment to the RS.<sup>2543</sup> The SVK also suffered from a chronic shortage of medical officers and medicines.<sup>2544</sup> The VJ therefore provided some medical personnel at the request of the SVK, but according to MP-80, it was insufficient.<sup>2545</sup>

899. The evidence shows that the VJ provided medical treatment to wounded VRS and SVK soldiers in general and not only to the PCs members. In April 1995, Perišić acknowledged that the VMA in Belgrade was “already overstretched” and that less serious cases of wounded VRS and SVK soldiers “should be treated in local medical institutions, rather than transferred – as they are now – to the VMA”.<sup>2546</sup> A month later, Perišić had to issue an order allocating 20 beds from a military barrack in Belgrade to accommodate VRS and SVK wounded soldiers, due to a shortage of beds at the VMA.<sup>2547</sup>

<sup>2538</sup> Ex. P1871, Order by VJ General Staff (regarding housing for members of the 30<sup>th</sup> and 40<sup>th</sup> PCs), 17 August 1994; Ex. P734, VJ General Staff Instructions on the PCs, 8 December 1993, para. 29.

<sup>2539</sup> Mile Novaković, T. 13323; Stojan Malčić, T. 11229; Ex. P863, Folder Containing Documents Regarding Medical Treatment of Members of VRS and SVK Treated in the FRY; MP-5, T. 2380-2385, 2462-2463; Ex. P396 (under seal).

<sup>2540</sup> Ex. P822, Judgement of the 2<sup>nd</sup> Municipal Court, Belgrade, 9 July 2001.

<sup>2541</sup> Ex. P907, Document Issued by the Drina Corps Command, 2 January 1995.

<sup>2542</sup> MP-80, T. 8361-8363 (closed session).

<sup>2543</sup> *Ibid.*

<sup>2544</sup> MP-80, T. 8360-8361 (closed session).

<sup>2545</sup> *Ibid.*

<sup>2546</sup> Ex. P719, Minutes from the 34<sup>th</sup> Session of the SDC held on 2 March 1995, p. 3. *See also* Ex. P2865, Order of the VRS 2<sup>nd</sup> Krajina Corps Logistics Command Regarding Sending Wounded to VJ Institutions, 16 March 1995; Ex. P779, Stenographic Transcript of the 28<sup>th</sup> Session of the SDC, 2 November 1994, p. 9; Ned Krayishnik, T. 9491-9493, 9496-9497; Ex. P2806, Lešić Videotape of Mladić and others in Belgrade, Han Piljesik and Crna Rijeka, 16-18 July 1995, at 57:20.

<sup>2547</sup> Ex. P908, VJ General Staff Order Issued by Momčilo Perišić, 30 May 1994, Doc ID 0630-7398, p. 1.

900. Medical treatment was also provided to PC members for pre-existing medical conditions. For instance, Ratko Mladić was admitted as an emergency patient to the VMA in Belgrade on 14 September 1995, where he underwent medical treatment in connection with a previously diagnosed medical condition.<sup>2548</sup>

901. In order to receive medical care, each member of the 30<sup>th</sup> and 40<sup>th</sup> PCs was required to have a valid medical booklet, which was stamped each time treatment was received.<sup>2549</sup> Such medical booklets, in order to be valid, needed to contain an up-to-date stamp certifying the current unit of service of the soldier and his place of residence.<sup>2550</sup>

902. Family members of the military beneficiaries also received medical care – regardless of whether they stayed in the FRY or joined their relatives serving in the VRS or SVK – and their booklets needed to be stamped every year in order to be valid.<sup>2551</sup>

903. The Trial Chamber received further evidence that requests were made by the VRS for critical equipment, including medicine.<sup>2552</sup> During the SDC session of 10 January 1994, Perišić stated “[l]ogistic support has been the best functioning element in the wretched war, and medical support was the best functioning part thereof. [...] With the current budget we have managed to provide proper treatment for all the wounded, including those from the [RS] and [RSK]. We did not get a single dinar for that”.<sup>2553</sup>

904. The Trial Chamber is satisfied that members of the PCs and their families were entitled to and benefited from medical assistance in the VJ and the FRY.

(f) Other Benefits

905. Like other VJ officers, members of the 30<sup>th</sup> and 40<sup>th</sup> PCs also enjoyed various benefits, such as compensation for service under difficult conditions, health insurance and housing benefits.<sup>2554</sup>

906. Service in the VRS and SVK by members of the PCs was considered “service under difficult (or special) conditions” and therefore gave them the right to compensation according to the Law on

<sup>2548</sup> Ex. P2744, Documents Concerning Mladić Discharge from VJ Military Medical Academy in Belgrade, 20 September 1995; Ex. P1113, Medical History Form for Ratko Mladić, 14 September 1995.

<sup>2549</sup> MP-5, T. 2380-2385 (private session); Ex. P396 (under seal).

<sup>2550</sup> MP-5, T. 2381-2383 (private session), 2468-2469 (private session); Stojan Malčić, T. 11230.

<sup>2551</sup> MP-5, T. 2382-2385 (private session), 2462-2464 (partly private session); Stojan Malčić, T. 11229-11230; Ex. P1857, Letter to 30<sup>th</sup> PC, 21 June 1994.

<sup>2552</sup> See Ex. P2915, VRS Request to the VJ for the Provision of Amunition, 18 July 1993, p. 4.

<sup>2553</sup> Ex. P791, Stenographic Transcript of the 17<sup>th</sup> Session of the SDC, 10 January 1994, pp 59-60.

<sup>2554</sup> Stojan Malčić, T. 11229-11232; Mile Novaković, T. 13051-13052, 13324-13326.

the VJ.<sup>2555</sup> On 3 February 1994, Mladić issued a decision regarding the compensation for military service performed in difficult (special) conditions. The decision was issued pursuant to Article 26 of the Rules of Travel and Other Expenses in the VJ, and “in connection with the implementation” of a 19 October 1993 decision of the Sector for Operations of the VJ General Staff identifying the territory where service was carried out under difficult (special) conditions.<sup>2556</sup> Mladić’s decision stated:

All professional officers and NCOs, civilians in the army, officers, NCOs and contract soldiers serving in the Yugoslav Army, deployed in the Army of Republika Srpska, are entitled to compensation for carrying out military service in difficult (special) conditions.<sup>2557</sup>

907. This decision established that the VRS Main Staff Commander, the Commander of the Air Force and Anti-Aircraft Defence as well as the Corps Commanders of the VRS decided on compensation for all eligible individuals and submitted the decisions to the Accounting Centre of the FRY MOD.<sup>2558</sup>

908. On 22 March 1994, Perišić issued a decision determining that any active servicemen in the VJ who were performing tasks in “territory where the members of the 30<sup>th</sup> and 40<sup>th</sup> Personnel Centres are in service” were entitled to compensation for service “under difficult (special) conditions”.<sup>2559</sup>

909. The Trial Chamber notes that a decision of the 30<sup>th</sup> PC on 12 May 1994 granted Mladić compensation for service under difficult conditions, based on the Law on the VJ as well as on a

<sup>2555</sup> Mile Novaković, T. 13051, 13324-13326; MP-5, T. 2396; Ex. P1777, VJ Personnel File of Mile Novaković, Doc ID 0611-7677, p. 1; Ex. P2626, Decision on Reimbursement of Mile Vignjević, 19 September 1994, p. 1; Ex. P1792, Certificate by the VJ Personnel Administration, 23 September 1994, p. 2 (on Tolimir’s salary increase due to “difficult (special) conditions”); Ex. P1573, VJ Financial File of Manojlo Milovanović 1992-2002, Doc IDs 0610-4526, 0610-4536, 0610-4543, 0610-4550, 0610-4553 (decisions on Manojlo Milovanović’s compensation for service under difficult circumstances); Ex. P1730, Various Military Documents of Radivoje Miletić, pp 22-23 (special compensation to Miletić to be paid by the Accounting Centre of the VJ General Staff); Ex. P1526, VJ Financial File of Bogdan Sladojević, Doc IDs 0622-3625, 0626-3646, 0622-3647, 0622-3672, 0622-3687 (decisions granting Sladojević allowance for service in “special” and “difficult” conditions); Ex. P1916, VJ Personnel File of Mile Mrkšić, Doc ID 0422-2976 (decision granting compensation for service under hardship circumstances in Military Post 4001, 21 June 1995); Ex. P1921, Decision of the Military Post 4001 Belgrade, 5 May 1994; Ex. P1922, Decision of the Military Post 3001 Belgrade, 12 May 1994; Ex. P1923, Decision of the Military Post 3001 Belgrade, 24 February 2000 (special conditions allowance to be paid by the Accounting Centre of VJ General Staff); Ex. P1777, VJ Personnel File of Mile Novaković, Doc ID 0611-7677 (Military Post 4001 decision granting Novaković right to compensation for service under difficult conditions, 10 February 1995); Ex. P1809, Decisions by Military Post 7111, February and May 1994 (Decisions on compensation for service carried out in difficult conditions, signed by Milenko Živković, to be paid by the Accounting Center of the VJ); Ex. P1814, Decision by VJ General Staff, 18 November 1996.

<sup>2556</sup> Ex. P399, Decision of the VRS Main Staff, 3 February 1994, p. 1. *See also* Ex. P740, VJ General Staff Decision Assigning the Tasks and Territory Where Service is Performed in Difficult Conditions, 19 October 1993.

<sup>2557</sup> Ex. P399, Decision of the VRS Main Staff, 3 February 1994, p. 1.

<sup>2558</sup> Ex. P399, Decision of the VRS Main Staff, 3 February 1994, p. 2; MP-5, T. 2399-2400, 2477-2478.

<sup>2559</sup> Ex. P741, VJ General Staff Decision Assigning the Tasks and Territory Where Service is Performed Under Difficult Conditions, 22 March 1994. *See also* Ex. P742, VJ General Staff Decision to Amend the Decision Assigning Tasks and Territory Where Service is Performed in Difficult Conditions, 14 June 1995; Miodrag Starčević, T. 5505-5507; Borivoje Jovanić, T. 11462.

decision issued by Perišić on 22 March 1994.<sup>2560</sup> In addition, the compensation was granted and calculated based on the decision issued by Mladić himself as Commander of the VRS on 3 February 1994.<sup>2561</sup> MP-5 also testified that he received compensation for service under difficult conditions<sup>2562</sup> and that officers in the VRS who were not assigned to the 30<sup>th</sup> PC did not benefit from the said arrangement.<sup>2563</sup>

910. A similar procedure applied to the SVK as well. Decisions regarding service in difficult conditions made by the SVK were forwarded through the 40<sup>th</sup> PC to the Accounting Centre of the FRY MOD so that the benefits could be calculated and paid.<sup>2564</sup> Rašeta also testified that his salary was increased by about 15% due to the hardship allowance for his service in the SVK.<sup>2565</sup>

911. Officers assigned to the 30<sup>th</sup> and 40<sup>th</sup> PCs were equally entitled to compensation for unused annual leave, requests for which were made directly to the PCs.<sup>2566</sup> Such applications were made in

<sup>2560</sup> Ex. P1810, Decision by Military Post 3001, 12 May 1994, p. 1. *See also* Ex. P741, VJ General Staff Decision Assigning the Tasks and Territory Where Service is Performed Under Difficult Conditions, 22 March 1994, p. 1; Ex. P2046, Military Post 7572 Decision, 11 February 1994.

<sup>2561</sup> Ex. P399, Decision of the General Staff of the VRS, 3 February 1994.

<sup>2562</sup> MP-5, T. 2397, 2399, 2464.

<sup>2563</sup> MP-5, T. 2397-2398.

<sup>2564</sup> Stamenko Nikolić, T. 10612-10614. *See also* Ex. D261, List of Soldiers Serving in the 40<sup>th</sup> PC, 14 February 1995.

<sup>2565</sup> Rade Rašeta, T. 5894, 5901.

<sup>2566</sup> Mile Novaković, T. 13325-13326; P1777, VJ Personnel File of Mile Novaković, Doc ID 0611-7677; Ex. P1772, Request by Stanislav Galić, 21 November 1994 (for compensation for unused leave from VJ General Staff to 30<sup>th</sup> PC); Ex. P1774, Request by Stanislav Galić, 10 April 2000; Ex. P1879, Decision by Military Post 3001, 9 July 2001 (granting Stanislav Galić compensation for unused annual leave for 1991-1994, to be made by the Accounting Centre of the VJ General Staff); Ex. P1625, Procedural Submission of Žarko Ljubojević to Supreme Military Court, 27 September 2000 (regarding compensation for unused leave in 1992-1995); Ex. P1526, VJ Financial File of Bogdan Sladojević, Doc IDs 0622-3587, 0622-3600 (decisions on Sladojević's request for remuneration for unused annual leave for 1991-1995 and 2002, to be paid by the Accounting centre of MOD); Ex. P1573, VJ Financial File of Manojlo Milovanović 1992-2002, Doc ID 0610-4538 (Decision on payment of unused annual leave, 31 October 2002); Ex. P1574, Various Documents Concerning VJ Payments to Radivoje Miletić, 1992-2001, Doc ID 0622-3406 (decision on special payment for unused leave for Miletić, to be paid by the Accounting Centre of the VJ General Staff, 9 May 2001); Ex. P1649, VJ Personnel File of Veljko Bosanac, Doc ID 0611-9029, (decision to compensate Bosanac for unused annual leave from 1991 to 1995, to be paid by the Accounting Centre of the VJ General Staff 2001); Ex. P1650, VJ Personnel File of Ljubomir Cvjetan, Doc ID 0622-7485 (decision granting compensation for unused annual leave, to be paid by the Accounting Centre of the VJ General Staff, 12 February 2002); Ex. P1652, VJ Personnel File of Borislav Đukić, Doc ID 0611-4266 (decision granting compensation for unused annual leave, to be paid by the Accounting Centre of the VJ General Staff, 24 January 2001); Ex. P1654, VJ Personnel Administration Documents Concerning Đorđe Đukić, Doc ID 0611-6892 (decision granting special compensation for unused annual leave, to be paid by the Accounting Centre of the VJ General Staff, 15 November 2001); Ex. P1675, VJ Personnel File of Budimir Gavrić, Doc ID 0611-9155 (decision granting special compensation for unused annual leave for various periods in 1991-1995); Ex. P1679, VJ Personnel File of Boško Klečević, Doc ID 0611-4168 (decision granting special compensation for unused annual leave, to be paid by the Accounting Centre of the VJ General Staff, 21 May 2001); Ex. P1680, Supreme Military Court Judgement Annulling the Decision of the Military Post 3001 Belgrade, 28 June 2001; Ex. P1682, VJ Personnel File of Jovan Marić, Doc ID 0611-4026 (decision granting salary and compensation for unused annual leave, to be paid by the Accounting Centre of the VJ General Staff, 4 April 2001); Ex. P1688, VJ Personnel File of Petar Škrbić, Doc ID 0611-5348 (decision granting compensation for unused annual leave, to be paid by the Accounting Centre of the MOD, 4 December 2001); Ex. P1693, VJ Personnel File of Stevan Tomić, Doc ID 0611-4576 (decision granting salary and special compensation for unused annual leave, to be paid by the Accounting Centre of the MOD, 4 June 2002); Ex. P1711, Request by Manojlo Milovanović for Unpaid Salary, 31 March 2000, 1 March 2000 (request for compensation for unused

accordance with Articles 99 and 103 of the Law on the VJ.<sup>2567</sup> For example, Radivoje Miletić, a member of the 30<sup>th</sup> PC, requested compensation from the 30<sup>th</sup> PC for unused annual leave for his time serving in the VRS from 1992 to 1995.<sup>2568</sup> His request was granted based on the same legal interpretation of the Supreme Military Court in Belgrade set out above.<sup>2569</sup> Other members of the 30<sup>th</sup> and 40<sup>th</sup> PCs who were granted compensation for unused annual leave included Mladić,<sup>2570</sup> Beara,<sup>2571</sup> Popović,<sup>2572</sup> Gvero,<sup>2573</sup> Pandurević,<sup>2574</sup> Galić,<sup>2575</sup> Obrenović,<sup>2576</sup> Novaković<sup>2577</sup> and Čeleketić.<sup>2578</sup> All of these decisions were issued based on the Supreme Military Court interpretation of the status of the members of the PCs serving outside the territory of the FRY.<sup>2579</sup>

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leave for 1/9/94 to 31/1/1995); Ex. P1777, VJ Personnel File of Mile Novaković, Doc ID 0611-7695 (request to Military Post 3001 for compensation of unused annual leave from 1991 to 1994, 19 December 2000); Ex. P1796, Decision by Military Post 3001, 9 May 2001, Doc ID 0622-3511 (decision granting Tolimir compensation for unused annual leave during 1992-1995, 9 May 2001); Ex. P1877, Decision by Military Post 3001, September 2001 (relating to Vinko Pandurević's compensation for unused annual leave in 1992-1995, to be paid by the Accounting Centre of the MOD); Ex. P1878, Decision by Military Post 3001, 19 June 2001 (Vidoje Blagojević's compensation for unused annual leave FROM 1991 to 1995, to be paid by the Accounting Centre of the MOD); Ex. P1880, VJ Financial File of Mile Novaković, Doc ID 0622-7170 (granting compensation for unused annual leave for 1991-1994, to be paid by the Accounting Centre of the VJ General Staff, 28 February 2001); Ex. P1881, Decision by Military Post 3001, 27 December 2001, Doc ID 0611-8543 (Military Post 3001 decision granting compensation for unused annual leave for 1991-1995, to be paid by the Accounting Centre of the MOD); Ex. P1882, VJ Personnel File of Živomir Ninković, Doc ID 0611-6532 (Military Post 3001 decision granting compensation for unused annual leave during 1991-1995, to be paid by the Accounting Centre of the VJ General Staff, 1 March 2001); Ex. P1907, VJ Personnel File of Bogdan Subotić, Doc ID 0611-5588 (decision for the compensation of Subotić's unused annual leave for 1991-1995, to be paid by the MOD Accounting Centre, 17 February 2003); Ex. P1911, VJ Personnel File of Milan Čeleketić, Doc IDs 0611-7964, 0611-7965 (2002 request and decision granting special compensation of Čeleketić's unused annual leave for 1992-1994); Ex. P1915, VJ Personnel File of Mirko Bjelanović, Doc IDs 0611-9272, 0611-9273 (2001 request and decision granting compensation for unused annual leave during 1991-1994, to be paid by the MOD Accounting Centre); Ex. P1934, VJ Personnel File of Vujadin Popović, Doc ID 0422-8702 (decision granting Popović compensation for unused annual leave, to be paid by the MOD Accounting Centre); Ex. P1963, Military Post 3001 Decision, 17 May 2001 (granting Ljubiša Beara special payments for unused leave between 1992 and 1995); Ex. P1899, VJ Personnel File of Milan Gvero, Doc ID 0422-3321, pp 1-4 (2001 certificate, request and decision regarding compensation for Gvero's unused annual leave in 1991-1995); Ex. P1897, VJ Personnel File of Dragan Obrenović, Doc IDs 0611-8785, 0611-8786, 0611-8788 (2001 documents relating to special compensation for unused annual leave for 1992-1995, to be paid by VJ General Staff Accounting Centre); Ex. P1649, VJ Personnel File of Veljko Bosanac, Doc ID 0611-9029 (2001 decision granting Bosanac the right to compensation for unused annual leave from 1991 to 1995, to be paid by VJ General Staff Accounting Centre).

<sup>2567</sup> Ex. P197, Law on the VJ, 18 May 1994. Article 99 defines the right for professional soldiers to get paid annual leave. Article 103 defines the use of annual leave and the right to receive compensation for unused annual leave under special circumstances.

<sup>2568</sup> Ex. P1725, Letter by Radivoje Miletić, 9 May 2001.

<sup>2569</sup> Ex. P1726, Decision by Military Post 3001, 9 May 2001, p. 2. *See supra* paras 835-836.

<sup>2570</sup> Ex. P849, VJ Military Post 3001 Decision Regarding Request for Compensation by Ratko Mladić, 17 May 2001.

<sup>2571</sup> Ex. P1876, Decision by Military Post 3001, 17 May 2001.

<sup>2572</sup> Ex. P1934, VJ Personnel File of Vujadin Popović, Doc ID 0422-8702

<sup>2573</sup> Ex. P1899, VJ Personnel File of Milan Gvero, Doc ID 0422-3321, pp 1-2.

<sup>2574</sup> Ex. P1877, Decision by Military Post 3001, September 2001.

<sup>2575</sup> Ex. P1879, Decision by Military Post 3001, 9 July 2001.

<sup>2576</sup> Ex. P1897, VJ Personnel File of Dragan Obrenović, Doc ID 0611-8785.

<sup>2577</sup> Ex. P1880, VJ Financial File of Mile Novaković, Doc ID 0622-7170.

<sup>2578</sup> Ex. P1911, VJ Personnel File of Milan Čeleketić, Doc ID 0611-7964.

<sup>2579</sup> *See supra* paras 835-836.

912. The evidence shows that VJ officers serving in the SVK were also entitled to reimbursement of travel and other expenses.<sup>2580</sup> Perišić issued an order in July 1994 regulating such reimbursements.<sup>2581</sup>

913. Moreover, members of the PCs were entitled to welfare benefits on the basis of the length of their service in the army.<sup>2582</sup> For example, Boro Poznanović, a 40<sup>th</sup> PC officer, was granted double his serviceable years with respect to welfare benefits for certain periods.<sup>2583</sup>

914. Finally, there is evidence that members of the 30<sup>th</sup> PC were entitled to education benefits from the VJ.<sup>2584</sup> By means of illustration, Vinko Pandurević, a 30<sup>th</sup> PC officer, was sent for education at the Yugoslav Army School of National Defence on 30 September 1998.<sup>2585</sup>

(g) FRY Citizenship

915. There is evidence that, after the war, members of the 30<sup>th</sup> and 40<sup>th</sup> PCs could also request to become citizens of the FRY based on their service in their respective PC. To this end, they needed to request that their respective PC issue a certificate of service in the VJ. This allowed the officers

<sup>2580</sup> Ex. P1526, VJ Financial File of Bogdan Sladojević, Doc IDs 0622-3610 (decision approving Sladojević's request for Mission subsistence allowance, 22 October 1998), Doc 0622-3635, 0622-3639, 0622-3647 (decisions granting allowances for troop duty in 1995 and 1997).

<sup>2581</sup> Ex. P1131, Order of the Chief of the VJ General Staff Perišić, 8 July 1994.

<sup>2582</sup> Ex. P1728, Decision by Military Post 1790, 1 February 2000 (relating to the calculation of Miletić's length of service for the purposes of establishing the military allowance to be added to his basic salary); Ex. P1729, VJ Personnel File of Radivoje Miletić, Doc ID 0422-2442 (Military Post 1790 Belgrade decision on recognition of military allowance of 1% on Miletić's basic salary, 1 February 2000); Ex. P1731, VJ Personnel File of Vinko Pandurević, Doc ID 0422-8585, pp 12-13 (decision recognising Pandurević's military allowance as the amount of 2% of the salary, 16 March 2000); Ex. P1758, Decision by VJ Personnel Administration, 20 December 1996 (deciding to double Dragomir Milošević's service from 30/06/91 to 14/12/95 for welfare benefits); Ex. P1907, VJ Personnel File of Bogdan Subotić, Doc IDs 0611-5577 (decision, dated 23 January 1996, to double Subotić's service years for welfare benefits from 15/7/91 to 31/1/96), 0611-5579 (certificate of Subotić's service status for welfare benefits, 17 January 1996); Ex. P1959, VJ General Staff Personnel Administration Decision, 11 September 1997 (to double service years for welfare benefits); Ex. P1897, VJ Personnel File of Dragan Obrenović, Doc ID 0611-8748 (VJ General Staff Personnel Administration decision, dated 5 May 1997, recognising his right to double his service years for welfare benefits for the periods of 26/06/91-25/5/92 and 1/12/92-14/12/95); Ex. P1960, VJ General Staff Personnel Administration Decision, 17 February 1995 (doubling service years for welfare benefits).

<sup>2583</sup> Ex. P1684, VJ Personnel File of Boro Poznanović, Doc ID 0611-5425 (VJ General Staff Personnel Administration Decision recognising Poznanović's right to double his years of service for welfare benefits, 30 January 1995).

<sup>2584</sup> Ex. P1526, VJ Financial File of Bogdan Sladojević, Doc ID 0622-3635 (approval of schooling entitlements, 17 October 1997); Ex. P1897, VJ Personnel File of Dragan Obrenović, Doc ID 0611-8778 (order of the VJ General Staff Personnel Administration to 30<sup>th</sup> PC on Obrenović enrolment as an external postgraduate student in the military academy of the military school centre of the VJ, 23 September 1997). *See also* Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 38 (Perišić stated that "if we stop helping them in the *area of education, financing of educated personnel* and material assistance for certain combat operations, they'll start losing territory") (emphasis added); Ex. P769, Minutes from the 58<sup>th</sup> Session of the SDC held on 21 November 1996, p. 3; Ex. P800, Stenographic Transcript of the 58<sup>th</sup> Session of the SDC, 21 November 1996, pp 5-6.

<sup>2585</sup> Ex. P1731, VJ Personnel File of Vinko Pandurević, Doc ID 0422-8525, pp 17-20,



to obtain an identification card which then allowed them to become citizens of the FRY.<sup>2586</sup> In this way, those officers could continue to receive their salary and other emoluments from the FRY after the end of the war in BiH.<sup>2587</sup> Stojan Malčić confirmed that upon his retirement in 1997, he acquired FRY citizenship, which enabled him to enjoy certain monetary rights.<sup>2588</sup> Mile Novaković testified that he also obtained FRY citizenship in 1997, more than two years after he moved to the FRY.<sup>2589</sup> There is also evidence that shows that family members of deceased soldiers could also obtain a certificate for the purpose of acquiring FRY citizenship.<sup>2590</sup>

## 9. Termination of Service

### (a) Law on Termination of Service

916. According to the Law on the VJ, the VJ Chief of General Staff had the authority to make decisions regarding the termination of service of professional non-commissioned and commissioned officers up to, and including, the rank of Colonel, as well as of civilian personnel in the Army.<sup>2591</sup> The FRY President, in turn, was authorised to make decisions regarding the termination of service of professional soldiers with the rank of General.<sup>2592</sup> The decrees issued by the President of the FRY to terminate service were implemented through a decision discharging the soldier from professional military service.<sup>2593</sup>

917. The Federal Minister of Defence, or a commander authorised by him, carried out decisions regarding the termination of service for professional soldiers and civilian personnel assigned to the MOD.<sup>2594</sup> Decisions on termination could only be issued by a superior officer holding the position

<sup>2586</sup> MP-5, T. 2415-2417; Ex. P1673, VJ Documents Relating to *inter alia* Drago Nikolić (certificate issued by the 30<sup>th</sup> PC for D. Nikolić to use for obtaining citizenship for him and his immediate family); Ex. P1687, VJ Documents Concerning Novica Simić, Doc ID 0611-6693 (certificate issued by the 30<sup>th</sup> PC for N. Simić to use for obtaining citizenship for him and his immediate family).

<sup>2587</sup> According to MP-5, in 1997 only FRY citizens were entitled to a salary from the VJ/FRY. Thus, those assigned to the 30<sup>th</sup> PC with citizenship in BiH or RS had to seek citizenship from the FRY in order to continue receiving salary, MP-5, T. 2418-2419.

<sup>2588</sup> Stojan Malčić, T. 11319.

<sup>2589</sup> Mile Novaković, T. 13054.

<sup>2590</sup> Ex. P1843, VJ Personnel File of Radovan Ravić, Doc ID 0422-9526 (certificate issued by Military Post 8486 for Radovan Ravić's wife to use for obtaining citizenship for her and her immediate family).

<sup>2591</sup> Ex. P197, Law on the VJ, 18 May 1994, Articles 152(6), 152(7).

<sup>2592</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 151(3).

<sup>2593</sup> Ex. P1777, VJ Personnel file of Mile Novaković, Doc ID 0611-7665 (decision issued by Major General Zorić of discharging Mile Novaković following a Presidential Decree); Ex. P1885, VJ Personnel File of Grujo Borić, Doc ID 0611-7576 (decision issued by Perišić discharging Grujo Borić from professional military service, 8 June 1998, issued pursuant to a decree issued by FRY President on 8 April 1997); Ex. P1897, VJ Personnel File of Dragan Obrenović, Doc ID 0611-8792 (decision issued by Military Post 3001 discharging Dragan Obrenović from professional military service, 20 June 2001); Ex. P1716, Decision issued by Military Post 1790 dismissing Manojlo Milovanović, undated (issued by Lieutenant General Milan Korajović based on a Presidential Decree); Ex. P1717, Decree by FRY President on Dismissal of Manojlo Milovanović, 31 December 2000.

<sup>2594</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 158; Ex. P1776, VJ Personnel File of Kosta Novaković, Doc ID 0611-6321 (order issued by FRY MOD terminating the professional military service of Kosta Novaković on the grounds that he had completed 30 years of pensionable service and the needs of service require cessation of his

of regiment commander or higher.<sup>2595</sup> The decree or order terminating the military service of a professional soldier could be the subject of a complaint before the VJ Supreme Military Court in Belgrade.<sup>2596</sup>

918. Article 107 of the Law on the VJ provided the grounds on which VJ personnel could be terminated. Generally, military service was terminated when the professional soldier reached a mandatory retirement age and had completed 40 years of pensionable service.<sup>2597</sup> Other grounds for terminating service included cases where a soldier was absent from service for five consecutive days without leave, was given a disciplinary sentence of suspension, after receiving two consecutive negative evaluations, or upon his own request.<sup>2598</sup> Military service of soldiers could also be terminated when they acquired at least 30 years of pensionable service when “the needs of service so required”.<sup>2599</sup> In this respect, Miodrag Starčević testified that determining the “needs of service” was at the discretion of the authorised officer and could be based on “objective or subjective” reasons.<sup>2600</sup> Military service was also terminated in cases of permanent disability.<sup>2601</sup>

919. The Trial Chamber notes that similar procedures and grounds for the termination of service of members of the VRS and SVK were provided for in the Law on the VRS and the Law on the SVK.<sup>2602</sup>

920. Pursuant to the Law on the VRS, the RS Minister of Defence had the authority to terminate service for soldiers up to the rank of Colonel, while the RS President could terminate the service of Generals.<sup>2603</sup> Moreover, an order issued by the RS Minister of Defence on 16 June 1992 further defined the authority of VRS commanding officers with respect to the termination of military

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professional military service); Ex. P2627, Order of the FRY MOD on the Termination of Mile Vignjević's Military Service, 4 October 1996.

<sup>2595</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 153. *See e.g.* Ex. P1695, Termination of Military Service of Vidoja Živanović, 13 November 1995.

<sup>2596</sup> *See e.g.* Ex. P1695, Termination of Military Service of Vidoja Živanović, 13 November 1995.

<sup>2597</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 107.

<sup>2598</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 107. *See also* Petar Škrbić, T. 11808-11809.

<sup>2599</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 107.

<sup>2600</sup> Miodrag Starčević, T. 5548-5550.

<sup>2601</sup> Ex. P197, Law on the VJ, 18 May 1994, Article 107. *See e.g.* Ex. P1649, VJ Personnel File of Veljko Bosanac, Doc ID 0611-9018 (order issued by Perišić Veljko Bosanac due to the establishment of his permanent disability and inability to serve in the army, 23 January 1996); Ex. P1696, Decree of the FRY President on Termination of Military Service of Vidoja Živanović, 10 October 1995; Ex. P1731, VJ Personnel File of Vinko Pandurević, Doc ID 0422-8478; Ex. P1794, Decree by the FRY President, 31 December 1999; Ex. P1884, VJ Personnel File of Lazo Borić, Doc ID 0611-7160 (order issued by the Chief of the General Staff of the VJ terminating Laza Babić, 19 December 1995); Ex. P1897, VJ Personnel File of Dragan Obrenović, Doc ID 0611-8795 (order of the Chief of the Personnel Administration of the VJ General Staff terminating Dragan Obrenović, 20 February 2001).

<sup>2602</sup> *See* Ex. P191, Law on the VRS, 1 June 1992, Articles 215-225, 369(4), 370(5); Ex. D170, Law on the SVK, 22 April 1993, Articles 108-116.

<sup>2603</sup> Ex. P191, Law on the VRS, 1 June 1992, Articles 369(4), 370(5).

service contracts of their subordinates.<sup>2604</sup> In particular, the Commander of the VRS Main Staff was authorised to terminate the military service of active-duty non-commissioned and commissioned officers, up to and including the rank of Lieutenant Colonel.<sup>2605</sup>

921. Under the Law on the SVK, the “Commander of the Army” and commanding officers had the authority to terminate the service of soldiers up to the rank of Colonel, while the President of the RSK, following recommendations from the SDC, had the authority to terminate the service of Generals.<sup>2606</sup>

(i) Role of Perišić in the Termination of Service Process

922. The Prosecution argues that Perišić had the authority under the Law on the VJ to terminate the military service of many members of the VJ who served in the PCs, and, in fact, exercised this authority.<sup>2607</sup> It submits that Perišić personally terminated the service of the following VJ personnel who served in the 30<sup>th</sup> PC: Ljubiša Beara, Milutin Skočajić, Stevan Tomić, Mićo Vlajsavljević; and similarly, of the following VJ personnel who served in the 40<sup>th</sup> PC: Boro Poznanović, Veljko Bosanac, Laza Babić and Rade Orlić.<sup>2608</sup>

923. The Defence asserts that the final authority regarding termination of service for personnel in the VRS and SVK was within the purview of RS and the RSK, and that such decisions were forwarded to the VJ by the VRS and SVK “exclusively to regulate the status in service” of these personnel.<sup>2609</sup> As an example, the Defence refers to the fact that Mladić’s active military service was terminated by decree of the RS President in 2002, not by the VJ.<sup>2610</sup> It argues that the VRS Military Post decisions illustrate that their service was regulated by RS legislation.<sup>2611</sup> The Defence further asserts that the VJ did not play any role in the process or decision to terminate the military service of personnel in the VRS or SVK and moreover, that the VJ did not attempt to influence any decisions on termination of service adopted by the VRS or SVK.<sup>2612</sup>

<sup>2604</sup> Ex. D332, RS Minister of Defence Order on Determination of Competence and Authority of Commanding Officers, 16 June 1992. *See* Ex. P191, Law on the VRS, 1 June 1992, Articles 215-225, 369(4), 370(5). *See also* Petar Škrbić, T. 11682-11685, wherein he testified that the order issued by the RS Minister of Defence defined the powers of senior officers of the VRS regarding, *inter alia*, termination of service of personnel serving in the VRS.

<sup>2605</sup> Ex. D332, RS Minister of Defence Order on Determination of Competence and Authority of Commanding Officers, 16 June 1992, p. 3.

<sup>2606</sup> Ex. D170, Law on the SVK, 22 April 1993, Articles 153-154.

<sup>2607</sup> Prosecution Final Brief, paras 239, 761-764; Prosecution Closing Arguments, T. 14747.

<sup>2608</sup> Prosecution Final Brief, para. 762.

<sup>2609</sup> Defence Final Brief, paras 443, 445-446, 456, 481.

<sup>2610</sup> Defence Final Brief, para. 476; Defence Closing Arguments, T. 14843.

<sup>2611</sup> Defence Final Brief, para. 453.

<sup>2612</sup> Defence Final Brief, para. 454. *See* Petar Škrbić, T. 11799.

924. The Trial Chamber received evidence demonstrating that as Chief of the VJ General Staff, Perišić personally exercised his authority to terminate the professional military service of members of both the 30<sup>th</sup> and 40<sup>th</sup> PCs without any involvement from the VRS or SVK.<sup>2613</sup> In cases relating to Generals, military service contracts were terminated by decree of the FRY President.<sup>2614</sup> In both cases, service was terminated based on the grounds discussed above under the Law on the VJ including, *inter alia*, after completing 40 years of pensionable service, or 30 years “when the needs of service so required”, or upon the personnel member’s own request.<sup>2615</sup>

925. Perišić terminated the military service of the following 30<sup>th</sup> PC members: Ljubiša Beara, Milutin Skočajić, Stevan Tomić, Mićo Vlasisavljević and the following 40<sup>th</sup> PC members: Boro Poznanović, Veljko Bosanac, Laza Babić and Rade Orlić.<sup>2616</sup> Illustratively, Ljubiša Beara’s military

<sup>2613</sup> Ex. P1650, VJ Personnel File of Ljubomir Cvjetan, Doc ID 0622-7499 (order issued by Perišić terminating Ljubomir Cvjetan on the of completing 40 years of pensionable service); Ex. P1883, VJ Personnel File of Milutin Skočajić, Doc ID 0611-7005 (order of the Chief of the VJ General Staff terminating Milutin Skočajić on the grounds that he had had completed 40 years of pensionable service); Ex. P1884, VJ Personnel File of Laza Babić, Doc ID 0611-7160 (order issued by the Chief of the General Staff of the VJ terminating Laza Babić, 19 December 1995); Ex. P2119, Order Issued by Perišić Related *inter alia* to the Termination of Professional Military Service of Ljubiša Beara from the VJ 30<sup>th</sup> PC, 6 August 1997; Ex. P1904, Order of Momčilo Perišić, 6 August 1997; Ex. P1693, VJ Personnel File of Stevan Tomić, Doc ID 0611-4545 (order issued by Perišić terminating Stevan Tomić based on being “permanently unfit to serve in the Army”, 6 September 1996); Ex. P1694, VJ Personnel File of Mićo Vlasisavljević, Doc ID 0611-8371 (order issued by Perišić terminating Mićo Vlasisavljević on the grounds that he had completed 30 years of pensionable service and the “needs of service require cessation of professional military service”, 28 September 1994); Ex. P1684, VJ Personnel File of Boro Poznanović, Doc ID 0611-5428 (order issued by Perišić terminating Boro Poznanović on the grounds that he had completed 40 years of pensionable service, 30 June 1998); Ex. P1649, VJ Personnel File of Veljko Bosanac, Doc ID 0611-9018 (order issued by Perišić terminating Veljko Bosanac due to permanent disability and inability to serve in the army, 23 January 1996); Ex. P1683, VJ Documents Concerning Rade Orlić, Doc ID 0611-4935 (order issued by Perišić terminating Rade Orlić “in order to exercise the right to early retirement” after 35 years of pensionable service, 31 December 1994); Ex. P1755, Certificate by VJ General Staff, 3 May 1996; Rade Orlić, T. 5747-5748; Ex. P1910, Official Note of Momčilo Perišić, 6 October 1995 (regarding Perišić’s interview with Milan Čeleketić discussing the termination of his “professional military service and engagement in the [VRS]”); Ex. P1807, Order by VJ Personnel Administration, 9 May 1995 (issued by the Chief of Personnel Administration of the VJ General Staff, Dušan Zorić, terminating Ljubo Kosojević on the grounds he had been absent from service without leave for five consecutive days).

<sup>2614</sup> Ex. P1717, Decree by FRY President on the Dismissal of Manojlo Milovanović, 31 December 2000 (on the grounds that he had 48 years of service for retirement and the “needs of service” so required); Ex. P1727, Decree of FRY President, 31 December 1999 (terminating Radivoje Miletić on the grounds that the needs of service so required); Ex. P1777, VJ Personnel File of Mile Novaković, Doc ID 0611-7664 (Decree by the FRY President terminating Mile Novaković on the grounds that the needs of service so required and he had completed 30 years of pensionable service); Ex. P1908, Decree of the FRY President, 22 December 1994 (terminating Milan Čeleketić on the grounds that he had “over 30 years of pensionable service and that the officer in charge assessed that [it] was required by the service”); Ex. P1757, Decree by the FRY President, 19 December 1996 (terminating Dragomir Milošević); Ex. P1794, Decree by the FRY President, 31 December 1999 (terminating Zdravko Tolimir based on his permanent disability); Ex. P1915, VJ Personnel File of Mirko Bjelanović, Doc ID 0611-9285 (Decree of the FRY President terminating Mirko Bjelanović, 22 December 1994); Ex. P1916, VJ Personnel File of Mile Mrkšić, Doc ID 0422-2982 (Decree of the FRY President terminating Mile Mrkšić, 22 December 1994); Ex. P1912, Decree of the FRY President, 22 December 1994 (terminating Mile Novaković); Ex. P1887, VJ Personnel File of Bozo Novak, Doc ID 0611-8525 Decree Issued by FRY President Zoran Lilić Terminating the Professional Military Service of Bozo Novak; Ex. P1687, VJ Documents Concerning Novica Simić, Doc ID 0611-6768 (decree of the FRY President terminating Novica Simić, 16 June 2001).

<sup>2615</sup> See *supra* paras 916, 918.

<sup>2616</sup> See *supra* para. 924, fn. 2613.

service with the VJ was terminated on 6 August 1997 pursuant to an order issued by Perišić.<sup>2617</sup> Beara served in the 30<sup>th</sup> PC<sup>2618</sup> and his military service with the VJ was terminated on the grounds that he had reached the mandatory retirement age and had acquired 40 years of pensionable service. As an example from the 40<sup>th</sup> PC, Bora Poznavović, who served in the 40<sup>th</sup> PC as the SVK 7<sup>th</sup> Corps Commander,<sup>2619</sup> was retired by Perišić on 30 June 1998, also because he had reached the mandatory retirement age and had completed 40 years of pensionable service.<sup>2620</sup>

926. Also the President issued decisions relating to members of the PCs, as illustrated by the fact that Stanislav Galić's professional military service in the 30<sup>th</sup> PC was terminated on 30 September 1994 by decree of the FRY President, based on the grounds that he had more than 30 years of pensionable service and that "service requirements" demanded the termination of his professional military service.<sup>2621</sup>

927. Moreover, the Trial Chamber received evidence that professional military service contracts were terminated in cases where VJ officers refused to be transferred to the 30<sup>th</sup> or 40<sup>th</sup> PCs.<sup>2622</sup> In this regard, the Trial Chamber recalls its earlier discussion regarding Dane Petrović,<sup>2623</sup> a Colonel serving in the VJ 1<sup>st</sup> Army, whom Perišić temporarily "relieved" from duty in July 1996 after he refused to transfer to the 40<sup>th</sup> PC.<sup>2624</sup> The Trial Chamber further recalls Perišić's statement at the SDC session of 11 October 1993 regarding "retiring" personnel early if they refused to serve in the PCs provided they had "over 30 years of pensionable employment".<sup>2625</sup>

928. Some evidence at first suggests that the final decisions regarding termination of service of members of the PCs did not always fall with the VJ.<sup>2626</sup> The Trial Chamber notes in this respect several decrees issued by the President of the RS terminating the service of personnel who served in

<sup>2617</sup> Ex. P1904/P2119, Order Issued by Perišić Related *inter alia* to the Termination of Professional Military Service of Ljubiša Beara from the VJ 30<sup>th</sup> PC, 6 August (on the grounds that he had reached a mandatory retirement age and had acquired 40 years of pensionable service).

<sup>2618</sup> Ex. P1920, VJ Personnel File of Ljubiša Beara, Doc ID 0603-0574, p. 2, stating that Beara officially began his service in the 30<sup>th</sup> PC on 10 November 1993, coinciding with the creation date of the PCs.

<sup>2619</sup> Ex. P1684, VJ Personnel File of Boro Poznavović, Doc ID 0611-5357, stating that Poznavović began his service in the 40<sup>th</sup> PC as the SVK 7<sup>th</sup> Corps Commander on 1 July 1994.

<sup>2620</sup> Ex. P1684, VJ Personnel File of Boro Poznavović, Doc ID 0611-5428 (order issued by Perišić terminating Boro Poznavović on the grounds that he had completed 40 years of pensionable service, 30 June 1998).

<sup>2621</sup> Ex. P1775, Decree of Zoran Lilić Terminating the Professional Military Service of Stanislav Galić, 30 September 1994.

<sup>2622</sup> See *supra* section VI.A.6.

<sup>2623</sup> See *supra* para. 806.

<sup>2624</sup> Ex. P2545, Order of VJ General Staff to Relieve Dane Petrović Temporarily of his Duties, 12 July 1996.

<sup>2625</sup> See *supra* para. 766. Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, p. 35, Perišić stated that "if someone doesn't want to go and has over 30 years of pensionable employment, we can give him early retirement so that we're not accepting this. We'll tell him that he is not performing his duties in a satisfactory manner and other things, but we won't write that he did not want to go there. So we won't give them any kind of legal stronghold".

the 30<sup>th</sup> PC.<sup>2627</sup> The decrees stated they were final and could not be appealed.<sup>2628</sup> Such decrees formed the basis for the subsequent implementation of decisions issued by the relevant VRS Military Posts.<sup>2629</sup> However, these decrees were issued by the RS President after the 30<sup>th</sup> PC was already disbanded.<sup>2630</sup> Consequently, the VRS decisions in evidence implementing the Presidential Decrees were also issued in 2002, after the 30<sup>th</sup> PC was abolished.<sup>2631</sup>

929. Addressing the Defence submissions regarding circumstances of termination of Mladić's contract, the Trial Chamber notes that on 16 June 2001, Mladić was "removed from the records of VJ professional soldiers" by Decree of the FRY President, along with 25 other personnel members serving in the 30<sup>th</sup> PC.<sup>2632</sup> Miodrag Starčević testified about this decree, explaining that being "removed from the records of VJ professional soldiers" meant that "from that point on, in a formal legal sense they ceased to be professional soldiers in the [VJ]".<sup>2633</sup>

930. Subsequently, on 7 March 2002, the RS President issued a decree terminating Mladić's professional military service.<sup>2634</sup> The next day, the decree was implemented by a VRS Military Post

<sup>2626</sup> Ex. P1756, Proposal by VRS Main Staff, 3 August 1996 (proposal sent from the VRS Main Staff Deputy Commander Manojlo Milovanović to the 30<sup>th</sup> PC, stating that Dragomir Milošević's post had been abolished and thus, pursuant to the Law of the VJ, it was "necessary to regulate his service status by putting him on disposal").

<sup>2627</sup> Ex. D259, RS Presidential Decree on Cessation of Professional Military Service, 1 November 2002 (terminating Novica Simić). Stamenko Nikolić confirmed that the decree was issued on 1 November 2002, after the agreement on special parallel relations was concluded between the FRY and RS, Stamenko Nikolić, T. 10617-10618. *See also* Ex. P1749, Decree by RS President, undated (terminating Vinko Pandurević); Ex. D348, Decree by RS President on Termination of Professional Service for Certain Officers, 7 March 2003. *See* Stamenko Nikolić, T. 10609-10611, 10615-10618.

<sup>2628</sup> Ex. D259, RS Presidential Decree on Cessation of Professional Military Service, 1 November 2002 (terminating Novica Simić); Ex. P1749, Decree by RS President, undated (terminating Vinko Pandurević); Ex. P2007, Decree of the RS President (terminating Radislav Krstić as of 28 February 2002).

<sup>2629</sup> Ex. D260, Decision Terminating the Professional Military Service of Bogdan Sladojević, 8 March 2002; Ex. D119 (under seal); Ex. D696, Military Post 7572 Decision Terminating the Professional Military Service of Radislav Krstić, 8 March 2002; Ex. D674, Military Post 7572 Decision of Termination of Professional Service of Momir Talić, 8 March 2002; Ex. D537, Decision Terminating the Professional Military Service of Vinko Pandurević, 8 March 2002; Ex. P1522, Personnel File of Bogdan Sladojević, p. 8 (excerpt of personnel file showing that Sladojević's professional military service ended on 7 March 2002 "due to the needs of service" by decree of the RS President; subsequently, Military Post 7572 Banja Luka issued a decision on 8 March 2002, relieving him of his military service).

<sup>2630</sup> *See supra* fns 2627-2628.

<sup>2631</sup> *See supra* fn. 2629.

<sup>2632</sup> Ex. P1905, Decree of the FRY President, 16 June 2001, instructing that a number of "Generals filling the posts in the [VJ] General Staff Personnel Centre", including Ratko Mladić, were to be removed from the records of professional soldiers of the VJ. *See also* Miodrag Starčević, T. 5499-5500. Starčević affirmed that the 26 personnel identified in the decree as serving in the 30<sup>th</sup> PC were "from a formal legal aspect [...] in fact members of the [VJ]", Miodrag Starčević, T. 5499; Ex. P1901, VJ Personnel Files of Ratko Mladić, Doc ID 0422-8234, p. 11, wherein it states that Mladić's "future status shall be resolved in keeping with the provisions of the Agreement to establish special parallel relations between the FRY and [RS]".

<sup>2633</sup> Miodrag Starčević, T. 5499.

<sup>2634</sup> Ex. P2033, RS Presidential Decree, 7 March 2002. *See* Ex. P1901, VJ Personnel Files of Ratko Mladić, Doc ID 0422-8234, p. 11. The Trial Chamber recalls that Mladić was released of his duty as Commander of the VRS Main Staff in 1996 by decree of the RS President, Biljana Plavšić, at which point she placed him at the disposal of the VRS Main Staff. Ex. P2024, RS Presidential Decree, 8 November 1996. *See supra* fn. 2320.

decision, as provided for under the Law on the VRS.<sup>2635</sup> Miodrag Starčević further testified that due to Mladić's rank in the VRS, such decisions were under the jurisdiction of the RS President.<sup>2636</sup>

931. The Trial Chamber notes that both the RS presidential decree and VRS Military Post decision were issued in 2002, after the 30<sup>th</sup> PC was abolished and after Mladić was removed from the records of VJ soldiers by the FRY President.<sup>2637</sup>

932. Petar Škrbić testified that while working in the Personnel Sector of the VRS Main Staff, he never received any requests from Perišić for a particular officer to be "pensioned off".<sup>2638</sup> He further testified that he never received any requests for an officer to remain in service after the VRS decided he would be "pensioned off", stating: "[t]here was no way for that to be done. Anyone who was to be pensioned off was pensioned off, and no one questioned that decision".<sup>2639</sup> The Trial Chamber notes that the veracity of Škrbić's testimony is put into question by the numerous examples of orders issued by Perišić terminating military service of VJ soldiers serving in the PCs.<sup>2640</sup>

(ii) Final Findings

933. The Trial Chamber finds that pursuant to the Law on the VJ, the FRY President and Perišić possessed the authority to terminate the professional military service of personnel assigned to the 30<sup>th</sup> and 40<sup>th</sup> PCs. Furthermore, both the FRY President and Perišić exercised this authority, as demonstrated by the numerous examples of decrees and orders terminating the military service of personnel serving in the PCs.

934. The Trial Chamber further finds that the RS presidential decrees and corresponding VRS Military Post decisions relied on by the Defence to demonstrate that termination of service for members of the 30<sup>th</sup> PC was only within the purview of the RS and VRS were, in fact, issued after the war and following the disbandment of the 30<sup>th</sup> PC. As a result, the Trial Chamber is not convinced that this practice calls into question Perišić's authority to terminate the military service of the members of the 30<sup>th</sup> PC.

935. The Trial Chamber finds that the evidence does not support the Defence argument that the decrees issued by Perišić or by the FRY President on termination of service for members of the PCs

<sup>2635</sup> Ex. P2018, VRS Military Decision, 8 March 2002. *See also* Ex. P1901, VJ Personnel Files of Ratko Mladić, Doc ID 0422-8234, p. 11.

<sup>2636</sup> Miodrag Starčević, T. 7032.

<sup>2637</sup> *See* Ex. P1905, Decree of the FRY President, 16 June 2001; Ex. P2018, VRS Military Decision, 8 March 2002; Ex. P2033, RS Presidential Decree, 7 March 2002.

<sup>2638</sup> Petar Škrbić, T. 11799.

<sup>2639</sup> *Ibid.*

were preceded by RS Presidential Decrees, nor that such decrees were only issued to regulate status-related rights of the concerned personnel.

#### 10. Removal from Duty

936. The Prosecution argues that Perišić had the discretion to temporarily remove from duty “persons who committed disciplinary offences/criminal acts damaging to the interests of the VJ”<sup>2641</sup> and where he was aware that “a subordinate had committed war crimes; he had discretion to remove the offender from the VJ”.<sup>2642</sup> The Defence submits that Perišić did not have this authority.<sup>2643</sup> They argue that the Regulations on the Application of International Laws of War in the Armed Forces of the SFRY were only applicable in cases of armed conflict of an international character referring to Starčević,<sup>2644</sup> and that the articles on command responsibility could only be “applied under the condition that it had been enshrined in the FRY Criminal Code, as explained by Gojović”.<sup>2645</sup> The Trial Chamber is not convinced that Gojović’s argument affects the general applicability of the Regulations. It further notes that Starčević does not support the Defence argument, but rather states that the Regulations were applicable when the SFRY/FRY was one of the parties to a conflict.<sup>2646</sup> The Regulations were therefore applicable to the VJ.

937. Articles 20 and 21 of the Regulations set out the responsibility of perpetrators of war crimes, as well as command responsibility for such crimes.<sup>2647</sup> According to Starčević, a violation of this regulation could be the basis for invoking removal from duty pursuant to Article 64 of the Law of the VJ.<sup>2648</sup> He further stated that the final analysis rested with the person authorised to decide on removal from service and that Perišić had this authority.<sup>2649</sup> Removal from duty is a temporary measure pending, for example, criminal proceedings and following the completion of such proceedings, a different procedure for determining if termination could be initiated.<sup>2650</sup>

<sup>2640</sup> See *supra* para. 925.

<sup>2641</sup> Prosecution Final Brief, para. 765.

<sup>2642</sup> *Ibid.*

<sup>2643</sup> Defence Final Brief, paras 961-973.

<sup>2644</sup> Defence Final Brief, paras 974-979, referring to Radomir Gojović, T. 12901-12902, 12964-12965, 12984 and Miodrag Starčević, T. 6978. See also Prosecution Final Brief, paras 717-720; Prosecution Closing Arguments, T. 14723-14725.

<sup>2645</sup> Defence Final Brief, para. 974.

<sup>2646</sup> See Miodrag Starčević, T. 5528-5531, 6978-6979; Ex. P198, Article in *Politika*, 28 April 1992; Ex. P1183, Decree on the Proclamation of the Law on Defence, 27 May 1994.

<sup>2647</sup> Miodrag Starčević, T. 5528-5531; Ex. P2304, Regulations on the Application of International Laws of War in the Armed Forces of the SFRY, Articles 20-21.

<sup>2648</sup> Miodrag Starčević, T. 5531-5534

<sup>2649</sup> Miodrag Starčević, T. 5534.

<sup>2650</sup> Miodrag Starčević, T. 5534-5535.



938. The Trial Chamber finds that according to the Law on the VJ and the Regulations, Perišić had the legal authority to temporarily remove VJ staff from duty and notes that there is no evidence that Perišić exercised this authority in relation to members of the 30<sup>th</sup> and 40<sup>th</sup> PC.

### 11. Disbandment

939. At the SDC session of 29 August 1995, the SDC decided to disband the 40<sup>th</sup> PC in light of the fact that the SVK “ceased to exist” after the loss of the RSK territory to Croatia and there was, therefore, no further need to finance and provide assistance through the PC.<sup>2651</sup> The SDC decided that all the officers of the 40<sup>th</sup> PC involved in the SVK defeat had to write statements on the events that unfolded in their areas of responsibility during the attack from the HVO and submit them to Perišić.<sup>2652</sup> Similarly, the SDC instructed the SVK Commander to send Perišić a detailed report on the cause of the “fall” of the western parts of the RSK.<sup>2653</sup> Members of the 40<sup>th</sup> PC who were found to have acted in a “professional and dignified manner” could be reassigned to posts in the VJ or in the 30<sup>th</sup> PC, with Perišić’s approval.<sup>2654</sup> For example, on 29 August 1995, Goran Gajić was transferred from the 40<sup>th</sup> PC to the 30<sup>th</sup> PC.<sup>2655</sup>

940. The 30<sup>th</sup> PC was disbanded by a decree issued by the President of the FRY on 28 March 2001.<sup>2656</sup> After its disbandment, members of the 30<sup>th</sup> PC serving in the VRS were formally removed from the record of VJ professional soldiers by a decree issued by the FRY President and their status was regulated in accordance with an agreement on special parallel relations between the FRY and the RS of 5 March 2001.<sup>2657</sup>

<sup>2651</sup> Ex. P708, Minutes from the 43<sup>rd</sup> Session of SDC held on 29 August 1995, 30 August 1995, pp 1-2; Ex. P765, Minutes from the 44<sup>th</sup> Session of the SDC held on 6 September 1995, pp 1-2. (Excerpt for the 11<sup>th</sup> Corps in Sector East).

<sup>2652</sup> Ex. P708, Minutes from the 43<sup>rd</sup> Session of SDC held on 29 August 1995, 30 August 1995. p. 2; Ex. P798, Stenographic Transcript of the 44<sup>th</sup> Session of the of the SDC held on 12 September 1995, pp 9-10; Ex. P765, Minutes from the 44<sup>th</sup> Session of the SDC held on 6 September 1995, pp 1-2.

<sup>2653</sup> Ex. P708, Minutes from the 43<sup>rd</sup> Session of SDC held on 29 August 1995, 30 August 1995. p. 2; Ex. P798, Stenographic Transcript of the 44<sup>th</sup> Session of the SDC held on 12 September 1995, pp 9-10.

<sup>2654</sup> Ex. P798, Stenographic Transcript of the 44<sup>th</sup> Session of the SDC, 12 September 1995, p. 10; Ex. P708, Minutes from the 43<sup>rd</sup> Session of SDC held on 29 August 1995, 30 August 1995, pp 1-2; Ex. P765, Minutes from the 44<sup>th</sup> Session of the SDC held on 6 September 1995, pp 1-2. *See also* Ex. P798, Stenographic Transcript of the 44<sup>th</sup> Session of the SDC, 12 September 1995, pp 6-10.

<sup>2655</sup> Ex. P2098, Order of the Main Staff of the 30<sup>th</sup> PC, 29 August 1995.

<sup>2656</sup> Ex. P735, FRY Presidential Decree Regarding 30<sup>th</sup> PC, 28 March 2001; P736, Order of the VJ General Staff Regarding Disbandment of the 30<sup>th</sup> PC, 10 April 2001; Ex. P1868, Order by the VJ General Staff, 16 April 2001.

<sup>2657</sup> Ex. P1905, Decree of the FRY President, 16 June 2001; Ex. P735, FRY Presidential Decree Regarding 30<sup>th</sup> PC, 28 March 2001; Ex. P1886, VJ Personnel File of Momir Talić, Doc ID 0611-8256 (FRY Presidential Decree of 16 June 2001); Ex. P1687, VJ Personnel File of Novica Simić, Doc ID 0611-6678 (FRY Presidential Decree of 16 June 2001).

## B. Perišić's Authority Over the Logistical Assistance Process

### 1. Submissions of the Parties

941. The Prosecution argues that Momčilo Perišić, as Chief of VJ General Staff, had significant responsibility over the provision of logistical assistance to the VRS and SVK,<sup>2658</sup> and exercised that authority pursuant to the decision of the SDC.<sup>2659</sup> It posits that Perišić organised the system of cooperation with the VRS and SVK, and was “fully supportive” of FRY efforts to assist these armies.<sup>2660</sup>

942. Conversely, the Defence generally submits that, under FRY law and procedure, the SDC and FRY MOD—not Perišić and the VJ General Staff—held the primary authority over the logistical assistance process.<sup>2661</sup> It argues that “the FRY MOD owned all movable and immovable military property”, “[t]he VJ only had the right to use the property the MOD allocated to the VJ for usage”, and the VJ “did not have the right to dispose or alienate the property”.<sup>2662</sup> The Defence contends that Perišić, being a subordinate in the process, had no control over the decision of the SDC and FRY MOD to give logistical assistance to the VRS, and therefore “cannot be held legally responsible for making governmental policy since he had neither the position nor authority to make policy”.<sup>2663</sup> In the Defence’s view, Perišić’s role in the logistical assistance process was essentially limited to giving certain quantities of materiel that would not endanger the VJ’s reserves, pursuant to the orders of the SDC and the authorisation of the FRY MOD.<sup>2664</sup>

### 2. Coordination and Meetings with VRS and SVK Officials

943. On 27 September 1993, Perišić presided over a meeting of the VJ Supreme Command Staff attended, *inter alia*, by the chiefs of the different administrations and sectors, as well as the chiefs of the combat arms and services.<sup>2665</sup> Perišić ordered that the VJ “[i]mprove the coordination and cooperation with the Army of the Republic of Serbian Krajina and the Army of Republika Srpska”.<sup>2666</sup> He instructed that meetings with senior representatives of the VRS and SVK be organised on a monthly basis in order to consider “[a]ssistance in manpower”, “[a]ssistance in

<sup>2658</sup> See Prosecution Final Brief, paras 35, 45, 59, 116-117, 240-242, 251-256, 283-301.

<sup>2659</sup> Prosecution Final Brief, paras 35, 253, 287-288, citing Ex. P1009, Order of FRY President, 18 February 1994.

<sup>2660</sup> Prosecution Final Brief, para. 59.

<sup>2661</sup> Defence Final Brief, paras 137-142, 613-615, 617.

<sup>2662</sup> Defence Final Brief, paras 614-615.

<sup>2663</sup> Defence Final Brief, paras 128, 142, 617, 629.

<sup>2664</sup> Defence Final Brief, paras 142, 614-615, 622, 631-632, 634-635, 784.

<sup>2665</sup> Ex. P1626, Official Note from the Meeting of the VJ Supreme Command Staff, 27 September 1993, p. 1.

<sup>2666</sup> Ex. P1626, Official Note from the Meeting of the VJ Supreme Command Staff, 27 September 1993, p. 4.

equipment and materiel” and “[e]conomic assistance”.<sup>2667</sup> Perišić added that “[s]upply of material and technical equipment to the [VRS and SVK] should be realized in accordance with the real possibilities and only upon the authorization of the Chief of the General Staff of the Yugoslav Army”.<sup>2668</sup> Perišić warned that officers unwilling to “develop and care for good interaction and spirit of cooperation” with the VRS and SVK would be dismissed.<sup>2669</sup> After the meeting, Perišić issued a memorandum reiterating that, in order to “[i]mprove coordination and cooperation” between the VJ, VRS and SVK, he would “organise meetings once a month” to discuss, *inter alia*, “[a]ssistance in [...] equipment and technical materiel” and “[f]inancial assistance”.<sup>2670</sup>

944. MP-80 testified that these monthly meetings occurred and were held in Belgrade at the offices of the VJ General Staff.<sup>2671</sup> Perišić chaired the meetings, which were attended by several VJ generals and by General Ratko Mladić of the VRS and General Milan Čeleketić of the SVK.<sup>2672</sup> Mladić and Čeleketić gave presentations explaining the situation in RS and RSK and asking the VJ to assist with the needs of the VRS and SVK.<sup>2673</sup> Making the presentation to Perišić was necessary because “nothing could have been done without his knowledge. He couldn’t have been bypassed”.<sup>2674</sup>

945. Mladić’s diary documents his meetings with Perišić and other FRY officials.<sup>2675</sup> In addition, on eight or nine occasions between mid-1993 and February 1996, Mladić dispatched Đorđe Đukić, the VRS Assistant Commander for Logistics, to Belgrade in order to request weaponry and

<sup>2667</sup> Ex. P1626, Official Note from the Meeting of the VJ Supreme Command Staff, 27 September 1993, p. 4.

<sup>2668</sup> *Ibid.*

<sup>2669</sup> Ex. P1626, Official Note from the Meeting of the VJ Supreme Command Staff, 27 September 1993, p. 5.

<sup>2670</sup> Ex. P878, Tasks set by Perišić at the Supreme Command Staff meeting of 27 September 1993, 26 October 1993, p. 3.

<sup>2671</sup> MP-80, T. 8321-8322 (closed session). *See also* Ex. P2175, Documents Regarding Meetings between SVK, VRS and VJ Chiefs of Staff, fall 1993 (the documents attest to coordination and meetings regarding logistical assistance between the VJ, VRS and SVK in October 1993); Ex. P2157, Communication Between SVK and VJ, 3 November 1993 (confirming forthcoming meeting); Ex. P2156, Memorandum on Co-ordination Between the VJ, VRS and SVK, 19 November 1993; Ex. P317, Aide Mémoire of the Chief of the Office of the SVK Commander to the VJ General Staff, December 1993; Ex. P919, SVK Main Staff Memo on the Coordination of Tasks in the VJ General Staff, January 1994; Ex. P2176, Documents Regarding the Cooperation Between VRS, SVK and VJ in April and May 1994 (regarding a coordination meeting between VJ, VRS and SVK organised on 19 May 1994); Ex. P2177, Letter from VJ General Staff to SVK Main Staff, 11 May 1994 (regarding the same coordination meeting on 19 May 1994).

<sup>2672</sup> MP-80, T. 8322-8325, 8338-8339, 8349-8350 (closed session).

<sup>2673</sup> *Ibid.*

<sup>2674</sup> MP-80, T. 8351 (closed session).

<sup>2675</sup> *See* Ex. D440, Excerpt from Ratko Mladić’s Notebook, 24 September 1993; Ex. D441, Excerpt from Ratko Mladić’s Notebook, 21 October 1993; Ex. D442, Excerpt from Ratko Mladić’s Notebook, 8 November 1993; Ex. P2933, Excerpt from Ratko Mladić’s Notebook, 13 December 1993; Ex. P2934, Excerpt from Ratko Mladić’s Notebook, 14 December 1993; Ex. P2935, Excerpt from Ratko Mladić’s Notebook, 27 December 1993; Ex. P2928, Excerpt from Ratko Mladić’s Notebook, 7 July 1994; Ex. P2783, Excerpt from Ratko Mladić’s Notebook, 1995 (concerning, *inter alia*, meetings involving Perišić on 24 January 1995, 16 February 1995, 6 April 1995 and 24 July 1995).

logistical assistance from Perišić and other VJ General Staff officials.<sup>2676</sup> Mladić regularly wrote to Perišić to ask for assistance as well.<sup>2677</sup>

946. A department of the RSK Defence Ministry was itself part of the representation of the RSK government in Belgrade, and dealt with the procurement and transport of goods for the use of the state and the SVK.<sup>2678</sup>

947. On 15 March 1994, a meeting was organised in Belgrade between Slobodan Milošević, Zoran Lilić, Ratko Mladić and Radovan Karadžić, among others.<sup>2679</sup> Karadžić opined that “[s]o far cooperation between the VRS and the VRSK [*i.e.*, SVK] with the VJ and General PERIŠIĆ has been good and correct”.<sup>2680</sup> On 13 December 1993 in Belgrade, Karadžić gave a presentation to various FRY and RS high-ranking officials, including Perišić, Milošević and Mladić.<sup>2681</sup> Karadžić explained RS’s strategic military objectives, notably separating Serbs from Muslims and Croats, the elimination of the Drina as a border and “to have our part of Sarajevo”, the city being “the key to the war”.<sup>2682</sup> Referring to logistical assistance, Milošević emphasised that “General Perišić will give everything that does not jeopardize b/g /combat readiness/ of units here”.<sup>2683</sup> At the continuation of the meeting on the next day, Perišić said “[w]e will help with weapons”.<sup>2684</sup>

### 3. Establishment of a Procurement and Delivery Procedure

948. The VJ’s provision of logistical assistance to the VRS became more institutionalised and orderly during Perišić’s tenure as Chief of General Staff.<sup>2685</sup> In order to avoid unauthorised transfers of ammunition and equipment, an agreement was entered into between Perišić and Mladić according to which VRS units would submit logistical assistance requests to the VRS Main Staff’s

<sup>2676</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, pp 3-4.

<sup>2677</sup> See *e.g.* Ex. P625, Request from Ratko Mladić to Perišić Regarding Communications Equipment, 7 October 1993; Ex. P1818, Request from Mladić to Perišić, 15 January 1994; Ex. P2768, Request from Ratko Mladić to the VJ General Staff Regarding Ammunition, 30 January 1994; Ex. P2719, Documents Relating to a Request from Ratko Mladić to Perišić Regarding Training of Officers, 15 and 20 April 1995; Ex. P2720, Documents Relating to a Request from Ratko Mladić to Perišić Regarding Guns, 30 April and 5 May 1995; Ex. P2781, Request from Ratko Mladić to Perišić for Engineering Equipment, 12 May 1995; Ex. D56, Request from Ratko Mladić to the VJ General Staff, 26 May 1995; Ex. P2722, Request from Ratko Mladić to Perišić for Expert Assistance, 31 May 1995; Ex. P2723, Request from Ratko Mladić to Perišić for Nitrogen Tanks, 31 May 1995; Ex. P2724, Request from Ratko Mladić to Perišić for Ammunition and Rockets, 14 June 1995; Ex. P624, Request from Ratko Mladić to Perišić for Ammunition, 19 June 1995; Ex. P2746, Request from Ratko Mladić to Perišić for Air Bombs, 7 October 1995; Ex. P2721, Documents Relating to a Request from Ratko Mladić to Perišić Regarding Provision of Sniper Training, May-July 1995 (*see* testimony provided by Radojica Kadjević regarding the dates on these documents, T. 13715-13718).

<sup>2678</sup> MP-80, T. 8623-8626 (closed session).

<sup>2679</sup> Ex. P2940, Excerpt from Ratko Mladić’s Notebook, 15 March 1994.

<sup>2680</sup> Ex. P2940, Excerpt from Ratko Mladić’s Notebook, 15 March 1994, p. 8.

<sup>2681</sup> Ex. P2933, Excerpt from Ratko Mladić’s Notebook, 13 December 1993.

<sup>2682</sup> Ex. P2933, Excerpt from Ratko Mladić’s Notebook, 13 December 1993, pp 1-2.

<sup>2683</sup> Ex. P2933, Excerpt from Ratko Mladić’s Notebook, 13 December 1993, p. 5.

<sup>2684</sup> Ex. P2934, Excerpt from Ratko Mladić’s Notebook, 14 December 1993, p. 1.

Logistics Sector, which would review all requests, and relay them to the VJ General Staff to obtain Perišić's approval.<sup>2686</sup>

949. This procedure is also reflected in a subsequent order from Perišić: "Every month, a work plan by the VJ [General Staff] shall regulate the issues and time of coordination with the General Staff of the [SVK] and VRS" and "[a]ll requests to the [VJ] shall be sent in time only through the VJ [General Staff] to the specialist organs and representatives, signed by the commanders of the General Staffs of the [SVK] and VRS, and I shall personally approve those proposed to me by my [a]ssistants. Other request[s] shall not be considered".<sup>2687</sup> Based on this procedure, Perišić refused to consider various requests, such as a direct request from VRS Lieutenant-Colonel Rade Danilović, instructing him to follow the chain of command and process his demand through the VRS Main Staff.<sup>2688</sup> Similarly, Perišić's office declined a request for equipment sent by the RS MUP because the VJ General Staff did not have the authority to review requests from this RS Ministry.<sup>2689</sup>

950. Đorđe Đukić reported that the VJ had denied certain requests to loan equipment because they had been improperly brokered by some VJ unit commanders, deploring: "[W]e are compelled to completely bar the realisation of the requests relating to promises of some irresponsible individuals from the VJ, who are actually not familiar with the situation regarding [weapons and military equipment] and VJ resources [and made] unrealistic promises".<sup>2690</sup> Đukić added: "In the future, VRS Main Staff will not send to VJ General Staff requests which are not in accordance with realistic potentials of the [VJ], repeated requests to which a negative answer has been received, requests for [equipment and materiel] which VJ also has to buy on the market, as well as for services in institutions which operate on the basis of influx and distribution of earnings".<sup>2691</sup>

<sup>2685</sup> See e.g. Mladen Mihajlović, T. 3959-3960.

<sup>2686</sup> Ex. P1245, Drina Corps Command Internal Memo, 24 October 1993.

<sup>2687</sup> Ex. P1258, VJ General Staff Order, 27 December 1993, pp 1-2. It should also be noted that, on 18 April 1994, Perišić called supplies to a halt, stating: "I hereby forbid (until further notice) the issuance of the NVO / weapons and military equipment / to the [a]rmies of the RS and RSK 30<sup>th</sup> and 40<sup>th</sup> [PCs]", Ex. P1008, Order from Perišić Sent to the Heads of VJ Services Regarding Issuing of Weapons and Military Equipment, 18 April 1994. Nevertheless, the VJ resumed its deliveries of weapons and military equipment to the VRS, as indicated by subsequent SDC meetings and deliveries of logistical assistance, see *infra* sections VI.B.4, VI.C.

<sup>2688</sup> Ex. P629, Telegram from the VRS 3<sup>rd</sup> Podrinje Mountain Infantry Brigade to the VRS Main Staff and the VJ General Staff, 24 September 1993; Mladen Mihajlović, T. 3934-3936, 3940-3943.

<sup>2689</sup> Ex. D452, Letter from the Office of the Chief of the VJ General Staff to the Republic of Serbia's MUP, 29 October 1993; Radojica Kadijević, T. 13640-13642.

<sup>2690</sup> Ex. P1247, Correspondence From VRS Main Staff Regarding Loan of Military Equipment From the VJ, undated, p. 1.

<sup>2691</sup> Ex. P1247, Correspondence From VRS Main Staff Regarding Loan of Military Equipment From the VJ, undated, p. 2. See also Dušan Kovačević, T. 12671 (commenting on Ex. P1247: "[A]s far as the Supreme Command meetings are concerned [...], I heard that Perišić was trying to put a stop to this arbitrary waste and in expenditure of army reserves at a local level as well as everywhere else").

951. Perišić instituted disciplinary proceedings against certain VJ commanders who had impermissibly given military supplies directly to the VRS and SVK.<sup>2692</sup> But he issued an order to replenish the VRS and SVK with material supplies,<sup>2693</sup> thereby distinguishing official assistance from the actions of individuals who did not follow the standard procedure.

952. Mladić instructed VRS members to abide by the procurement procedure established by Perišić.<sup>2694</sup> Mladić ordered that no request would be considered or approved without his own signature and that of Perišić or his subordinated command.<sup>2695</sup> Mladić forbade VRS units from directly obtaining supplies from the VJ outside the procurement procedure: “I forbid contacting state and other organs and organisations in the FRY for the purpose of collecting material aid for the needs of the [VRS] without my permission”.<sup>2696</sup> “All authorisations, confirmations and other documents for collecting material aid in the FRY for the needs of the VRS units and institutions, issued without my permission, shall be rendered invalid; they shall be retracted and destroyed”.<sup>2697</sup>

953. The SVK Command issued a similar order:

In spite of orders and many warnings that the security of [material supplies] from the VJ be done in planned fashion and through the SVK [General Staff], there are still instances of commands or individuals directly contacting the VJ [General Staff] or individual units. Direct contacts without authorisation from the SVK [General Staff], give the impression of unorganised and haphazard work, incur unnecessary costs and the requirements of the VJ [General Staff] and the units are not being met. [...] Requests to the VJ for [material supplies] replenishment of the units are to be sent directly to the Corps Command. [The Command] strictly forbid[s] subordinate commands and individuals to directly contact the VJ [General Staff] or the VJ units in order to secure [material supplies].<sup>2698</sup>

954. In accordance with the foregoing procedure, requests for assistance approved by Perišić were processed by the relevant organs of the VJ General Staff.<sup>2699</sup> Perišić instructed VJ General Staff administrators that requests for logistical assistance should only be granted insofar as they did

<sup>2692</sup> Ex. P628, Orders from Perišić Regarding Procurement Procedure, 17 August 1994.

<sup>2693</sup> See Ex. P628, Orders from Perišić Regarding Procurement Procedure, 17 August 1994.

<sup>2694</sup> Ex. P1245, Drina Corps Command Internal Memo, 24 October 1993.

<sup>2695</sup> Ex. P1245, Drina Corps Command Internal Memo, 24 October 1993, p. 2.

<sup>2696</sup> Ex. P1802, Order by VRS Commander, 19 July 1995, p. 2.

<sup>2697</sup> Ex. P1802, Order by VRS Commander, 19 July 1995, p. 2. See also Ex. P1212, Instruction from the VRS Main Staff to the 1<sup>st</sup> Krajina Corps Command Regarding VJ Equipment, 25 April 1994 (stating that: “VJ equipment can only be handed over with the approval of the VJ Chief of General Staff” and the VRS Main Staff “cannot approve takeover of equipment that does not belong to the VRS”).

<sup>2698</sup> Ex. P1124, SVK Order on the Method of Securing Material Supplies from the VJ, 23 December 1993; MP-80, T. 8372-8373 (closed session). See also Ex. P1127, SVK Main Staff Order, 22 December 1993. The RSK’s Supreme Council for Defence determined the material needs of the SVK, MP-80, T. 8590-8591 (closed session) (commenting on Ex. D170, Law on the SVK, 22 April 1993, Article 281).

<sup>2699</sup> Mladen Mihajlović, T. 3886-3890, 3902-3903, 3967-3968 (partly private session).

not endanger the VJ's reserves,<sup>2700</sup> and told Mladić: "I will not give big reserves even at the cost of being replaced [...] I cannot give you what we do not have".<sup>2701</sup>

955. General Mladen Mihajlović, who served as Chief of the Engineering Administration in the VJ General Staff,<sup>2702</sup> testified that, between 1993 and 1995, the VRS Main Staff regularly made requests to the VJ General Staff for equipment and materials.<sup>2703</sup> Perišić or members of his cabinet would review VRS requests and handwrite notes thereon, stating, for example: "Consider this request", "[s]upply this if possible", "[l]ook into this, consider it",<sup>2704</sup> "[n]othing to be given without my approval",<sup>2705</sup> or "[s]ee what can be done".<sup>2706</sup> Perišić would also enter his initials on certain documents.<sup>2707</sup> Upon Perišić's approval, requests were eventually forwarded to the relevant administrators of the VJ General Staff, who assessed the state of supplies and usually did not grant requests in their entirety because of insufficient levels of replenishment in the VJ.<sup>2708</sup> Even though the VJ did not usually grant VRS requests in full, Mihajlović explained that it was common for the VJ to approve the delivery of 10,000 mines at a time, for example.<sup>2709</sup> Đorđe Đukić also testified that Perišić and other officials normally reduced the quantities requested and denied certain requests for weapons and ammunition.<sup>2710</sup>

956. Once VJ General Staff administrators had evaluated whether a request could be fulfilled, they drafted a document for Perišić's "consideration and final decision-making".<sup>2711</sup> Civilian trucks then transported equipment secretly to VRS bases in Banja Luka, Koran, Bileća and Bijeljina after avoiding border crossings manned by UNPROFOR observers.<sup>2712</sup> According to the UNPROFOR military command,<sup>2713</sup> most military supplies from Serbia were funnelled to the VRS and SVK through the Posavina corridor between Tuzla, Northern Bosnia, and Croatia.<sup>2714</sup>

<sup>2700</sup> Ex. D393, Office of the Chief of the VJ General Staff Note, 12 September 1993. *See e.g.* Ex. D488, VJ General Staff Response to the VRS Main Staff, 19 May 1995 (wherein the VJ General Staff refused to supply the VRS Main Staff with flamethrowers because the quantities in the VJ's possession were minimal).

<sup>2701</sup> Ex. D761, Excerpt from Ratko Mladić's Notebook, 21 March 1994, pp 2-3.

<sup>2702</sup> Mladen Mihajlović, T. 3876.

<sup>2703</sup> Mladen Mihajlović, T. 3886-3887.

<sup>2704</sup> Mladen Mihajlović, T. 3877, 3888.

<sup>2705</sup> Ex. P629, Telegram from the VRS 3rd Podrinje Mountain Infantry Brigade to the VRS Main Staff and the VJ General Staff, 24 September 1993, p. 2; Mladen Mihajlović, T. 3935.

<sup>2706</sup> Ex. P2713, Request for Ammunition Forwarded to Perišić, 9 August 1995, p. 1.

<sup>2707</sup> Mladen Mihajlović, T. 3888.

<sup>2708</sup> Mladen Mihajlović, T. 3888-3890, 3914 3967-3968 (partly private session).

<sup>2709</sup> Mladen Mihajlović, T. 3891-3899 (private session), discussing, *inter alia*, Ex. P623, VJ General Staff Engineering Administration Consent for Weapons and Military Equipment Delivery to the VRS, 15 May 1995. *See also* Mladen Mihajlović, T. 3871-3872 (private session).

<sup>2710</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 4.

<sup>2711</sup> Mladen Mihajlović, T. 3889.

<sup>2712</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 4.

<sup>2713</sup> MP-433, T. 2104-2105 (closed session).

<sup>2714</sup> MP-433, T. 2143-2144 (closed session).

957. Milomir Kovačević, a truck driver for the Serbian MUP between 14 January 1994 and 4 August 1995, explained how the VJ surreptitiously delivered military supplies to the VRS.<sup>2715</sup> The VJ and MUP requisitioned civilian trucks, issued travel permits and ordered them to deliver ammunition, mines, explosives, fuel and food to the VRS.<sup>2716</sup> In particular, Kovačević recounted a delivery in March 1994 where the VJ and MUP requisitioned a convoy of 10 to 15 fuel trucks to transport fuel and other goods to RS.<sup>2717</sup> The convoy was escorted by all-terrain vehicles bearing VJ license plates.<sup>2718</sup> Kovačević and the other truck drivers were told to turn off their lights and take a gravel road built through a forest in the area of Kuzmin and Sid, Serbia, heading towards Sremska Raca, Bosnia.<sup>2719</sup> The convoy ultimately reached a large iron gate manned by VJ soldiers.<sup>2720</sup> The military personnel did not go farther but ordered the truck drivers to cross a bridge over the Sava River into Bosnia by driving as fast as possible while keeping their lights off in order to evade European Union border monitors, who were situated three kilometres away from the bridge.<sup>2721</sup> The convoy was met by VRS and RS Police personnel after it crossed the bridge into RS.<sup>2722</sup> Kovačević and his fellow truck drivers were subsequently ordered to deliver their cargo to various locations in RS, including the VRS Kozora barracks in Banja Luka.<sup>2723</sup>

958. Kovačević also conducted deliveries by crossing the FRY-RS border across the Drina River near Zvornik, RS, taking a special road at night where there were no checkpoints.<sup>2724</sup> On several instances, he transported weapons, ammunition, explosives and fuel from Serbia to RS, namely ammunition from the *Prvi Partizan* company in Užice, as well as automatic rifles and pistols from Kragujevac.<sup>2725</sup> Further, while Kovačević was employed by the Partnertrans company in 1994, his truck was requisitioned by the VJ, and he performed deliveries on 10 to 15 occasions pursuant to orders from VJ Major Žarko Slujkić.<sup>2726</sup> While Milomir Kovačević's credibility was called into question when he falsely denied part of his criminal record, namely convictions on two counts of

<sup>2715</sup> Milomir Kovačević, T. 6055-6057, 6065-6074.

<sup>2716</sup> Milomir Kovačević, T. 6056, 6114.

<sup>2717</sup> Milomir Kovačević, T. 6058, 6065-6066.

<sup>2718</sup> Milomir Kovačević, T. 6067-6068.

<sup>2719</sup> Milomir Kovačević, T. 6068-6069.

<sup>2720</sup> *Ibid.*

<sup>2721</sup> Milomir Kovačević, T. 6070-6072, 6137-6138. Civilians owned stalls selling audio-cassettes at the bridge, and police deployed at the border crossing instructed them to play loud music during the trucks' passage in order to cover the engines' noise, Milomir Kovačević, T. 6138-6139.

<sup>2722</sup> Milomir Kovačević, T. 6071-6072.

<sup>2723</sup> Milomir Kovačević, T. 6072.

<sup>2724</sup> Milomir Kovačević, T. 6073-6074.

<sup>2725</sup> Milomir Kovačević, T. 6057, 6074-6077. Kovačević knew that the ammunition from *Prvi Partizan* in Užice was shipped to RS, although he did not know to which entity it was shipped, Milomir Kovačević, 6076-6077.

<sup>2726</sup> Milomir Kovačević, T. 6113-6116.



fraud,<sup>2727</sup> the Trial Chamber finds that Kovačević's account of surreptitious border crossings is amply corroborated by separate testimonial and documentary evidence.

959. A report states that, on 16 June 1995, the VRS made arrangements to take over 22 motor vehicles and 5 trailers from the VJ.<sup>2728</sup> This operation was to be conducted by "co-ordination with the VJ Drina Border Division Detachment for providing support at ferry crossing point".<sup>2729</sup> The border crossing was to "be carried out in the sector of the village of Balatun-Cra Bara" because "[i]llegal crossings are the least frequent there, access roads are good, the Drina River bed has no dunes and the crossing point is easy to close off to prevent the UNPROFOR from coming".<sup>2730</sup>

960. Đukić likewise explained that equipment was secretly transported by civilian trucks to VRS bases in Banja Luka, Koran, Bileća and Bijeljina after avoiding border crossings manned by UNPROFOR observers.<sup>2731</sup> Witness MP-14 elaborated on the surreptitious nature of the transportation system, reporting that after the 1993 Orthodox Christmas, the VRS's Koran Depot sent two trucks to collect military supplies at a VJ depot in Kraljevo in southern Serbia.<sup>2732</sup> The trucks were not stopped but rather waved along at both the Serbian and Bosnian borders because the operation had been formally arranged beforehand.<sup>2733</sup> The procedure changed when the FRY imposed sanctions on RS, as ammunition was henceforth transported "in secret" through a forest road where there were only VJ patrols but no border checkpoint.<sup>2734</sup>

961. International monitors had difficulty controlling the FRY-RS border given its length and the terrain.<sup>2735</sup> The evidentiary record plainly demonstrates that the border was porous and that it was rather easy for FRY and RS authorities to evade international monitors. After going to RS for a meeting with Mladić on 12 August 1994, Perišić himself remarked "[w]e have passed through the blockade incognito".<sup>2736</sup> The surreptitious nature of the logistical assistance process is further discussed below.<sup>2737</sup>

<sup>2727</sup> Milomir Kovačević, T. 6096-6104. See Ex. D92, Letter with a Copy of the Criminal Record of Milomir Kovačević from the MUP, 12 May 2009.

<sup>2728</sup> Ex. P1205, VRS Correspondence on Reception of Logistical Assistance from the VJ, 30 June 1995.

<sup>2729</sup> Ex. P1205, VRS Correspondence on Reception of Logistical Assistance from the VJ, 30 June 1995, p. 1.

<sup>2730</sup> *Ibid.*

<sup>2731</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 4.

<sup>2732</sup> MP-14, T. 3527-3528 (closed session).

<sup>2733</sup> MP-14, T. 3528-3529 (closed session).

<sup>2734</sup> *Ibid.*

<sup>2735</sup> Michael Williams, T. 6411.

<sup>2736</sup> Ex. D344, Excerpt from Ratko Mladić's Notebook, 12 August 1994, p. 1.

<sup>2737</sup> See *infra* section VI.C.2.(c).

#### 4. Supreme Defence Council Decisions on Logistical Assistance

962. Logistical assistance to the VRS was regularly discussed and agreed upon at FRY Supreme Defence Council meetings attended by Perišić, as well as Slobodan Milošević, President of Serbia, Zoran Lilić, President of the FRY, Pavle Bulatović, FRY Defence Minister, Momir Bulatović, President of Montenegro, and other officials.

963. On 11 October 1993, the SDC discussed at length the FRY's difficult financial situation and its negative repercussions on the replenishment of the VJ's reserves and its overall budget.<sup>2738</sup> Perišić briefed the SDC about the situation and acknowledged that the VJ's aid to the VRS and SVK was affecting the VJ's resources: "[O]ur reserves of wartime material which we are now spending [...] are bringing us into a situation where our combat capacities are declining, and we can't even help these two republics. [...] Each day we are using up our reserves but we are not getting a normal inflow of funds; and, secondly, we are helping the armies of the republics of Serbian Krajina".<sup>2739</sup> Yet, Perišić never suggested that the VJ discontinue its assistance to the VRS and SVK despite the problems with the VJ's funding and resources.<sup>2740</sup> Rather, in light of Perišić's advice, the SDC decided to raise the VJ's budget to help replenish its reserves.<sup>2741</sup> The SDC adopted measures to resolve "problems concerning financing and securing funds for the transformation of the [VJ] and charged the Federal Government with securing the funds necessary to finance the [VJ] by the end of the week".<sup>2742</sup>

964. On 10 January 1994, the SDC convened to discuss the VJ's funding.<sup>2743</sup> Perišić cautioned the SDC that "the financing of [RS] and [RSK]" had "not been taken into account at all".<sup>2744</sup> "If the war there were to continue", he noted, "we know that they need to be given certain assistance, beginning with weapons and ordnance and all other materiel".<sup>2745</sup> Perišić stated that 522 million dollars and 307 million dollars were respectively required for the needs of the VRS and SVK.<sup>2746</sup> He subsequently pled: "We cannot abandon Ratko and others—they are asking for extremely expensive ammunition they use to fire on land targets. Why? Because it is very effective [...]".<sup>2747</sup>

<sup>2738</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, pp 1-31.

<sup>2739</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, pp 5-6.

<sup>2740</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, pp 5-8.

<sup>2741</sup> Ex. P709, Stenographic Transcript of the 14<sup>th</sup> Session of the SDC, 11 October 1993, pp 9, 23-32.

<sup>2742</sup> Ex. P770, Minutes from the 14<sup>th</sup> Session of the SDC held on 11 October 1993, pp 1-2.

<sup>2743</sup> Ex. P791, Stenographic Transcript of the 17<sup>th</sup> Session of the SDC, 10 January 1994, p. 1.

<sup>2744</sup> Ex. P791, Stenographic Transcript of the 17<sup>th</sup> Session of the SDC, 10 January 1994, p. 4.

<sup>2745</sup> *Ibid.*

<sup>2746</sup> Ex. P791, Stenographic Transcript of the 17<sup>th</sup> Session of the SDC, 10 January 1994, p. 5.

<sup>2747</sup> Ex. P791, Stenographic Transcript of the 17<sup>th</sup> Session of the SDC, 10 January 1994, p. 56.

965. On 7 February 1994, at the 18<sup>th</sup> Session of the SDC, Perišić warned that the Law on Property (enacted a few months earlier) “does not give the Chief of General Staff any right to misappropriate [*sic*] any resource, especially in terms of assistance and specifically now to Republika Srpska and the Republic of Serbia Krajina. All this now should go through the Ministry and Government”.<sup>2748</sup> Perišić told the SDC that it should either give him the authority to give logistical assistance to the VRS and the SVK *or* allow the Law on Property to regulate the logistical assistance process.<sup>2749</sup> Perišić advised the SDC to give him that authority because “if the two Krajinas [*sic*] are not defended, we will be significantly jeopardised. And they certainly can’t be defended without our assistance in weapons and military equipment”.<sup>2750</sup>

966. Eleven days later, Zoran Lilić directed that, “in accordance with a decision of the Supreme Defence Council”, the VJ “shall supply the 30<sup>th</sup> and 40<sup>th</sup> Personnel Centre[s] with weapons and military equipment”.<sup>2751</sup> Lilić added: “The Chief of the General Staff of the [VJ] is hereby authorised to reconcile the requests of the 30<sup>th</sup> and 40<sup>th</sup> Personnel Centre[s] with the means of the [VJ] and specifically regulate the method and procedures for providing the supplies”.<sup>2752</sup> Starčević confirmed that the SDC thereby ordered Perišić to provide logistical assistance to the VRS and to the SVK, within the limits of the VJ’s available resources.<sup>2753</sup>

967. The Defence cites the transcript of the 18<sup>th</sup> SDC Session for the assertion that “[t]he Army of Yugoslavia did not have the right to dispose or alienate [military] property”.<sup>2754</sup> The Defence does not mention that Perišić then urged the SDC to give the VJ the authority to give property to the VRS and SVK.<sup>2755</sup> The Defence Final Brief also omits any reference to Lilić’s subsequent order giving Perišić that authority following his request. The Trial Chamber finds that the evidence conclusively establishes that the SDC granted Perišić authority over the logistical assistance process.

968. On 16 March 1994, the SDC again discussed the provision of weapons and military equipment to the VRS and SVK.<sup>2756</sup> On 7 June 1994, Perišić personally advised the SDC that logistical assistance to the VRS and SVK was necessary and must continue: “If we stop helping

<sup>2748</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC, 7 February 1994, p. 53.

<sup>2749</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC, 7 February 1994, p. 53. *See* Ex. D114, Law on Property of the FRY, 16 July 1993.

<sup>2750</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC, 7 February 1994, p. 53.

<sup>2751</sup> Ex. P1009, Order of FRY President, 18 February 1994.

<sup>2752</sup> *Ibid.*

<sup>2753</sup> Miodrag Starčević, T. 6857-6858 (private session). *See also* MP-80, T. 8371-8372 (closed session).

<sup>2754</sup> Defence Final Brief, para. 615 (citing Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC, 7 February 1994, pp 53-54).

<sup>2755</sup> Defence Final Brief, para. 615.

<sup>2756</sup> Ex. P710, Minutes of the 19<sup>th</sup> Session of the SDC, 16 March 1994, p. 2.

them in the area of education, financing of educated personnel and material assistance for certain combat operations, they'll start losing territories. [...] This means we have to help them somehow"; and "we can't leave them to their own devices".<sup>2757</sup> Perišić recommended that the SDC approve the grant of ammunition and spare parts to the VRS and SVK.<sup>2758</sup>

969. On 11 July 1994, Perišić and Pavle Bulatović, the FRY Defence Minister, "presented [to the SDC] the reasons for the materiel requests and personnel-related proposals" of RS and RSK.<sup>2759</sup> The SDC went on to decide that "negotiations and the delivery of weapons and military equipment to be used by [RS] and the [RSK] shall only be conducted through the Federal Defence Ministry and the *Yugoslav Army General Staff*".<sup>2760</sup>

970. On 21 July 1994, Perišić equally told the SDC that it was necessary to consider "how much longer we can extend assistance to the [VRS] and [SVK]".<sup>2761</sup> Perišić invited General Blagoje Kovačević of the VJ General Staff<sup>2762</sup> to make a presentation to the SDC on the matter.<sup>2763</sup> Kovačević noted that, the VJ's reserves were partially depleted "[b]y giving large quantities of weapons, ammunitions, and explosives – 3,640 tonnes" to the VRS and SVK.<sup>2764</sup> Perišić later specified that the VJ's stock of infantry rifle ammunition remained at 110% but that its stock of 60mm and 82mm infantry shells was down to 37%.<sup>2765</sup> Perišić did not propose discontinuing military assistance to the VRS and SVK, instead urging the SDC to increase the VJ's budget: "[I]t is not possible to send supplies across the Drina river out of these reserves. *But that leads to the conclusion that a budget of additional funds for this purpose should be considered*".<sup>2766</sup> Slobodan Milošević and Zoran Lilić agreed with Perišić that the VJ's budget should be raised accordingly,<sup>2767</sup> and the SDC went on to reach that conclusion.<sup>2768</sup>

971. Ratko Mladić attended an SDC meeting in Belgrade six months later on 24 January 1995.<sup>2769</sup> Milošević observed: "We are exhausted and have no reserves", and stressed the need to

<sup>2757</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, pp 38-39.

<sup>2758</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 39.

<sup>2759</sup> Ex. P752, Minutes from the 22<sup>nd</sup> Session of the SDC held on 11 July 1994, p. 2.

<sup>2760</sup> *Ibid* (emphasis added).

<sup>2761</sup> Ex. P785, Stenographic Transcript of the 23<sup>rd</sup> Session of the SDC, 21 July 1994, p. 3.

<sup>2762</sup> Blagoje Kovačević was Deputy Chief of the VJ General Staff, Miodrag Starčević, T. 6810 (private session).

<sup>2763</sup> Ex. P785, Stenographic Transcript of the 23<sup>rd</sup> Session of the SDC, 21 July 1994, p. 8.

<sup>2764</sup> Ex. P785, Stenographic Transcript of the 23<sup>rd</sup> Session of the SDC, 21 July 1994, p. 9.

<sup>2765</sup> Ex. P785, Stenographic Transcript of the 23<sup>rd</sup> Session of the SDC, 21 July 1994, p. 15.

<sup>2766</sup> *Ibid* (emphasis added).

<sup>2767</sup> Ex. P785, Stenographic Transcript of the 23<sup>rd</sup> Session of the SDC, 21 July 1994, pp 15-16, 20.

<sup>2768</sup> Ex. P754, Minutes from the 23<sup>rd</sup> Session of the SDC held on 21 July 1994, p. 3. The Minutes also mention that the FRY MOD should additionally use funds "secured by RS and the RSK for their needs" in "materiel and technical equipment", *Ibid*. In practice, the VRS and SVK were generally unable to provide such funds. *See infra* section VI.C.7.

<sup>2769</sup> Ex. P2783, Excerpt from Ratko Mladić's Notebook, 1995, pp 1-4.

end the war soon by reaching a peace agreement with favourable terms.<sup>2770</sup> Notably, Perišić urged the SDC to continue assisting the VRS in the meantime: “Our backbone over there is the army and we have to give them their mainstay and support”.<sup>2771</sup>

972. On 7 June 1995, Perišić again encouraged the SDC to keep on authorising the VJ’s assistance to the VRS and SVK: “Allow us, as has been the case so far, to offer certain help to the [RS] and the [RSK], primarily with spare parts and whatever we can give that will not have an impact on FRY’s combat readiness”.<sup>2772</sup>

973. On 29 July 1995, pursuant to another briefing by Perišić, the SDC decided to “[c]ontinue to extend certain assistance to the Armies of [RS] and the [RSK] within limits that do not jeopardise the combat readiness of the [VJ]”.<sup>2773</sup> The SDC agreed that it was “immediately” necessary to “continue extending material and expert assistance to the VRS and SVK, to the extent of VJ abilities”.<sup>2774</sup> The SDC also decided that it was necessary to “emphasise [in the mass media] the legitimate right of the FRY, as their mother-state, to help the survival of the Serbian people west of the Drina”.<sup>2775</sup> Perišić participated in several other SDC sessions where the provision of assistance to the VRS and SVK was discussed.<sup>2776</sup>

974. In sum, these records conclusively demonstrate that the SDC licensed military assistance to the VRS and SVK, and that it granted to Perišić and the VJ General Staff the authority to administer the provision of this assistance. Perišić also opted to refer certain requests to the SDC. For instance, when the RSK MOD asked for “ammunition and mines and explosives free of charge, as soon as possible”, Perišić appended a handwritten note to the request stating “[n]ot without the VSO”, meaning not without the SDC’s approval.<sup>2777</sup>

<sup>2770</sup> Ex. P2783, Excerpt from Ratko Mladić’s Notebook, 1995, pp 2-3.

<sup>2771</sup> Ex. P2783, Excerpt from Ratko Mladić’s Notebook, 1995, p. 4.

<sup>2772</sup> Ex. P786, Stenographic Transcript of the 37<sup>th</sup> Session of the SDC, 7 June 1995, p. 43.

<sup>2773</sup> Ex. P763, Minutes from the 39<sup>th</sup> Session of the SDC, 29 July 1995, p. 5.

<sup>2774</sup> Ex. P763, Minutes from the 39<sup>th</sup> Session of the SDC, 29 July 1995, p. 4.

<sup>2775</sup> *Ibid.*

<sup>2776</sup> See Ex. P754, Minutes from the 23<sup>rd</sup> Session of the SDC held on 21 July 1994, p. 2; Ex. P749, Minutes from the 36<sup>th</sup> Session of the SDC held on 12 May 1995, p. 5; Ex. P720, Minutes from the 38<sup>th</sup> Session of the SDC held on 27 June 1995, p. 3.

<sup>2777</sup> Ex. P1142, Letter from RSK MOD to Cabinet of the Chief of the VJ General Staff, 6 December 1994; Radojica Kadrijević, T. 13629. See also Ex. P1143, Response from the Cabinet of the Chief of the VJ General Staff to Letter from RSK MOD, 7 December 1994 (Perišić’s position was that “the final decision on this should be made by the [SDC]”).

975. Slobodan Milošević, who took an active role on the SDC along with Perišić, admitted in 2001 that the FRY had given significant military assistance to the VRS and SVK throughout the war, emphasising “we helped our people with all the resources we had at our disposal”.<sup>2778</sup>

976. Several Defence witnesses nonetheless posited that Perišić had a limited role in the logistical assistance system. SVK Commander Mile Novaković notably testified that he met with Perišić around September 1993 in order to update Perišić on the essential elements of the situation in RSK and to request materiel and personnel assistance.<sup>2779</sup> However, Novaković claimed that the political and military authority in the FRY was in Slobodan Milošević’s hands:

[M]y fate did not depend on General Perišić. [...] Everything that had to be done was really not referred to General Perišić. If I were to exaggerate I could say that he wasn’t to be asked about anything. Perhaps that wasn’t quite true, but basically none of the decisions were under his authority or jurisdiction. [...] If the army was supposed to resolve something then he would call his man from his political party, Mr. Lilić, who could possibly have a say in this. He could possibly tell General Perišić something in the sense that some decision would need to be implemented.<sup>2780</sup>

977. The Trial Chamber considers that Novaković’s account of Milošević’s role cannot reasonably lead to the conclusion that Perišić had no meaningful role or authority over the logistical assistance process, as the aforesaid evidence demonstrates that the SDC granted him important authority in this area.

978. An entry in Mladić’s diary concerns a meeting in Belgrade between Mladić, Perišić, Milošević and Novaković on 24 September 1993.<sup>2781</sup> A note in the diary indicates that Perišić spoke about “[f]inancial support” without further clarification.<sup>2782</sup> Novaković claimed that Perišić meant that there was “insufficient material financial support” and that the VJ did not have the means to assist the SVK with material resources.<sup>2783</sup> Novaković further testified that Perišić told him at a prior meeting that, in light of the disastrous state of its reserves, the VJ did not have sufficient reserves to give any ammunition to the SVK and that the VJ did not even have “the basic prerequisites for waging war”.<sup>2784</sup> Similarly, Dušan Kovačević, who concurrently held the titles of RS Minister of Defence, VRS Major General and VJ Major General,<sup>2785</sup> acknowledged that the

<sup>2778</sup> Milošević made these admissions in legal pleadings filed after the Investigating Judge of the Belgrade District Court placed him in detention under charges of having fraudulently used state funds from 1994 to 2000, Ex. P322, Appeal by Slobodan Milošević to the Investigating Judge of the Belgrade District Court, 2 April 2001, pp 1-3.

<sup>2779</sup> Mile Novaković, T. 13113-13115.

<sup>2780</sup> Mile Novaković, T. 13310-13311.

<sup>2781</sup> Ex. D440, Excerpt from Ratko Mladić’s Notebook, 24 September 1993, pp 1-11.

<sup>2782</sup> Ex. D440, Excerpt from Ratko Mladić’s Notebook, 24 September 1993, p. 2.

<sup>2783</sup> Mile Novaković, T. 13136-13137.

<sup>2784</sup> Mile Novaković, T. 13115-13117.

<sup>2785</sup> Dušan Kovačević, T. 12531-12532, 12588, 12730-12732.

VRS received assistance from the VJ and the SDC, although he testified that Perišić would “not give ammunition out of his own reserves” when it threatened the combat readiness of the VJ.<sup>2786</sup>

979. The Trial Chamber does not find Novaković and Kovačević credible in suggesting that Perišić and the VJ assisted the SVK and VRS to such a limited extent. Besides the foregoing evidence on the organisation of a comprehensive logistical assistance process, extensive evidence shows the VJ’s role in providing important quantities of logistical assistance to these armies pursuant to Perišić’s directives.<sup>2787</sup>

980. Radojica Kadjević, a retired VJ General who also served in the FRY MOD and a Defence witness,<sup>2788</sup> equally posited that Perišić had no authority over the provision of military supplies to the VRS and SVK. Kadjević stressed that, “[u]nder the law, the [VJ] and the General Staff had no competencies when it came to exports of military equipment, military goods”.<sup>2789</sup> Upon being questioned about the reference to “reserves” attributed to Perišić in Mladić’s diary (“[w]e will see how much we can set aside for you from our reserves”),<sup>2790</sup> Kadjević stated: “I believe that these are war reserves at the disposal of the [VJ] in its depots, the reserves of materiel in this case”.<sup>2791</sup> Nevertheless, Kadjević insisted that Perišić had simply no authority to supply the VRS and SVK with weaponry from the VJ’s military reserves.<sup>2792</sup>

981. Kadjević likewise affirmed that the FRY Military Technical Institute (VTI) was subordinated to the FRY MOD; and was adamant that “General Perišić could not exercise power over any of the facilities of the VTI”, had no authority over VTI personnel and could not deploy VJ personnel to serve at a VTI facility.<sup>2793</sup> Kadjević was subsequently presented with a series of documents demonstrating that the VJ General Staff approved the VRS’s request for a VTI specialist to provide sniper training to VRS soldiers and their instructors at a VTI facility, as further confirmed by Perišić’s handwritten initials and the sniper instructor’s report.<sup>2794</sup> Kadjević acknowledged that the sniper instructor was “sent to the 30<sup>th</sup> Personnel Centre, which is where

<sup>2786</sup> Dušan Kovačević, T. 12667-12669.

<sup>2787</sup> See *infra* section VI.C-D.

<sup>2788</sup> Between November 1993 and June 1995, Kadjević worked for the FRY MOD as “Chief of the Administration for Investigation, Development, Manufacture of Weaponry and Military Equipment”. He then became Assistant Federal Minister of Defence for Military Economic Activities from June 1995 until April 1999, Radojica Kadjević, T. 13530-13531.

<sup>2789</sup> Radojica Kadjević, T. 13551. See also Radojica Kadjević, T. 13622-13623, 13683.

<sup>2790</sup> Ex. P2928, Excerpt from Ratko Mladić’s Notebook, 7 July 1994, p. 7.

<sup>2791</sup> Radojica Kadjević, T. 13710.

<sup>2792</sup> *Ibid.*

<sup>2793</sup> Radojica Kadjević, T. 13613-13614, 13713-13714.

<sup>2794</sup> Radojica Kadjević, T. 13719-13724; Ex. P2721, Documents Relating to a Request from Ratko Mladić to Perišić Regarding Provision of Sniper Training, May-July 1995 (see Radojica Kadjević, T. 13715-13718, regarding the dates on these documents).

officers were sent within the [VJ] in order to send them to the VRS”.<sup>2795</sup> Kadrijević said that this information came as “a surprise” to him because he was unaware that Perišić could send VTI members to the 30<sup>th</sup> Personnel Centre for the needs of the VRS.<sup>2796</sup>

982. Kadrijević similarly claimed that the FRY Ministry of Foreign Affairs precluded any export of military goods to RS in due compliance with UNSC resolutions.<sup>2797</sup> Asked whether the FRY exported weaponry during the war from 1993 to 1995, Kadrijević responded: “During that period there was [sic] no exports. What was done was probably done illegally, unbeknownst to the Ministry of Defence”.<sup>2798</sup> The Trial Chamber considers that Kadrijević is again unbelievable on this point, as he is contradicted by extensive evidence documenting the role of the VJ General Staff, MOD and other FRY authorities in supplying significant quantities of weaponry to the VRS regardless of UNSC resolutions.<sup>2799</sup>

983. The Trial Chamber considers that Kadrijević’s account was overly legalistic and did not comport with how things operated in practice and how existing laws were superseded by SDC decisions granting Perišić authority over logistical assistance. In fact, Kadrijević testified that he was not privy to SDC decisions giving Perišić authority over logistical assistance.<sup>2800</sup> The Trial Chamber is of the view that he may have been kept in the dark about this matter because it was a state secret, as explained below.

984. Borivoje Jovanić, another Defence witness and former high-ranking FRY MOD official,<sup>2801</sup> equally affirmed that Perišić, as Chief of the VJ General Staff, had no power under the FRY Law on Property to give weaponry from the VJ war reserves to the VRS or SVK.<sup>2802</sup> But Jovanić recognised that the SDC could confer that authority on Perišić, although he also claimed to be unaware of the SDC’s decisions.<sup>2803</sup> When presented with Ex. P1009, the aforementioned SDC decision granting

<sup>2795</sup> Radojica Kadrijević, T. 13720.

<sup>2796</sup> Radojica Kadrijević, T. 13723-13724. Kadrijević was also asked to comment on a document stating that Milorad Motika, Director of *Pretis*, a RS military factory, urged Mladić to ask Perišić for help in granting a request for 1,000 rocket engines needed by *Pretis* by having Perišić forward the request to the FRY’s Assistant Defence Minister. Kadrijević again insisted that Perišić had no authority over this matter: “It is evident that this document does not reflect the regular procedure in Republika Srpska. [...] Normally the director of this company, Motika, would need to approach [RS MOD] and they in turn would need to contact [FRY MOD] and that would be the end of the procedure. If I may add here, General Mladić and General Perišić appear here as, to put to crudely, couriers who were supposed to be a contact for something that is neither within their jurisdiction nor could they deal with it and resolve it”, Radojica Kadrijević, T. 13622-13623; Ex. P604, Request Addressed to VRS Main Staff by Milorad Motika, 10 May 1994.

<sup>2797</sup> Radojica Kadrijević, T. 13552.

<sup>2798</sup> Radojica Kadrijević, T. 13547-13548.

<sup>2799</sup> See *infra* section VI.C.

<sup>2800</sup> Radojica Kadrijević, T. 13708-13709.

<sup>2801</sup> Borivoje Jovanić, T. 11400-11401.

<sup>2802</sup> Borivoje Jovanić, T. 11468. See Ex. D114, Law on Property of the FRY, 16 July 1993.

<sup>2803</sup> Borivoje Jovanić, T. 11468-11469 (private session). See Ex. D114, Law on Property of the FRY, 16 July 1993.



Perišić authority to provide military supplies to the VRS and SVK, Jovanić stated that this matter was “new” to him.<sup>2804</sup>

985. Several documents indicate that weaponry was delivered to the VRS pursuant to the orders of the MOD of the “Republic of Serbia”, not of the FRY,<sup>2805</sup> although these documents precede Perišić’s appointment as Chief of the VJ General Staff on 26 August 1993.<sup>2806</sup> The Trial Chamber does not find these documents probative of the Defence’s claim that the FRY MOD had primacy over Perišić in matters of logistical assistance.<sup>2807</sup> The record is clear that Perišić oversaw the process.

986. Finally, the Trial Chamber notes that, in the course of his interview with the Prosecution, Perišić was pointed to page 38 of the record of the 21<sup>st</sup> SDC Session, where he urged the SDC to continue sending logistical assistance to the VRS and SVK, as discussed above.<sup>2808</sup> The Prosecution told Perišić: “If you look at that, the content and that whole context, there can be no doubt that it was precisely the VSO [*i.e.*, SDC] and the [VJ] who provided the assistance to the RS and RSK”.<sup>2809</sup> Perišić’s response reads as follows: “Well, I do not deny that at all. I have never denied that, but I do challenge the veracity of two things: first, that the Army of [RS] and of the [RSK] was a paramilitary; and second, I challenge the assertion of this separation not having continued with my arrival and not having been brought, in some elements, to an end”.<sup>2810</sup> In sum, Perišić conceded the interviewer’s point that it was the SDC and VJ who provided assistance to RS and RSK, and instead focused on challenging distinct allegations.

987. Conversely, on a subsequent day of his interview, Perišić denied that the VJ had provided ammunition to the VRS pursuant to his orders and said that, at most, any ammunition came from the FRY MOD:

Q: During your term as the Chief of the General Staff, did you ever authorise or were you ever aware of your army providing ammunition to the VRS? [...]

A: As far as I can recall, I, never authorised nor ordered anything directly, and I believe there was no reason for that, because most of the weapon and military equipment factories were located in the territory of Bosnia [...].

<sup>2804</sup> Borivoje Jovanić, T. 11468-11469 (private session) (commenting on Ex. P1009, Order of FRY President, 18 February 1994).

<sup>2805</sup> Ex. D449, Record of Receipt of Ammunition by the Drina Corps, 25 July 1993; Ex. D450, Record of Receipt of Ammunition by the Drina Corps, 6 August 1993; Ex. D451, Record of Receipt of Ammunition by the Drina Corps, 23 August 1993. *See* Radojica Kadijević, T. 13575-13580, 13585-13857.

<sup>2806</sup> Ex. P196, Decree of the President of the FRY, 26 August 1993.

<sup>2807</sup> Defence Final Brief, paras 137-139, 613-615.

<sup>2808</sup> Ex. P810, Transcript of Interview with Perišić, 23 January 2004, p. 39. *See* Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 38.

<sup>2809</sup> Ex. P810, Transcript of Interview with Perišić, 23 January 2004, p. 39.

<sup>2810</sup> *Ibid.*

Q: Would it be correct to say that if there were any large amounts of ammunition that were sent from the [VJ] to the VRS you should have been aware of that?

A: Firstly, I do not see any reason for doing that at all, and secondly, if there were any such shipments, they went through the Ministry, *i.e.* through the work organisation /factory/ – Ministry of Defence – the Republika Srpska Army line, rather than the work organisation – the General Staff – the Republika Sprska Army line [sic].<sup>2811</sup>

988. The Trial Chamber finds that Perišić was not truthful in denying his role and claiming that the FRY MOD was responsible for any logistical assistance provided to the VRS. The aforesaid evidence conclusively establishes that Perišić oversaw the provision of ammunition and military equipment to the VRS and SVK; and persuaded the SDC to give him the legal authority to do so.

##### 5. Cooperation with the FRY Ministry of Defence and Influence Over FRY Military Factories

989. The FRY's military factories, known as "special purpose industries", were state-owned and legally subordinated to the FRY MOD.<sup>2812</sup> The day-to-day operations of the special purpose industries were officially managed by the FRY MOD, not by Perišić and the VJ General Staff.<sup>2813</sup>

990. The Defence's position is that the VJ operated under the authority of the MOD at the production level.<sup>2814</sup> In its view, "[t]he VJ could not directly obtain products from [special purpose industries] without prior approval from the MOD" and "only the FRY MOD could contract with the [special purpose industries] for the production of material for the needs of VJ".<sup>2815</sup> It submits that, because the FRY legally owned all military property, the VJ could only "use the property the MOD allocated to the VJ for usage" and the VJ "did not have the right to dispose or alienate the property".<sup>2816</sup>

991. While the MOD technically owned military material,<sup>2817</sup> the Trial Chamber recalls that, in practice, the VJ was not subordinated to the FRY MOD in logistical assistance matters. The SDC granted Perišić ample authority in this area, allowing him to provide material to the VRS and SVK. Furthermore, the forthcoming evidence demonstrates that the VJ General Staff's relationship with the FRY MOD was essentially one of cooperation, not subordination, insofar as aid to the VRS and SVK was concerned.

<sup>2811</sup> Ex. P815, Transcript of Interview with Perišić, 25 January 2004, pp 21-22.

<sup>2812</sup> Jugoslav Kodžopeljić, T. 12311-12312, 12320-12321, 12332; Borivoje Jovanić, T. 11397; MP-80, T. 8354 (closed session); Miodrag Starčević, T. 6896-6897; Radojica Kadijević, T. 13543. However, the VJ itself operated two major technical repair and weapon overhaul facilities ("institutes") at Kragujevac and Čačak, Jugoslav Kodžopeljić, T. 12312-12313.

<sup>2813</sup> Mladen Mihajlović, T. 3966-3967; Dušan Kovačević, T. 12675; Miodrag Starčević, T. 6896-6897; Borivoje Jovanić, T. 11396-11397, 11399; Radojica Kadijević, T. 13543.

<sup>2814</sup> Defence Final Brief, para. 613.

<sup>2815</sup> Defence Final Brief, para. 139.

<sup>2816</sup> Defence Final Brief, paras 614-615.

<sup>2817</sup> See *e.g.* Ex. D114, Law on Property of the FRY, 16 July 1993, Article 39.

992. The SDC held that “the Federal Defence Ministry *and the Yugoslav Army General Staff*” would be in charge of “negotiations and the delivery of weapons and military equipment” for the VRS and SVK.<sup>2818</sup> The SDC decided that “negotiations and the delivery of weapons and military equipment to be used by Republika Srpska and the Republic of the Serbian Krajina shall only be conducted through the Federal Defence Ministry *and the Yugoslav Army General Staff*, and *not by dealing directly with producers in the special-purpose industry*”.<sup>2819</sup> Notably, after the RS and RSK Defence Ministers proposed to contract directly with the FRY special purpose industries to obtain weaponry and military equipment, Slobodan Milošević mocked their proposal and emphasised: “They can’t! They can only do it with the federal ministry *and the General Staff*”.<sup>2820</sup>

993. A Defence exhibit indicates that Pavle Bulatović, the FRY Minister of Defence, authored and signed another document reiterating the SDC’s conclusions and specifying that “[a]greements and deliveries of NVO /weapons and military equipment/ for the needs of RS and RSK are to be made exclusively through the SMO [*i.e.*, FRY MOD] *and GŠ /General Staff/ of the VJ*”.<sup>2821</sup> Bulatović, like Perišić, participated in numerous other SDC meetings where military assistance to the VRS and SVK was agreed upon,<sup>2822</sup> further demonstrating that Bulatović and the MOD cooperated with Perišić and the VJ in the logistical assistance process.

994. General Mihajlović, a senior VJ General Staff official,<sup>2823</sup> affirmed that the VJ “could not directly take anything from the military industry of Yugoslavia without the approval and consent of the Ministry of Defence” and stated that the MOD “had organisation units that were responsible for supply and procurement. They were the main organ through which supplies were executed”.<sup>2824</sup> Radojica Kadijević explained that a particular request for weaponry from the SVK was preceded by an application from the RSK MOD to the FRY MOD.<sup>2825</sup> But because the FRY MOD “did not have at its disposal data about the possibilities and capacities of the [VJ] [...], it addressed the office of

<sup>2818</sup> Ex. P752, Minutes from the 22<sup>nd</sup> Session of the SDC held on 11 July 1994, p. 2 (emphasis added).

<sup>2819</sup> *Ibid* (emphasis added).

<sup>2820</sup> Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, pp 39-41.

<sup>2821</sup> Ex. D453, Plan for Implementation of the Conclusions of the 21<sup>st</sup> Session of the SDC, 29 July 1994, p. 2 (emphasis added). The SMO is the FRY MOD, Miodrag Starčević, T. 6947.

<sup>2822</sup> See Ex. P710, Minutes from the 19<sup>th</sup> Session of the SDC, 16 March 1994; Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994; Ex. P752, Minutes from the 22<sup>nd</sup> Session of the SDC, 11 July 1994, p. 2 (emphasis added); Ex. P763, Minutes from the 39<sup>th</sup> Session of the SDC, 29 July 1995; Ex. P785, Stenographic Transcript of the 23<sup>rd</sup> Session of the SDC, 21 July 1994; Ex. P754, Minutes from the 23<sup>rd</sup> Session of the SDC, 21 July 1994; Ex. P749, Minutes from the 36<sup>th</sup> Session of the SDC, 12 May 1995; Ex. P720, Minutes from the 38<sup>th</sup> Session of the SDC, 27 June 1995. Pavle Bulatović, as the FRY Minister of Defence, was not officially a member of the SDC, although he partook in its work when matters of exceptional importance in the domain of his ministry were discussed, Stamenko Nikolić, T. 10441.

<sup>2823</sup> Mladen Mihajlović, T. 3876-3877.

<sup>2824</sup> Mladen Mihajlović, T. 3966-3967.

<sup>2825</sup> Radojica Kadijević, T. 13629-13630 (commenting on Ex. P1142, Letter from RSK MOD to Cabinet of the Chief of the VJ General Staff, 6 December 1994).

the Chief of Staff, requesting the Chief of Staff's opinion with [sic] this regard".<sup>2826</sup> Perišić then decided whether the request was approved or denied, and informed the FRY MOD, which proceeded to prepare a document for the SDC.<sup>2827</sup>

995. In practice, the FRY MOD could actually seek authorisation *from Perišić* before giving property to the VRS and SVK, rather than the other way around, as the Defence insists was the case.<sup>2828</sup> According to a Defence exhibit, the FRY MOD asked Perišić's office to "take a position" in regard to a request from the RSK MOD "for a delivery of ammunition and mines without payment", and "if it should make a positive decision, prepare an appropriate decision to be signed by the Federal Minister of Defence".<sup>2829</sup> Another document shows that the FRY MOD itself asked Perišić for permission to sell Motorola radios to the VRS, which Perišić granted.<sup>2830</sup> The director of *Krušik*—a weapons factory in Valjevo, Serbia, officially subordinated to the FRY MOD<sup>2831</sup>—also required *Perišić's* approval before allowing the sale of 40 FAB-275 air-bombs to the VRS.<sup>2832</sup>

996. Similarly, an excerpt from Mladić's diary indicates that he and Perišić participated in a meeting with the leadership of *Krušik* and that Perišić reportedly said: "We have come to see what we can do to help the RS Army and how", "what we can offer as assistance" and "what can be delivered with and without payment".<sup>2833</sup> Vladimir Rodić, Perišić's driver, confirmed that he drove

<sup>2826</sup> *Ibid.*

<sup>2827</sup> Radojica Kadijević, T. 13630 (commenting on Ex. P1142, Letter from RSK MOD to Cabinet of the Chief of the VJ General Staff, 6 December 1994).

<sup>2828</sup> Defence Final Brief, paras 137-139, 614-615.

<sup>2829</sup> Ex. D173, Request from FRY MOD to Office of the Chief of the VJ General Staff, 6 December 1994.

<sup>2830</sup> Ex. P2727, Series of Documents Relating to a Request from the VRS to Purchase Motorola Radios. Siniša Borović, Perišić's Chef de Cabinet from November 1994 to December 1996, confirmed that the FRY MOD sent this request (to sell Motorola radios to the VRS) to Perišić's office. *See* Siniša Borović, T. 13992 (commenting on Ex. P2727, Series of Documents Relating to a Request from the VRS to Purchase Motorola Radios, He further testified that Perišić's office thereafter forwarded it to the Sector for Communications, Information Technologies, and Electronic Operations of the VJ, asking for its position. The Chief of the Sector agreed to purchase "a number of Motorolas", Siniša Borović, T. 13992-13993, and Ex. P2727 demonstrates that Perišić's office wrote the FRY MOD, stating that he agreed that the VRS purchase this equipment. *See* Ex. P2727, Series of Documents Relating to a Request from the VRS to Purchase Motorola Radios, Doc ID 0647-6774.

<sup>2831</sup> Borivoje Jovanić, T. 11479-11480.

<sup>2832</sup> Ex. P2427, Request from Mladić to Perišić to Allow Purchase of Air Bombs, 2 September 1995. Mladić wrote Perišić: "Since the Director of Military Production at the *Krušik* RO/Company/ requires approval from you, please allow us to purchase the above quantity of FABs", *ibid.* (The acronym "FAB" refers to air bombs. Ex. P505, Transcript of Nikola Tošović Deposition Hearing, 13 December 2008, T. 62.) Miodrag Starčević, who was Chief of the Yugoslav Legislative Administration between 1992 and 1994, understood Ex. P2427 to mean that the approval of the VJ General Staff was required for special purpose industries to sell weapons to the VRS, Miodrag Starčević, T. 5425-5427, 7054-7059 (partially private session). On the other hand, Borivoje Jovanić, who headed the FRY MOD's finance and budget administration unit, affirmed that the *Krušik* director should have asked the FRY Minister of Defence for authorisation, rather than Perišić, as only the FRY MOD could authorise sales, Borivoje Jovanić, T. 11400-11401, 11480-11481. However, Jovanić's position is contradicted by Ex. P2727.

<sup>2833</sup> Ex. P2928, Excerpt from Ratko Mladić's Diary, 7 July 1994, pp 1, 7. *Krušik's* director stated that he was "thrilled to be able to meet the 2 greatest Generals", and that his factory had the annual capacity to build hundreds of thousands of shells and rockets, as well as other ammunition, Ex. P2928, Excerpt from Ratko Mladić's Diary, 7 July 1994, pp 1-7.

Perišić to *Krušik* for a meeting with Mladić, Radojica Kadjević and General Sava Pustinja.<sup>2834</sup> Kadjević, then a senior FRY MOD official, equally confirmed the occurrence of this meeting (and mentioned that he also joined Mladić in his visit of the *Crvena Zastava* weapons plant in 1994).<sup>2835</sup>

997. A plan for implementing the SDC's conclusions suggests that the VJ was exempted from having to obtain the MOD's approval: "No direct agreements and deliveries of NVO can be made and special purposes industrial enterprises cannot deliver or sell NVO to anyone without the approval of the SMO [*i.e.*, FRY MOD], with the exception of planned deliveries for the VJ".<sup>2836</sup>

998. The cooperation between the VJ and FRY MOD in the logistical assistance process is further evidenced by a contract whereby the FRY MOD agreed to loan 42,720 kilograms of TNT to the RS MOD.<sup>2837</sup> While the VJ apparently was not involved in the preparation of the contract, it indicates that the VJ participated in the delivery of the TNT, which itself was stored at the VJ's 608<sup>th</sup> Logistics Base.<sup>2838</sup> A copy of the contract was delivered to the 608<sup>th</sup> Logistics Base and the VJ's Lunjevica depot, near Gornji Milanovac, Serbia.<sup>2839</sup>

999. It must be noted that, as opposed to the weaponry delivered from the VJ's reserves, a portion of the weaponry delivered to the VRS and SVK was purchased from FRY special purpose industries,<sup>2840</sup> which were managed by the FRY MOD.<sup>2841</sup> Even though Perišić had a measure of influence over the special purpose industries, it cannot be ascertained whether Perišić or the FRY MOD specifically authorised these particular deliveries emanating directly from the special purpose industries.

1000. At any rate, the VRS obtained much fewer supplies from the special purpose industries than from the VJ. Mladić reported to the RS National Assembly that, with regard to weaponry used in battle from the beginning of the war until 15 April 1995, merely 9.11% of the total infantry ammunition was "imported, *i.e.* bought" whereas 47.2% came from VJ "aid", only 0.26% of

<sup>2834</sup> Vladimir Rodić, T. 14213-14214, 14234.

<sup>2835</sup> Radojica Kadjević, T. 13688-13689, 13701-13704.

<sup>2836</sup> Ex. D453, Plan for Implementation of the Conclusions of the 21<sup>st</sup> Session of the SDC, 29 July 1994, p. 2 (emphasis added).

<sup>2837</sup> Ex. P1201, Cover Letter and Contract Regarding Loan of TNT by VJ to VRS, 17 February 1994. The Sector for Military Activity is identified as Military Post 8634-4 in the contract, and was a FRY MOD organ, Radojica Kadjević, T. 13603, 13606. The contract was registered with the Procurement Administration, another FRY MOD organ, identified as Military Post 1089-30, Radojica Kadjević, T. 13601-13602.

<sup>2838</sup> Ex. P1201, Cover Letter and Contract Regarding Loan of TNT by VJ to VRS, 17 February 1994, p. 2; Radojica Kadjević, T. 13604, 13606.

<sup>2839</sup> Ex. P1201, Cover Letter and Contract Regarding Loan of TNT by VJ to VRS, 17 February 1994, p. 1; Radojica Kadjević, T. 13605-13606.

<sup>2840</sup> See MP-14, T. 3617-3618.

<sup>2841</sup> See *supra* para. 989.

expanded artillery ammunition was imported/bought whereas 34.4% came from VJ “aid”, and 4.9% of anti-aircraft ammunition was imported/bought whereas 52.4% came from VJ “aid”.<sup>2842</sup>

1001. Mladić did not specify from which country the imported weaponry came, although the only reasonable conclusion presented by the evidentiary record is that it was imported from the FRY’s special purpose industries because the VRS did not obtain significant quantities of weapons from other countries.<sup>2843</sup> Mladić’s report therefore demonstrates that a far greater proportion of the VRS’s ammunition came from VJ “aid” than from the special purpose industries, as otherwise demonstrated by the vast majority of the evidence adduced on this issue. For example, a VRS annual report shows that the VJ provided the majority of the VRS’s infantry ammunition in 1994, as well as approximately a fourth of its shells, whereas the rest came “from the RS government”.<sup>2844</sup> That report does not identify FRY special purpose industries or FRY MOD as a source of supply.

#### 6. State Secrecy of Logistical Assistance

1002. The logistical assistance system was not transparent. Slobodan Milošević admitted that logistical assistance “was not made public because it was a *state secret*, as was everything else that was provided for the Army of Republika Srpska”.<sup>2845</sup> The Supreme Defence Council’s decisions on the matter were classified as “military secret”.<sup>2846</sup> Momčilo Perišić’s orders were similarly classified as “military secret”, “strictly confidential” or both.<sup>2847</sup> Military aid to the VRS was delivered surreptitiously.<sup>2848</sup> Perišić expressed concern on 7 February 1994 that, as a result of the new Law on Property, leaks of information regarding military aid to the VRS and SVK may increase, especially if civilians oversee these matters.<sup>2849</sup> The subsequent SDC order reaffirming

<sup>2842</sup> Ex. P312, Transcript of Tape Recording of the 50<sup>th</sup> Session of the RS Assembly, 15 April 1995, p. 51.

<sup>2843</sup> See *infra* section VI.C.9.(a).

<sup>2844</sup> Ex. P1214, Annual Financial Statement of the Plan of Tasks and Financing of the VRS for 1994, 17 February 1995, pp 19-21.

<sup>2845</sup> Ex. P322, Appeal by Slobodan Milošević to the Investigating Judge of the Belgrade District Court, 2 April 2001, p. 2 (emphasis added). A contract between the FRY and RS for the loan of 42,720 kilograms of TNT states that the provisions of the contract “are considered to be military secrets”, Ex. P1201, Cover Letter and Contract Regarding Loan of TNT by VJ to VRS, 17 February 1994, p. 3.

<sup>2846</sup> See Ex. P1009, Order of FRY President, 18 February 1994; Ex. P710, Minutes of the 19<sup>th</sup> Session of the SDC, 16 March 1994; Ex. D453, Plan for Implementation of the Conclusions of the 21<sup>st</sup> Session of the SDC, 29 July 1994.

<sup>2847</sup> See Ex. P878, Tasks set by Perišić at the Supreme Staff Command meeting of 27 September 1993, 27 October 1993; Ex. P1258, Order of Momčilo Perišić, December 1993; Ex. P1626, Official Note from the Meeting of the VJ Supreme Command Staff, 27 September 1993; Ex. P571, Matériel List, 23 November 1993; Ex. P575, Matériel List, 23 November 1993; Ex. P581, Matériel List, 22 November 1993. The translated form features an erroneous date at its top right, although the original indicates the receipt date as 22 November 1993, see MP-14, T. 3577. See also Ex. P582, Matériel List, 24 November 1993; Ex. P628, Orders from Perišić Regarding Procurement Procedure, 17 August 1994.

<sup>2848</sup> See *supra* section VI.B.3; *infra* section VI.C.2.(c).

<sup>2849</sup> Ex. P782, Stenographic Transcript of 18<sup>th</sup> Session of the SDC, 7 February 1994, p. 53. See Ex. D114, Law on Property of the FRY, 16 July 1993.

Perišić's authority over logistical assistance was labelled "military secret" and "strictly confidential".<sup>2850</sup>

1003. FRY authorities officially denied that logistical assistance occurred, as illustrated by the words of Ambassador Dragomir Đokić, who told the UNSC that the FRY "is constantly subjected to provocations and absurd allegations that it is supplying the Bosnian Serbs with military materiel".<sup>2851</sup>

1004. Part of the reason for this state secrecy was that the FRY's support to the VRS and SVK was met with a measure of opprobrium by the international community. The UNSC issued multiple resolutions urging a cease-fire and a halt of all hostilities.<sup>2852</sup> It demanded that the FRY cease its involvement in the military conflict in Bosnia,<sup>2853</sup> condemned the FRY's failure to do so and subjected it to sanctions.<sup>2854</sup> The UNSC further called upon the FRY to maintain the effective closure of the border with BiH in respect of all goods with exception to food, medical supplies and clothing for essential humanitarian needs.<sup>2855</sup> In addition, as early as spring 1992, the UNSC discussed the sniping and shelling of Sarajevo civilians on a nearly daily basis<sup>2856</sup> and strongly condemned these actions.<sup>2857</sup>

1005. The evidence unequivocally shows that Perišić sought to provide assistance to the VRS and SVK regardless of the UNSC's resolutions. Perišić specifically addressed the matter when he met with a delegation of leaders of the Serbian Orthodox Church, including Patriarch Pavle, Amfilohije Radović and Bishop Irinej of Niš. The record of the meeting indicates that the delegation asked Perišić about the conflict in Bosnia. "In his responses, General Perišić said that *despite the unfair sanctions imposed by the international community* the FRY has been assisting RS and the RSK in every respect (humanitarian, *military*, etc.) in order for the Serbian people to successfully defend

<sup>2850</sup> Ex. P1009, Order of FRY President, 18 February 1994.

<sup>2851</sup> Ex. P2484, Record of the 3522<sup>nd</sup> Meeting of the UNSC, 21 April 1995, p. 3.

<sup>2852</sup> See Ex. P201, UNSC Resolution 752, 15 May 1992; Ex. P202, UNSC Resolution 757, 30 May 1992; Ex. P2434, UNSC Resolution 758 (8 June 1992) 760 (18 June 1992) and 761 (29 June 1992); Ex. P2435, UNSC Resolution 764, 13 July 1992; Ex. P471, UNSC Resolution 781, 9 October 1992; Ex. P208, UNSC Resolution 819, 16 April 1993; Ex. P2472, UNSC Resolution 836, 4 June 1993.

<sup>2853</sup> See Ex. P201, UNSC Resolution 752, 15 May 1992, p. 2; Ex. P202, UNSC Resolution 757, 30 May 1992, p. 1; Ex. P2473, UNSC Resolution 838, 10 June 1993, p. 1.

<sup>2854</sup> See Ex. P202, UNSC Resolution 757, 30 May 1992, pp 1-5; Ex. P2473, UNSC Resolution 838, 10 June 1993, p. 2; Ex. P2434, UNSC Resolution 760, 18 June 1992.

<sup>2855</sup> See Ex. D25, UNSC Resolution 943, 23 September 1994, at p. 2; Ex. D26, UNSC Resolution 970, 21 January 1995, pp 1-2; Ex. D27, UNSC Resolution 988, 21 April 1995, pp 1, 4; Ex. D28, UNSC Resolution 1003, 5 July 1995, p. 1.

<sup>2856</sup> Muhamed Sacirbey, T. 7179-7181.

<sup>2857</sup> Ex. P2475, Note of the President of the UNSC, 7 January 1994.

itself [sic] and survive on its [sic] territory”.<sup>2858</sup> “Perišić promised to do everything in his power to continue helping the Serbian people”.<sup>2859</sup>

1006. The FRY’s provision of logistical assistance to the VRS and SVK was widely known despite its official state secrecy. UNPROFOR officials were aware that the VRS received significant military support from the FRY.<sup>2860</sup> General Branko Gajić, a senior VJ official and Defence witness, himself acknowledged that the FRY sent large quantities of military aid to RS and RSK,<sup>2861</sup> stating that the military assistance was a matter of “common knowledge [as] the public was aware of it, there were articles in the press about it, and as far as I can remember I think it was discussed by the delegates in parliament [...] it was well known even to military and political representatives accredited in Belgrade”.<sup>2862</sup>

## 7. Conclusion

1007. The foregoing evidence conclusively demonstrates that Momčilo Perišić, as Chief of the VJ General Staff, oversaw the administration of logistical assistance for the military needs of the VRS and SVK. In fact, Perišić convinced the SDC to give him the legal authority to do so in an effort to comply with the FRY’s Law on Property.<sup>2863</sup> That being noted, the Trial Chamber considers that the question of greater relevance is not what the FRY’s domestic legislation technically stipulated, but the *actual* role that Perišić played in the logistical assistance process.

1008. Perišić’s role went beyond administering the logistical assistance process. Perišić participated in the SDC’s deliberations on logistical assistance to the VRS and SVK, and recurrently encouraged the SDC to maintain this assistance, thereby helping craft the FRY’s policy to aid these armies.

1009. Insofar as Perišić opposed certain requests conflicting with the VJ’s own needs, that fact does not signify that Perišić generally opposed logistical assistance or sought to keep it to a minimum. Rather, Perišić’s role in coordinating the process, his statements before the SDC, and his approval of extensive assistance to the VRS and SVK<sup>2864</sup> demonstrate that he was intent on assisting these armies. Perišić’s remarks before the VJ Collegium at the end of the war are equally instructive: “I could have retained the material reserves, all the material reserves to retain them here

<sup>2858</sup> Ex. P2743, Memo from Office of Chief of VJ General Staff, 11 August 1995, p. 2 (emphasis added).

<sup>2859</sup> Ex. P2743, Memo from Office of Chief of VJ General Staff, 11 August 1995, p. 4.

<sup>2860</sup> Michael Williams, T. 6464; Ex. P2372, Transcript of Michael Williams from *Prosecutor v. S. Milošević*, 24 June 2003, T. 22893-22894; MP-433, T. 2104-2105, 2142-2144 (closed session).

<sup>2861</sup> Branko Gajić, T. 10987-10988.

<sup>2862</sup> Branko Gajić, T. 10991-10992.

<sup>2863</sup> Ex. P782, Stenographic Transcript of 18<sup>th</sup> Session of the SDC, 7 February 1994, p. 53; Ex. P1009, Order of FRY President, 18 February 1994.



to the maximum, to give as little as possible material reserves away [...]. We gave all we had always and I am not sorry for that, as we defended the people as much as we could”.<sup>2865</sup>

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<sup>2864</sup> See *infra* section VI.C-D.

<sup>2865</sup> Ex. P2203, Transcript of the Collegium of the Chief of the VJ General Staff, 6 November 1995, Doc ID 0618-6912, p. 3. See Miodrag Starčević, T. 6787-6788. An undated document from “the logistics sector”, presumably of the VJ, states that all the VRS and SVK requests had been met that far, although further provisions would only be possible from the “surplus of unpromising equipment”. The document adds that the VJ does not have the financial capacity to provide weaponry produced by FRY factories to the VRS and SVK. The latter “should” make arrangements through the FRY MOD so that weaponry can be delivered from the “production sector, with the funding plan ensured”. The document adds that the VJ “can still provide ammunition for 7.9 calibre weapons from its own surpluses”, whereas it can no longer give fuel because “its own reserves have dropped below the allowed minimum”. It goes on to reach the following conclusion: “The VJ has depleted its capabilities, reserves and resources of logistical support and the only logistical support it can provide is insufficient for the actual needs of the VRS and VRSK [sic]”, Ex. P2175, Documents Regarding Meetings between SVK, VRS and VJ Chiefs of Staff, fall 1993, Doc ID 0630-5913 (undated), pp 1, 3. See Mile Novaković, T. 13189-13191. The Trial Chamber finds this document relevant, but considers its weight undermined by the fact that it is undated and its author is unnamed. In any event, the Trial Chamber finds that extensive evidence shows that the VJ continued to assist the VRS and SVK despite problems with its reserves.

## C. Logistical and Technical Assistance to the VRS

### 1. Submissions of the Parties

1010. The Prosecution submits that, as approved by Momčilo Perišić pursuant to the authority granted by the SDC, the VJ provided considerable quantities of weaponry and military equipment, as well as training and technical assistance, to the VRS, which heavily depended on this aid because of its limited reserves and resources.<sup>2866</sup> It posits that the VRS did not have to pay for the material it received from the VJ.<sup>2867</sup> The Prosecution alleges that logistical assistance continued notwithstanding the FRY's official imposition of sanctions on RS in August 1994.<sup>2868</sup>

1011. The Defence recognises that Perišić and the VJ gave assistance to the VRS pursuant to the SDC's orders,<sup>2869</sup> although it submits that the VRS had substantial reserves of ammunition at its disposal, as well as other important sources of logistical assistance besides the VJ.<sup>2870</sup> The Defence argues that it is not possible to accurately estimate what supplies the VRS respectively obtained from the VJ and other sources, and that the Trial Chamber would engage in speculation by reaching a conclusion in this regard.<sup>2871</sup> In its eyes, "we don't know" what supplies came from where.<sup>2872</sup> The Defence further "adopts" the "conclusions" made by Ivan Đokić,<sup>2873</sup> who appeared as an expert witness on the VJ's logistical assistance and generally posited that the latter was limited in scope. Đokić's testimony and report are discussed separately in a subsequent section.<sup>2874</sup>

### 2. Delivery of Weaponry and Military Equipment to the VRS

#### (a) Analysis of Military Material Delivery Forms

1012. The Trial Chamber was presented with numerous material delivery forms allegedly reflecting the VJ's provision of weaponry to the VRS following Perišić's orders.

1013. The Defence raises multiple challenges to the material delivery forms, namely that various forms were not properly filled in, that they are unintelligible, that they do not adequately identify

<sup>2866</sup> See generally Prosecution Final Brief, paras 35, 45-81, 240, 253, 257-301.

<sup>2867</sup> Prosecution Final Brief, para. 260, citing MP-14, T. 3617 (closed session).

<sup>2868</sup> Prosecution Final Brief, paras 283-286.

<sup>2869</sup> Defence Final Brief, paras 607, 780.

<sup>2870</sup> Defence Final Brief, paras 611, 616, 707, 723-741.

<sup>2871</sup> Defence Final Brief, paras 647, 742-743.

<sup>2872</sup> Defence Closing Arguments, T. 14784.

<sup>2873</sup> Defence Final Brief, para. 805, citing Ex. D507, Expert Report of Ivan Đokić, paras 334-344.

<sup>2874</sup> See *infra* section VI.E.

the sender and recipient, that they do not establish whether listed items were actually delivered, and that they do not reflect Perišić's approval.<sup>2875</sup>

1014. Defence witness Jugoslav Kodžopeljić generally called in question the reliability of the material delivery forms, and the Defence relies to a significant extent on Kodžopeljić's testimony in challenging this evidence.<sup>2876</sup> Kodžopeljić was the VJ General Staff's Chief of Technical Administration from 1993 to 1999, and was responsible for matters of logistical support, as well as the oversight of the VJ General Staff's Kragujevac and Čačak overhaul facilities.<sup>2877</sup> Kodžopeljić testified that the VJ had specific bookkeeping regulations governing all weapon deliveries to any military unit, and that no equipment could be delivered if not properly recorded in a material list, as doing so was important to the VJ's budgetary and inventory planning.<sup>2878</sup>

1015. Conversely, Prosecution witness MP-14 analysed and authenticated various material delivery forms introduced into evidence by the Prosecution. MP-14 notably testified that the VRS regularly received military equipment from the VJ during the war,<sup>2879</sup> and that delivery forms were completed as part of standard procedure.<sup>2880</sup> The VJ and VRS used the same types of delivery forms, also described as "material lists".<sup>2881</sup> MP-14 was familiar with the issue<sup>2882</sup> in light of his work at a VRS base,<sup>2883</sup> where he was subordinated to the Assistant Commander for Logistics of the VRS Main Staff.<sup>2884</sup>

1016. The Trial Chamber has closely analysed the material delivery forms, as well as Kodžopeljić and MP-14's respective testimonies, and will now describe its findings.

1017. At the outset, the Trial Chamber notes both the box for "unit of measure" and the box for "quantity" are filled in on certain forms. For instance, with regard to 155mm M-1 bullets under Ex. P568, the "unit of measure" reads "60" and the "amount" reads "100".<sup>2885</sup> Witness MP-14

<sup>2875</sup> Defence Final Brief, paras 648-677.

<sup>2876</sup> Defence Final Brief, paras 648-677.

<sup>2877</sup> Jugoslav Kodžopeljić, T. 12256, 12261, 12264, 12312-12314, 12383, 12414-12415, 12494. *See also* Siniša Borović testifying that the Kragujevac and Čačak facilities were subordinated to the VJ, Siniša Borović, T. 13887-13888.

<sup>2878</sup> Jugoslav Kodžopeljić, T. 12279-12284.

<sup>2879</sup> MP-14, T. 3525 (closed session).

<sup>2880</sup> MP-14, T. 3527-3529 (closed session), 3693-3694 (closed session).

<sup>2881</sup> MP-14, T. 3527 (closed session).

<sup>2882</sup> In addition to examining various delivery forms discussed below, MP-14 was asked to examine Ex. P568 in detail as an example for all delivery forms. *See* MP-14, T. 3529-3545 (closed session); Ex. P568, Matériel List, 28 June 1993. The Trial Chamber notes that Ex. P568 concerned a delivery that occurred before Perišić's appointment as VJ Chief of General Staff. However, its format is identical to that of numerous other forms that followed Perišić's appointment and were tendered into evidence. *See also* Ex. P196, Decree of the President of the FRY Appointing Momčilo Perišić as VJ Chief of General Staff, 26 August 1993.

<sup>2883</sup> MP-14, T. 3506-3507 (closed session).

<sup>2884</sup> MP-14, T. 3680 (closed session).

<sup>2885</sup> Ex. P568, Matériel List, 28 June 1993, p. 2.

explained that the number “60” in the unit of measure form was a “code” number and not an actual quantity of items.<sup>2886</sup> That code is found in multiple other forms as well.<sup>2887</sup> As explained by MP-14, the relevant box is the one indicating the quantity of items, which was 100 M-1 bullets of 155mm calibre under Ex. P568.<sup>2888</sup>

1018. Kodžopeljić challenged the intelligibility of several material forms. The Trial Chamber does not find him credible in his claim that Ex. P574 is so unclear that “practically one cannot know in any way whatsoever what particular item has been delivered or issued”, notably because the nomenclature number on the form was incorrect.<sup>2889</sup> The form refers on its face to 5,400 rounds for 7.9mm M75 sniper-rifles and 60,016 universal 7.62mm rounds.<sup>2890</sup> That fact was confirmed by MP-14.<sup>2891</sup> Kodžopeljić’s position was that property was tracked in an automated database relying on 12-digit nomenclature numbers without which “nobody would know what we were talking about”.<sup>2892</sup> The Trial Chamber finds Kodžopeljić unpersuasive. Even though an improper nomenclature number might pose problems for tracking information in that database, it does not render a material list unintelligible if one can read on its face the names of the items provided.<sup>2893</sup>

1019. With regard to Ex. P572, Kodžopeljić recognised that the form indicates the sender as the VJ General Staff and the origin as Ladjevci, Serbia, although he claimed that this information was “insufficient” for purposes of VJ administrative and financial planning, and posited that “the handwriting is the same as that of the person who has received the item”.<sup>2894</sup> The Trial Chamber considers that whether a form has sufficient information for purposes of VJ administrative and financial planning is irrelevant and does not render a delivery form incomprehensible on its face. Assuming Kodžopeljić was correct in stating that the person who filled out the form was the recipient, that fact alone would not render the form unreliable. MP-14’s testimony suggests that this fact would be unremarkable, as it was possible for the recipient to complete details in the paperwork omitted by the sender.<sup>2895</sup>

<sup>2886</sup> MP-14, T. 3540-3541 (closed session).

<sup>2887</sup> See e.g. Ex. P576, Matériel List, 23 November 1993; Ex. P572, Matériel List, 22 November 1993; Ex. P579, Matériel List, 24 November 1993; Ex. P571, Matériel List, 23 November 1993; Ex. P575, Matériel List, 23 November 1993; Ex. P578, Matériel List, 23 November 1993; Ex. P582, Matériel List, 24 November 1993; Ex. P593, Matériel List, 20 December 1993.

<sup>2888</sup> MP-14, T. 3539-3541 (closed session); Ex. P568, Matériel List, 28 June 1993.

<sup>2889</sup> Jugoslav Kodžopeljić, T. 12361; Ex. P574, Matériel List, 22 November 1993.

<sup>2890</sup> Ex. P574, Matériel List, 22 November 1993.

<sup>2891</sup> MP-14, T. 3564-3565.

<sup>2892</sup> Jugoslav Kodžopeljić, T. 12361, 12363.

<sup>2893</sup> See also Jugoslav Kodžopeljić, T. 12362, 12364, 12368, 12372 (repeating argument about nomenclature numbers being incorrect on various forms that are otherwise intelligible).

<sup>2894</sup> Jugoslav Kodžopeljić, T. 12353-12357; Ex. P572, Matériel List, 22 November 1993 (translated document erroneously reads 1,936 rockets instead of 50). See also MP-14, T. 3558-3559.

<sup>2895</sup> MP-14, T. 3699.

1020. Kodžopeljić also contended that Ex. P576 is unintelligible. The form reads that the sender was the VJ General Staff, that the material originated from Bogutovačka Banja, and that the recipient was the Drina Corps Command at Military Post 7111.<sup>2896</sup> It refers to 296 self-propelled gun rounds and 192 howitzer rounds, and bears a receipt stamp for the VRS' base at Han Pijesak, RS.<sup>2897</sup> Upon examining the form, Kodžopeljić nevertheless opined that “[i]t’s impossible to know what this is about”.<sup>2898</sup> By contrast, MP-14 was able to easily understand the form.<sup>2899</sup>

1021. Kodžopeljić took a similar approach in examining Ex. P582. Because the box labelled “name and address of sender” was left blank on the form, Kodžopeljić claimed that “it is unknown who it was – or, rather, from which depot the material was sent”.<sup>2900</sup> In fact, that information is readily ascertainable by reading the box indicating the military post number of the sender and its location, namely 7518 and Paracin, Serbia, as well as the box indicating the bookkeeping sender in Niš, Serbia.<sup>2901</sup> Moreover, the form specifies that the delivery was conducted pursuant to an order by Perišić himself: “Decision NGŠ VJ / Yugoslav Army Chief of General Staff / Str. pov. br. / strictly confidential number / 6748-2, of 17.11.1993”.<sup>2902</sup> The mention of Perišić’s decision was inserted in the box labelled “name and address of the receiver” in Ex. P582, as well as Exs P579 and P581.<sup>2903</sup>

1022. With regard to Exs P579 and P581, the Trial Chamber notes that both forms bear the signature of an individual named Đorđe Cetković, whose ID was issued by the Zvornik Secretariat of Interior.<sup>2904</sup> Given that the same person signed for the receipt of a form that was explicitly addressed to the VRS,<sup>2905</sup> the Trial Chamber considers it established that the receiver was the VRS.

<sup>2896</sup> Ex. P576, Matériel List, 23 November 1993 (the translated document misses the quantity of 192 howitzer rounds present in the original); MP-14, T. 3570-3571. The military post number for the Drina Corps was 7111, MP-14, T. 3534 (closed session).

<sup>2897</sup> Ex. P576, Matériel List, 23 November 1993; MP-14, T. 3570-3571. Han Pijesak was a location in RS where a VRS base as well as the VRS Main Staff headquarters were situated, Milenko Jevđević, T. 11067; MP-14, T. 3548.

<sup>2898</sup> Yugoslav Kodžopeljić, T. 12364.

<sup>2899</sup> MP-14, T. 3570-3571, commenting on Ex. P576, Matériel List, 23 November 1993.

<sup>2900</sup> Yugoslav Kodžopeljić, T. 12382; Ex. P582, Matériel List, 24 November 1993 (the English translation of the form features an erroneous date at its top right, although the original BCS indicates the receipt date as 19 November 1993).

<sup>2901</sup> Ex. P582, Matériel List, 24 November 1993; MP-14, T. 3560, 3579-3582. *See also* Ex. P573, Matériel List, 23 November 1993.

<sup>2902</sup> Ex. P582, Matériel List, 24 November 1993. *See also* Yugoslav Kodžopeljić, T. 12376, 12380.

<sup>2903</sup> Ex. P582, Matériel List, 24 November 1993; Ex. P579, Matériel List, 22 November 1993; Ex. P581, Matériel List, 22 November 1993 (the English translation of the form features an erroneous date at its top right, T. 12377).

<sup>2904</sup> Ex. P579, Matériel List, 22 November 1993 (the English version of the form records the recipient as illegible, upon examination of the original, however, the Trial Chamber is satisfied that the recipient is the same as in Ex. P581); Ex. P581, Matériel List, 22 November 1993; MP-14, T. 3574-3575, 3577. The parties agreed that a signature is present on the original document but not the copy examined in court. *See* Yugoslav Kodžopeljić, T. 12481.

<sup>2905</sup> Ex. P575, Matériel List, 23 November 1993; MP-14, T. 3570, 3574-3575, 3577.

Kodžopeljić's assertion that "there is no indication of the recipient" is therefore misleading.<sup>2906</sup> The Trial Chamber further notes that Ex. P571, a delivery sheet where the VRS is explicitly labelled as the recipient, refers to a similar "confidential" order from Perišić, numbered "674-81" and dated "12.11.93".<sup>2907</sup>

1023. Thus, the Trial Chamber considers that Kodžopeljić's answers evince a lack of objectivity by depicting material delivery forms as far less intelligible than they actually are.

1024. The Trial Chamber's analysis of the material delivery forms indicates that multiple forms feature several boxes left unfilled. For instance, on certain forms, the box for "quantity requested-approved" is filled in but the box for "quantity issued-received" is left blank,<sup>2908</sup> or vice versa.<sup>2909</sup> In this regard, the Trial Chamber considers that the relevant box is the box that has been filled in. Similarly, the box for "category and year of production" has been left blank on numerous forms.<sup>2910</sup> The Trial Chamber does not find such omissions material so long as the form identifies the items supplied, their quantity, the sender, the recipient, and the date of conveyance or receipt.

1025. The Trial Chamber notes that various forms are not stamped by both the sender and the recipient; and some also feature boxes that have not been filled in with information indicating the identity of the VJ member who approved the delivery, although a separate control signature may have been appended.<sup>2911</sup> Relying on Kodžopeljić, the Defence claims that it is consequently impossible to determine if these deliveries occurred and were legitimate.<sup>2912</sup> The Trial Chamber considers that a sending stamp or signature raises a presumption of delivery. The FRY-RS border was porous and the VJ could easily send large quantities of weaponry to the VRS with minimal risk that any weapons would be intercepted by international border monitors.<sup>2913</sup> The Trial Chamber considers as well that a receipt stamp or signature by VRS or RS authorities establishes that equipment was sent in the first place.

<sup>2906</sup> Jugoslav Kodžopeljić, T. 12376-12377, commenting on Ex. P581, Matériel List, 22 November 1993.

<sup>2907</sup> Ex. P571, Matériel List, 23 November 1993. *See also* Ex. P575, Matériel List, 23 November 1993. The same analysis is applicable to Ex. P579, Matériel List, 22 November 1993. Ex. P579 also refers to the sender as "Military Post 98080-06-302", which MP-14 explained was the number military post in Lunjevića, Serbia, MP-14, T. 3573-3574 (closed session).

<sup>2908</sup> *See e.g.* Ex. P577, Matériel List, 23 November 1993; MP-14, T. 3571-3572.

<sup>2909</sup> *See e.g.* Ex. P595 Matériel List, 1 October 1995.

<sup>2910</sup> *See e.g.* Ex. P576, Matériel List, 23 November 1993; Ex. P580, Matériel List, 24 November 1993; Ex. P584, Matériel List, 25 November 1993.

<sup>2911</sup> *See e.g.* Ex. P575, Matériel List, 23 November 1993 (signature in sender box labelled "manager", sending stamp for Military Post 5292 Kraljevo, Serbia, and receipt signature); Ex. P576, Matériel List, 23 November 1993 (signature in sender's "checked by" box but no information in sender boxes "ordered by" or "manager" and no sender stamp; receipt signature and stamp for VRS Military Post 7111, Han Pijesak, RS).

<sup>2912</sup> Defence Final Brief, paras 661-673.

<sup>2913</sup> *See supra* section VI.B.3. *See also infra* section VI.C.2.(c).

1026. The Defence contends that the presence of blank boxes on the material forms otherwise renders the forms unreliable.<sup>2914</sup> The Trial Chamber finds that the mere fact that some boxes were left blank on a delivery form featuring multiple boxes does not raise a reasonable doubt as to the reliability of the forms. The Trial Chamber notes that MP-14 acknowledged that most material delivery forms were “incomplete”, but credibly explained that, in times of war, it was “practically impossible” to follow all rules and regulations regarding paperwork, partly because there was insufficient manpower to do so.<sup>2915</sup> MP-14 further explained that the presence of certain blank boxes on a form did not render transactions unfeasible or signify that they were unauthorised.<sup>2916</sup>

1027. Overall, the Defence endorses Kodžopeljić’s testimony.<sup>2917</sup> However, for all of the aforesaid reasons, the Trial Chamber finds Kodžopeljić to have minimal credibility. The Chamber additionally notes that Kodžopeljić was not credible in claiming that he essentially did not know the VJ’s 30<sup>th</sup> PC’s functions or why the 30<sup>th</sup> PC was listed as the recipient on certain material delivery lists, despite having been the Chief of Technical Administration for the VJ General Staff’s logistics sector from 1993 until 1999.<sup>2918</sup> It is well established that some weaponry was technically sent to the VRS and SVK via the Personnel Centres.<sup>2919</sup> Kodžopeljić also was not credible in his claim that all VJ supplies to the VRS were paid for.<sup>2920</sup>

1028. The Trial Chamber is mindful, however, that a number of supplies were delivered by VJ members to the VRS outside of the official procurement procedure devised by Perišić. As previously discussed,<sup>2921</sup> Perišić ordered in December 1993 that all requests for logistical assistance be processed through the VJ General Staff with his approval.<sup>2922</sup> Perišić decided to institute disciplinary proceedings against certain VJ commanders who gave military supplies directly to the VRS and SVK without authorisation.<sup>2923</sup> The Trial Chamber also recalls that Mladić ordered all VRS units to involve the VRS Main Staff in the official procurement of material from the VJ,

<sup>2914</sup> Defence Final Brief, paras 661-673.

<sup>2915</sup> MP-14, T. 3697-3699 (closed session).

<sup>2916</sup> MP-14, T. 3707-3708.

<sup>2917</sup> Defence Final Brief, paras 648-677.

<sup>2918</sup> Jugoslav Kodžopeljić, T. 12314, 12473-12477.

<sup>2919</sup> See Ex. P1009, Order of FRY President, 18 February 1994 (ordering that the VJ General Staff provide certain military supplies to the VRS and SVK via the 30<sup>th</sup> and 40<sup>th</sup> PC); Ex. P628, Orders from Momčilo Perišić Regarding Procurement Procedure, 17 August 1994; Stamenko Nikolić, T. 10630-10632; Petar Škrbić, T. 11944; Miodrag Simić, T. 10192.

<sup>2920</sup> Jugoslav Kodžopeljić, T. 12503, 12516-12518. See *infra* section VI.C.7.

<sup>2921</sup> See *supra* section VI.B.3.

<sup>2922</sup> Ex. P1258, VJ General Staff Order, 27 December 1993.

<sup>2923</sup> Ex. P628, Orders from Momčilo Perišić Regarding Procurement Procedure, 17 August 1994.

pursuant to an agreement reached with Perišić.<sup>2924</sup> Mladić stressed that violators would face disciplinary action.<sup>2925</sup>

1029. In light of the occurrence of unauthorised logistical assistance, the Trial Chamber has decided to rely on material delivery forms and reports that either mention Perišić's approval or indicate that supplies were sent by the VJ General Staff itself, as opposed to merely the VJ generally. The Trial Chamber has also decided to rely on documents indicating the involvement of the VRS Main Staff in transactions with the VJ.

1030. For these reasons, the Trial Chamber has chosen not to rely on a material list simply stipulating that a VJ military facility in Paracin, Serbia, delivered to the Drina Corps Command a certain quantity of ammunition.<sup>2926</sup> The same problem applies to a form stating that the "VJ" delivered ammunition to the Drina Corps Command.<sup>2927</sup> Other documents also merely indicate that the Drina Corps Command received weaponry from "Batajnica",<sup>2928</sup> as well as from "Kragujevac" without specifying that Perišić, the VJ General Staff or VRS Main Staff were involved.<sup>2929</sup> This information is also lacking in a report stating that, between 1 January and 31 December 1995, the VRS received various weapons from the VJ.<sup>2930</sup>

1031. Finally, the Defence notably argues that, aside from delivery forms, "[r]equests for assistance do not prove that assistance was given".<sup>2931</sup> The Trial Chamber agrees with the Defence that mere requests cannot be assumed to have been fulfilled and cannot be counted as logistical assistance.<sup>2932</sup> That being noted, certain simple requests are otherwise instructive insofar as they

<sup>2924</sup> Ex. P1245, Drina Corps Command Internal Memo, 24 October 1993; Ex. P1802, Order by VRS Commander, 19 July 1995.

<sup>2925</sup> *Ibid.*

<sup>2926</sup> Ex. P573, Matériel List, 20 November 1993; MP-14, T. 3560 (partly private session).

<sup>2927</sup> Ex. P592, Matériel List, 16 December 1993; MP-14, T. 3605.

<sup>2928</sup> Ex. P580, Matériel List, 24 November 1993; MP-14, T. 3575-3576.

<sup>2929</sup> Ex. P586, Matériel List, 21 December 1993. Ex. P586 is different from Ex. P593, where the sender is identified as the "Kragujevac TRZ / Maintenance and Repairs Depot", an institution that was under VJ General Staff oversight, Ex. P593, Matériel List, 20 December 1993; Jugoslav Kodžopeljčić, T. 12313-12314, 12414-12415, 12494; Siniša Borović, T. 13888. *See also* MP-14, T. 3607-3609, 3670-3671.

<sup>2930</sup> Ex. P1222, Analysis of Technical Support for the VRS in 1995, p. 6. The Trial Chamber likewise did not take into account Ex. P596, as this receipt sheet is undated and therefore may fall outside the indictment period. *See* Ex. P596, Matériel List, undated.

<sup>2931</sup> Defence Final Brief, para. 638.

<sup>2932</sup> *See e.g.* Ex. P979, Ilidža Infantry Brigade Command Request for Ammunition, 1 July 1995 (mere request for ammunition); Ex. P2711, Request from Ratko Mladić to VJ General Staff, 10 October 1995 (mere request for ammunition and fuel); Ex. P2712, Request from Ratko Mladić to VJ General Staff, 12 October 1995 (mere request for modification of launching device for rockets); Ex. P2767, Request from Mladić to the Chief of VJ General Staff for Special Artillery Ammunition, 3 January 1994, 3 January 1994 (mere request for ammunition).



contain statements from VRS personnel commenting on their low state of ammunition reserves or their dependence on VJ assistance.<sup>2933</sup>

1032. The Defence goes further in claiming that exhibits reflecting approved requests cannot be considered as proof of assistance unless separate evidence indicates that the assistance was later delivered.<sup>2934</sup> The Trial Chamber disagrees and finds that such exhibits indicating an agreement to deliver supplies or provide training cannot be treated as mere requests, but rather provide a reasonable basis to conclude that the delivery or training was later effectuated.<sup>2935</sup> These exhibits must be analysed in the context of the evidence adduced at trial. The Trial Chamber recalls that a comprehensive logistical assistance system was in place and that the FRY-RS border was porous, thereby enabling logistical assistance to be regularly delivered without difficulty.<sup>2936</sup>

1033. The Trial Chamber has considered the Defence's remaining challenges on this issue and finds them unsubstantiated. In particular, the Defence contends that the Trial Chamber cannot consider Ex. P571 and P575 because they respectively concern mines and grenades sent to the VRS by the Mrsać-Kraljevo facility, which was "not under the authority of the VJ GŠ", Perišić therefore

<sup>2933</sup> See e.g. Ex. P1260, SRK Request to the VJ General Staff Regarding Ammunition and Weapons, 3 May 1995 (mentioning shortage of ammunition and urgent need for assistance); Ex. P2739, Request from Ratko Mladić to VJ General Staff, 3 September 1995, p. 2 (same); Ex. P2724, Request from Ratko Mladić to Momčilo Perišić for Ammunition and Rockets, 14 June 1995 (emphasising need for assistance).

<sup>2934</sup> Defence Final Brief, para. 641, citing, *inter alia*, Ex. P621, Approval by the Engineering Administration of the Land Forces of the VJ General Staff Addressed to Military Post 9808, 11 March 1994; P622, Approval by the Engineering Administration of the Land Forces of the VJ General Staff Addressed to Military Post 9808, 16 May 1995; P623, Approval by the Engineering Administration of the Land Forces of the VJ General Staff Addressed to Military Post 9808, 15 May 1995.

<sup>2935</sup> See e.g. Ex. P621, Approval by the Engineering Administration of the Land Forces of the VJ General Staff Addressed to Military Post 9808, 11 March 1994 (VJ General Staff Engineering Administration "approves" rocket devices for VRS); Ex. P622, Approval by the Engineering Administration of the Land Forces of the VJ General Staff Addressed to Military Post 9808, 16 May 1995 (same); Ex. P623, Approval by the Engineering Administration of the Land Forces of the VJ General Staff Addressed to Military Post 9808, 15 May 1995 (pursuant to Perišić's approval to "handover" mines and explosives); Ex. P876, Order of the VJ General Staff on the Issuance of Materiel, 10 May 1994 (VJ General Staff orders fuel for the "needs" of VRS General Milan Gvero); Ex. P877, Command of 608th Logistical Base of GS VJ Decision Signed by Perišić, 28 December 1993 (Perišić order to "cede" several hundred thousand rounds of ammunition, *inter alia*); Ex. P1252, Correspondence Between VJ General Staff and VRS Command Regarding Ammunition Supply, 7 October 1995 (VJ General Staff made rockets available for pick-up by VRS); Ex. P1255, VJ General Staff Internal Memo Regarding VRS Request for Assistance, 28 June 1995 (Perišić order to deliver rocket engines); Ex. P1257, Order From Military Post 2082 to Military Post 1092 Regarding Arms Supply to the 30<sup>th</sup> PC, 27 February 1995 (fuses for howitzer cannons approved by Perišić); Ex. P1261, VJ Order Regarding Supply of Ammunition to VRS, 10 December 1993 (12,000 rounds approved by Perišić); Ex. P1262, VJ Order Regarding Supply of Ammunition to VRS, 17 December 1993 (over a million rounds approved by Perišić); Ex. P2719, Documents Relating to a Request from Ratko Mladić to Perišić Regarding Provision of Sniper Training, May-July 1995 (Perišić's Cabinet approved request that VJ officers continue training VRS staff); Ex. P2721, Documents Relating to a Request from Ratko Mladić to Perišić Regarding Provision of Sniper Training, May-July 1995 (VJ General Staff approved request for sniper training, see Radojica Kadjević, T. 13719-13722).

<sup>2936</sup> See *supra* para. 961. See also *infra* section VI.C.2.(c).

having “no responsibility for this material”.<sup>2937</sup> Yet, both exhibits explicitly state that the transaction was conducted pursuant to an order by Perišić.<sup>2938</sup>

(b) Deliveries Conducted Between August 1993 and August 1994

1034. The Trial Chamber will now consider the material delivery forms and other evidence that it finds reliable and relevant to the allegations against Momčilo Perišić based on the analytical method described above. The Trial Chamber will initially describe evidence of deliveries conducted between 26 August 1993, when Momčilo Perišić became Chief of VJ General Staff, and August 1994, when the FRY officially imposed sanctions on RS.

1035. On 12 November 1993, the VJ General Staff ordered that the VRS be supplied with over 800,000 bullets, 2,000 “rifle grenades” and 50 rocket launchers, all “free of charge”.<sup>2939</sup> The Drina Corps was the intended recipient of 800,000 bullets from this order.<sup>2940</sup> Evidence further indicates that, on 22 November 1993, the VJ General Staff delivered to the Drina Corps 30,000 rounds for Browning machine guns and 50 anti-artillery rockets,<sup>2941</sup> as well as 5,400 rounds for 7.9mm M75 sniper-rifles and 60,016 universal 7.62mm rounds.<sup>2942</sup>

1036. Numerous deliveries were effectuated on 22 and 23 November 1993. Three were conducted pursuant to “strictly confidential” orders from Perišić.<sup>2943</sup> One order concerned 30,000 rounds for Browning firearms and 50 rockets,<sup>2944</sup> while the others concerned 60 mines<sup>2945</sup> and 2,000 grenades.<sup>2946</sup> In addition, three separate delivery sheets indicate that the VJ General Staff sent the Drina Corps 300 mortar shells,<sup>2947</sup> 800,100 rounds,<sup>2948</sup> 296 self-propelled gun rounds and 192 howitzer rounds.<sup>2949</sup>

<sup>2937</sup> Defence Final Brief, paras 718-719, citing Ex. P571, Matériel List, 23 November 1993; Ex. P575, Matériel List, 23 November 1993).

<sup>2938</sup> Ex. P571, Matériel List, 23 November 1993; Ex. P575, Matériel List, 23 November 1993.

<sup>2939</sup> Ex. P1269, VJ Order Regarding Supply of Ammunition to VRS, 19 November 1993.

<sup>2940</sup> Ex. P1512, Authorisation by the Drina Corps Command, 22 November 1993 (the Drina Corps were authorised to pick up 800,000 7.9mm bullets in accordance with a VJ General Staff decision featuring the same order number as Ex. P1269).

<sup>2941</sup> Ex. P572, Matériel List, 22 November 1993 (The translated document reads 1,936 rockets, although the original reads 50); MP-14, T. 3558-3559.

<sup>2942</sup> Ex. P574, Matériel List, 22 November 1993; MP-14, T. 3563-3565. Another form bearing the same date refers to identical quantities of the same kind of ammunition, and refers to a “strictly confidential” order from Perišić, and contains a sending stamp by the VJ’s base at Lunjevica. See Ex. P579, Matériel List, 22 November 1993 (the translated form features an erroneous date at its top right; boxes 40-41 of the translated form should also be blank as in the original); Jugoslav Kodžopeljić, T. 12369; MP-14, T. 3573-3574.

<sup>2943</sup> Ex. P571, Matériel List, 23 November 1993; Ex. P575, Matériel List, 23 November 1993; Ex. P581, Matériel List, 22 November 1993.

<sup>2944</sup> Ex. P581, Matériel List, 22 November 1993 (the translated form features an erroneous date at its top right, although the original indicates the receipt date as 22 November 1993). See MP-14, T. 3578.

<sup>2945</sup> Ex. P571, Matériel List, 23 November 1993; MP-14, T. 3556-3557.

<sup>2946</sup> Ex. P575, Matériel List, 23 November 1993; MP-14, T. 3568-3570.

<sup>2947</sup> Ex. P577, Matériel List, 23 November 1993; MP-14, T. 3571-3572.

1037. On 24 November 1993, another “strictly confidential” order from Perišić led the Drina Corps to obtain 150,000 machine gun heavy rounds, 500 rockets, 960 hand grenades and 30 “modified” hand grenades.<sup>2950</sup> On 25 November 1993, the VJ General Staff delivered to the Drina Corps over two million bullets and 1,727 mortar shells,<sup>2951</sup> a large delivery requiring multiple truckloads,<sup>2952</sup> as well as a separate delivery of 3,269 mortar rounds and 148 shells.<sup>2953</sup>

1038. Multiple deliveries were likewise conducted in December 1993. Perišić personally issued a “strictly confidential” order stating: “For the needs of re-supply, the following weapons and military equipment shall be ceded to VRS”.<sup>2954</sup> The order went on to list: 721,250 rounds, 2,000 76mm cases, 27,130 grenades, 900 shells, 50 mines, 100 rockets, 85 Osa rocket launchers, 300 charges for rocket launchers, 3,000 basic charges and 350 fuses.<sup>2955</sup> Perišić also coordinated the VRS’s procurement of 1,525,600 rounds and 20,192 rockets,<sup>2956</sup> as well as other orders of 12,000 bullets,<sup>2957</sup> 70,200 rounds and 600kg of hydraulic oil.<sup>2958</sup> Pursuant to an order from the VJ General Staff, the VRS received another 61,460 bullets.<sup>2959</sup> The VRS additionally received at least 170 artillery rounds for D20 Howitzers and 130mm guns from the Kragujevac Technical Overhaul Company (TRZ),<sup>2960</sup> whose function was to repair and refill ammunition.<sup>2961</sup> The Defence claims that the Kragujevac TRZ was not under VJ General Staff oversight,<sup>2962</sup> an incorrect assertion contradicted by two of its own witnesses.<sup>2963</sup> An order from Perišić ceding military supplies to the

<sup>2948</sup> Ex. P578, Matériel List, 23 November 1993; MP-14, T. 3572-3573, 3709.

<sup>2949</sup> Ex. P576, Matériel List, 23 November 1993 (the translated document misses the quantity of 192 howitzer rounds present in the original); MP-14, T. 3570-3571.

<sup>2950</sup> Ex. P582, Matériel List, 24 November 1993; MP-14, T. 3579-3580.

<sup>2951</sup> Ex. P583, Matériel List, 25 November 1993; MP-14, T. 3588-3589.

<sup>2952</sup> MP-14, T. 3588.

<sup>2953</sup> Ex. P584, Matériel List, 25 November 1993; MP-14, T. 3589.

<sup>2954</sup> Ex. P877, Command of 608<sup>th</sup> Logistical Base of the VJ General Staff Decision Signed by Perišić, 28 December 1993.

<sup>2955</sup> *Ibid.*

<sup>2956</sup> Ex. P1262, VJ Order Regarding Supply of Ammunition to VRS, 17 December 1993.

<sup>2957</sup> Ex. P1261, VJ Order Regarding Supply of Ammunition to VRS, 10 December 1993.

<sup>2958</sup> Ex. P1263, VJ Order Regarding Supply of Ammunition to VRS, 23 December 1993.

<sup>2959</sup> Ex. P591, Matériel List, 14 December 1993; MP-14, T. 3602-3604.

<sup>2960</sup> Ex. P593, Matériel List, 20 December 1993. *See* MP-14, T. 3607-3609, 3670-3671.

<sup>2961</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 41-43; Ex. P509, Procurement Plan (Survey of Incoming Material By Partner), 1 January – 31 December 1994, p. 1; MP-14 (closed session), T. 3534; Jugoslav Kodžopeljić, T. 12416.

<sup>2962</sup> Defence Final Brief, para. 718.

<sup>2963</sup> Jugoslav Kodžopeljić, T. 12313-12314, 12494; Siniša Borović, T. 13888. Immediately after asserting that the “TRZ Kragujevac” was not under VJ GŠ authority, the Defence’s Brief incongruously states that the Kragujevac “repair institute” was under Kodžopeljić’s VJ General Staff administration, Defence Final Brief, paras 718, 720. The Trial Chamber notes that the Kragujevac “TRZ”, “institute” or “depot” is the same “repair” or “overhaul” entity. *See* Jugoslav Kodžopeljić, T. 12406-12408, 12415-12416; MP-14, T. 3534, 3719 (closed session); Siniša Borović, T. 13888; Petar Škrbić, T. 11943; Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 41-43; Ex. P593, Matériel List, 20 December 1993.

VRS confirms that Perišić evidently had the authority to issue orders to the Kragujevac TRZ: “The responsibility for transfers of supplies is assigned to Technical Repair Facility Kragujevac”.<sup>2964</sup>

1039. Mladić and Perišić discussed logistical assistance matters on 27 December 1993 in Belgrade.<sup>2965</sup> Mladić wrote in his diary that a request for supplies of steel, fuses and TNT had been “resolved”.<sup>2966</sup>

1040. On 13 January 1994, the Krajina Corps officially notified the VRS Main Staff that the VJ had supplied it with 428 semi-automatic rifles, 286 automatic rifles, 101 rifles, 33 sub-machine guns, 6 sniper rifles, 10 semi-automatic pistols, 4 pistols, 18 rocket launchers, 1 howitzer, 15 telephones and 2 radio sets.<sup>2967</sup> Given that Mladić ordered that VRS units who engaged in unauthorised procurement would face disciplinary measures, in accordance with Perišić’s directives;<sup>2968</sup> the only reasonable inference is that the Krajina Corps was referring to officially-approved assistance when it informed the VRS Main Staff that it had obtained these supplies from the VJ.

1041. On 15 January 1994, Mladić wrote to Perišić, asking the VJ General Staff to dispatch to the VRS a team of experts, which had previously been used to develop 262 mm “Orkan” rockets, so that it could dismantle components from Orkan rockets located in Knin and subsequently re-mount them on missiles at the Military Technical Institute,<sup>2969</sup> even though it was subordinated to the FRY MOD.<sup>2970</sup> Four days later, Perišić wrote a letter, coded “very urgent” and “highly confidential”, to the SVK Main Staff, stating: “A work team is dispatched, led by Col Radomir EĆIMOVIĆ, in order to implement the agreement you made with Lt Col Gen MLADIĆ, which relates to dismantling 4 barrels of the 262mm ‘Orkan’ SVLR/self-propelled multiple rocket launcher/. Please enable the work group to carry out the task”.<sup>2971</sup>

1042. On 17 February 1994, the VJ made an arrangement to “loan” 42.72 tonnes of TNT to the VRS pursuant to an official transaction with the RS MOD.<sup>2972</sup>

<sup>2964</sup> Ex. P877, Command of 608<sup>th</sup> Logistical Base of the VJ General Staff Decision Signed by Perišić, 28 December 1993, p. 2.

<sup>2965</sup> Ex. P2935, Excerpt from Ratko Mladić’s Notebook, 27 December 1993.

<sup>2966</sup> *Ibid.*

<sup>2967</sup> Ex. P1232, Cable from 1<sup>st</sup> Krajina Corps Command to the VRS Main Staff, 13 January 1994.

<sup>2968</sup> Ex. P1245, Drina Corps Command Internal Memo, 24 October 1993, p. 2; Ex. P1802, Order by VRS Commander, 19 July 1995.

<sup>2969</sup> Ex. P1818, Request from Ratko Mladić to Momčilo Perišić, 15 January 1994.

<sup>2970</sup> Radojica Kadijević, T. 13611.

<sup>2971</sup> Ex. P1138, Correspondence Between Chief of the VJ General Staff and the SVK Main Staff, 19 January 1994.

<sup>2972</sup> Ex. P1201, Contract on Loan Between the Military Post Office 8634-4 Belgrade and the RS MOD, 17 February 1994, p. 1.

1043. On 31 March 1994, the VJ General Staff supplied the VRS with 1,181,491 rounds of different types,<sup>2973</sup> followed by 5,000 rounds for anti-aircraft guns pursuant to Perišić's decision.<sup>2974</sup>

1044. On 18 April 1994, Perišić called supplies to a halt: "I hereby forbid (until further notice) the issuance of the NVO / weapons and military equipment / to the armies of the RS and RSK (30<sup>th</sup> and 40<sup>th</sup> KC / Personnel Centre/)".<sup>2975</sup> Nevertheless, deliveries of weaponry to the VRS resumed shortly thereafter, as indicated by multiple subsequent SDC meetings where logistical assistance continued to be agreed upon with Perišić's encouragement,<sup>2976</sup> as well as by the continuing flow of logistical assistance.

1045. On 22 May 1994, the VJ General Staff provided 3,353,000 bullets and 1,400 shells to the VRS.<sup>2977</sup> Following Perišić's orders, subsequent deliveries included 200,000 bullets,<sup>2978</sup> 21,850 bullets and 64 rockets,<sup>2979</sup> and another 2,900 bullets.<sup>2980</sup>

1046. On 11 July 1994, the VRS Krajina Corps officially informed the VRS Main Staff that it had received from the VJ a total of 2,598,100 bullets for 7.62mm automatic rifles, 6,300 bullets for 7.62mm pistols, and 966 mines.<sup>2981</sup> Again, because Mladić ordered that VRS units who engaged in unauthorised procurement would face disciplinary measures, in accordance with Perišić's directives;<sup>2982</sup> the only reasonable inference is that the Krajina Corps was referring to officially-approved assistance when it informed the VRS Main Staff that it had obtained these supplies from the VJ.

1047. In 1994 as a whole, the VRS Main Staff estimated that it had obtained from the VJ approximately 25,878,862 infantry bullets and 7,569 shells, among other ammunition.<sup>2983</sup>

<sup>2973</sup> Ex. P1270, VJ Order Regarding Supply of Ammunition to 30<sup>th</sup> PC, 31 March 1994.

<sup>2974</sup> Ex. P1265, VJ Order Regarding Supply of Ammunition to 30<sup>th</sup> PC, 14 April 1994.

<sup>2975</sup> Ex. P1008, Order from Perišić Sent to the Heads of VJ Services Regarding Issuing of Weapons and Military Equipment, 18 April 1994.

<sup>2976</sup> See *supra* section VI.B.4.

<sup>2977</sup> Ex. P1272, VJ Order Regarding Supply of Ammunition to 30<sup>th</sup> PC, 22 May 1994.

<sup>2978</sup> Ex. P1271, VJ Order Regarding Supply of Ammunition to 30<sup>th</sup> PC, 3 June 1994.

<sup>2979</sup> Ex. P1266, VJ Order Regarding Supply of Ammunition to 30<sup>th</sup> PC, 1 July 1994.

<sup>2980</sup> Ex. P1267, VJ Order Regarding Supply of Ammunition to 30<sup>th</sup> PC, 11 July 1994.

<sup>2981</sup> Ex. P1213, Correspondence Between the 1<sup>st</sup> Krajina Corps Command and the VRS Main Staff Regarding Reception of Military Equipment, 11 July 1994, p. 3.

<sup>2982</sup> Ex. P1245, Drina Corps Command Internal Memo, 24 October 1993, p. 2; Ex. P1802, Order by VRS Commander, 19 July 1995

<sup>2983</sup> Ex. P1214, Annual Financial Statement of the Plan of Tasks and Financing of the VRS for 1994, 17 February 1995, pp 19-21.

(c) Deliveries Conducted Between August 1994 and December 1995 during the Period of Sanctions Imposed by the FRY on Republika Srpska

1048. The flow of military supplies from the VJ General Staff to the VRS continued after August 1994, notwithstanding the FRY's decision to officially seal its border with RS except for medical equipment and other humanitarian supplies,<sup>2984</sup> as part of its sanctions on RS for having refused to accept a proposed peace plan.<sup>2985</sup> The FRY's nominal prohibition on the delivery of military materiel to the VRS essentially lasted until the end of the war in BiH.<sup>2986</sup>

1049. On 25 August 1995, approximately a year after the imposition of the sanctions, a meeting of the FRY and RS leadership was convened, bringing together, among others, Momčilo Perišić, Slobodan Milošević, Zoran Lilić, Ratko Mladić, Radovan Karadžić and the Serbian Orthodox Church's top representatives.<sup>2987</sup> The transcript of the meeting reads: "Bishop Irinej advocated the tacit lifting of the Drina River blockade. President Milošević responded that the blockade was merely a formality and that aid flows daily".<sup>2988</sup>

1050. Milošević admitted in 2001 that the FRY had secretly provided significant military assistance to the VRS during the war.<sup>2989</sup> Milošević denied having used any state funds for his personal gain or that of others, instead insisting that the state funds were used "for the survival of the country during a total embargo and war across the Drina river, in which *we helped our people with all the resources we had at our disposal*".<sup>2990</sup> Milošević specifically mentioned the FRY's logistical assistance to the VRS and SVK:

these expenditures constituted a *state secret* and because of state interests could not be indicated in the Law on the Budget, which is a public document. The same applies to the expenditures incurred by providing equipment, from a needle to an anchor, for the security forces and special anti-terrorist forces in particular, from light weapons and equipment to helicopters and other weapons which still remain where they are today, and this was not made public because it was a *state secret*, as was everything else that was provided for the Army of Republika Srpska.<sup>2991</sup>

1051. Milošević emphasised:

<sup>2984</sup> Ex. P2372, Transcript of Michael Charles Williams from *Prosecutor v. S. Milošević*, 24 June 2003, T. 22957; Michael Williams, T. 6463-6464; MP-14, T. 3528-3529 (closed session); Charles Kirudja, T. 2827-2828.

<sup>2985</sup> See generally Miodrag Simić, T. 10182-10183; Petar Škrbić, T. 11938; Ex. P222, Press Article Published in *Borba*, 5 August 1994.

<sup>2986</sup> See generally Petar Škrbić, T. 11947.

<sup>2987</sup> Ex. P230, Transcript of Meeting of FRY and RS Leadership, 25 August 1995.

<sup>2988</sup> Ex. P230, Transcript of Meeting of FRY and RS Leadership, 25 August 1995, p. 11.

<sup>2989</sup> Ex. P322, Appeal and Statement of Reasons by Slobodan Milošević to the Investigating Judge of the District Court in Belgrade, 2 April 2001, pp 2-3.

<sup>2990</sup> Ex. P322, Appeal and Statement of Reasons by Slobodan Milošević to the Investigating Judge of the District Court in Belgrade, 2 April 2001, pp 1-2 (emphasis added).

<sup>2991</sup> Ex. P322, Appeal and Statement of Reasons by Slobodan Milošević to the Investigating Judge of the District Court in Belgrade, 2 April 2001, p. 2 (emphasis added).

As to the exceptional amount of material gain quoted as a reason for custody, the question arises: for whom? For the Army of Republika Srpska, the security organs, the Army of the Republic of Serbian Krajina, to help the people across the Drina river, the textile and metal workers and others financed through *Beogradska Banka* in the most difficult social situation and during a total external blockade.<sup>2992</sup>

1052. According to Michael Williams, who served as Director of Information for UNPROFOR from February 1994 until April 1995 and saw all classified reports in the UN's possession,<sup>2993</sup> the RS-FRY border was difficult to monitor, partly due to the nature of the terrain and the length of the border.<sup>2994</sup> While Milošević was reluctant to have monitors at the border, he eventually agreed to do so in mid-September 1994 at the request of UN officials.<sup>2995</sup> However, "the international community was given grossly inadequate [resources]" to monitor the 300-mile border.<sup>2996</sup> The monitoring body consisted of a small force lacking access to the information and intelligence in NATO's possession.<sup>2997</sup> The UN military command deemed that closely monitoring the border was impossible.<sup>2998</sup> Milošević nonetheless gave repeated assurances that the border was completely sealed, and that only food, clothes and medicine would be permitted passage.<sup>2999</sup>

1053. A report from the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia, dated 18 May 1995, concluded that the FRY government was meeting its commitment to close the border.<sup>3000</sup> FRY Customs had reported confiscating various goods at the RS border, such as petrol, diesel, cigarettes and food, although no ammunition or weapons were reportedly confiscated.<sup>3001</sup> These goods were contraband transported by smugglers, not VRS or VJ personnel.<sup>3002</sup> Smugglers regularly managed to cross the border in certain areas that were negligently monitored by FRY Customs in spite of repeated complaints by UN officials.<sup>3003</sup> Unarmed uniformed personnel were improperly allowed to cross the border on at least 688 occasions, while uniformed policemen were allowed to cross carrying a sidearm on at least seven

<sup>2992</sup> Ex. P322, Appeal and Statement of Reasons by Slobodan Milošević to the Investigating Judge of the District Court in Belgrade, 2 April 2001, p. 3.

<sup>2993</sup> Ex. P2372, Transcript of Michael Charles Williams from *Prosecutor v. S. Milošević*, 24 June 2003, T. 22893-22894.

<sup>2994</sup> Michael Williams, T. 6411.

<sup>2995</sup> Ex. P2372, Transcript of Michael Charles Williams from *Prosecutor v. S. Milošević*, 24 June 2003, T. 22957-22958; Michael Williams, T. 6411-6412.

<sup>2996</sup> Michael Williams, T. 6412. *See* Ex. P2372, Transcript of Michael Charles Williams from *Prosecutor v. S. Milošević*, 24 June 2003, T. 22958-22959.

<sup>2997</sup> Ex. P2372, Transcript of Michael Charles Williams from *Prosecutor v. S. Milošević*, 24 June 2003, T. 22959.

<sup>2998</sup> *Ibid.*

<sup>2999</sup> Ex. P2372, Transcript of Michael Charles Williams from *Prosecutor v. S. Milošević*, 24 June 2003, T. 22959-22961.

<sup>3000</sup> Ex. D156, Letter from the UN Secretary-General to the President of the UNSC, 25 June 1995, p. 2. The report was cited in a letter from the UN Secretary-General to the President of the UNSC.

<sup>3001</sup> Ex. D156, Letter from the UN Secretary-General to the President of the UNSC, 25 June 1995, p. 3.

<sup>3002</sup> Ex. D156, Letter from the UN Secretary-General to the President of the UNSC, 25 June 1995, pp 6-10.

<sup>3003</sup> *Ibid.*

occasions, and several uniformed personnel and military vehicles were barred from crossing the border on at least one occasion.<sup>3004</sup>

1054. Despite that report, Williams observed that the overall military capabilities of the VRS increased in 1994 and 1995 due to FRY assistance.<sup>3005</sup> He opined that, while there had been a “political break” between the FRY and RS, the sanctions had not fundamentally altered the “close ties” between the VJ and VRS – both stemmed from the JNA and officers shared a sense of “intimacy” from having taken the same courses and worked at the same bases.<sup>3006</sup>

1055. Charles Kirudja, the Chief of Civil Affairs for the UN Mission in Belgrade,<sup>3007</sup> likewise concluded that “most core officers of the [VJ] ha[d] never really fallen in line with [Milošević] about the closing of the border and the isolation of their ‘brothers on the Drina’”.<sup>3008</sup> A report by Colonel Bogojević of the VRS’s 1<sup>st</sup> Krajina Corps corroborated this conclusion:

After the unilateral suspension of the political and economic relations of the [FRY] with the RS, we have registered frequent rumours and misinformation on an alleged suspension of relations of the VJ with the VRS [...] On the contrary, the relations between the VRS and VJ are still correct and have not been upset by the suspension of political and economic relations of the SRJ with the RS. There has not been a single case of calling of professional soldiers or NCOs in the VRS back to the VJ. Also, the intensified measures of control of the interstate border (on border crossings) were taken by organs of the MUP and Customs Service of the RS, but not of the VJ.<sup>3009</sup>

Bogojević went on to note that the VRS’s cooperation with the VJ had actually “improved” since the sanctions.<sup>3010</sup> Similarly, UN military intelligence indicated that helicopter flights from the FRY to RS increased following the sanctions.<sup>3011</sup>

1056. In his report to the RS National Assembly, Mladić stated that supplies of weaponry almost ended after the sanctions were imposed: “[E]ver since [August 1994] it has been very difficult, supplies have almost dried up”.<sup>3012</sup> Yet, the trial record demonstrates that the VJ General Staff

<sup>3004</sup> Ex. D156, Letter from the UN Secretary-General to the President of the UNSC, 25 June 1995, p. 8.

<sup>3005</sup> Michael Williams, T. 6463-6464.

<sup>3006</sup> Michael Williams, T. 6468-6469. *See also* Michael Williams, T. 6411.

<sup>3007</sup> Charles Kirudja, T. 2796-2797.

<sup>3008</sup> Ex. P473, Code Cable from Charles Kirudja to Akashi, 16 February 1995, p. 2.

<sup>3009</sup> Ex. P2819, 1<sup>st</sup> Krajina Corps Command Document on Status of VJ-VRS Relations, 12 August 1994, p. 1.

<sup>3010</sup> Ex. P2819, 1<sup>st</sup> Krajina Corps Command Document on Status of VJ-VRS Relations, 12 August 1994.

<sup>3011</sup> Michael Williams, T. 6403; Ex. P2372, Transcript of Michael Charles Williams from *Prosecutor v. S. Milošević*, 24 June 2003, T. 22961. *See also* on issue of helicopter flights, Charles Kirudja, T. 2827, 2830-2832, 2835, 2843; Ex. P472, Code Cable from Charles Kirudja to Akashi, 13 February 1995, paras 6-9; Ex. P473, Code Cable from Charles Kirudja to Akashi, 16 February 1995, pp 1, 3-4; Ex. D101, Letter from Dragomir Djokic to the President of the UNSC Regarding March 1995 Flights across FRY and BiH, 11 April 1995.

<sup>3012</sup> Ex. P312, Transcript of the Tape Recording of the 50<sup>th</sup> Session of the National Assembly, 15 and 16 April 1995, p. 51.



continued to surreptitiously deliver significant quantities of weaponry to the VRS throughout the sanctions period, although this assistance was a FRY “state secret”.<sup>3013</sup>

1057. MP-14 testified that he witnessed that the VRS continued to receive significant logistical assistance from the VJ during the sanctions period, albeit in far lower volumes, as ammunition and weapons were transported without documentation and “in secret” through a forest road without a border checkpoint.<sup>3014</sup> As stated above,<sup>3015</sup> Milomir Kovačević, who worked as a truck driver for the Serbian MUP during the sanctions period, likewise testified that the VJ continued to deliver military supplies to the VRS by surreptitiously transporting cargo across the FRY-RS border in order to avoid monitors.<sup>3016</sup>

1058. Additionally, Milan Babić testified that the VRS was obtaining clandestine assistance from the VJ.<sup>3017</sup> He explained that the sanctions could be circumvented and that they were only a pretence.<sup>3018</sup>

1059. Even though the VRS’s situation was partly worsened by the FRY’s “economic blockade” on RS,<sup>3019</sup> the VJ largely maintained its regular delivery of military supplies to the VRS, as further indicated by the following evidence.

1060. In January 1995, the VRS Main Staff reported that “a great number of commands, units and certain members of [the] VJ have selflessly been offering us humanitarian aid and services which are extremely important for Republika Srpska Defence”.<sup>3020</sup> On 27 February 1995, the VJ General Staff issued to the VRS, via the 30<sup>th</sup> Personnel Centre, 100 contact fuses for howitzer cannons following a ruling by Perišić.<sup>3021</sup>

1061. In May 1995, General Mladen Mihajlović of the VJ General Staff,<sup>3022</sup> reported that Perišić had granted a request by the VRS Main Staff and “approved the handover of the following

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<sup>3013</sup> See *supra* section VI.B.6.

<sup>3014</sup> MP-14, T. 3525, 3528-3529 (closed session).

<sup>3015</sup> See *supra* section VI.B.3.

<sup>3016</sup> Milomir Kovačević, T. 6058-6078.

<sup>3017</sup> Ex. P53 (under seal), T. 13083-13087.

<sup>3018</sup> Ex. P53 (under seal), T. 13085. The portion of Babić’s testimony introduced into evidence did not specify whether the proposal to obtain weapons and ammunition in exchange for “fictitious payment[s]” was actually implemented.

<sup>3019</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, pp 9, 18.

<sup>3020</sup> Ex. P1211, Correspondence Between the VRS Main Staff and the RS Prime Minister Regarding the Construction of a Material Gift for the VJ, 15 January 1995, p. 1.

<sup>3021</sup> Ex. P1257, Order From Military Post 2082 to Military Post 1092 Regarding Arms Supply to the 30<sup>th</sup> PC, 27 February 1995.

<sup>3022</sup> Mladen Mihajlović, T. 3876.

engineers' NVO without allowance", namely 10,000 mines and five tonnes of explosives.<sup>3023</sup> In a separate memorandum, Mihajlović stated that the VJ General Staff "approves the transfer of engineering military equipment and arms, without remuneration", namely three additional rocket devices to open passages through mine fields.<sup>3024</sup>

1062. On 26 May 1995, General Mladić asked the VJ General Staff for over 17,000 mines and various engineering supplies, a request granted approximately in half.<sup>3025</sup> On 19 June 1995, Mladić forwarded a "[v]ery urgent" request to Perišić for 1,835,850 rounds of various calibres and 2,000 shells required for heavy combat operations in the Trnovo area, near Sarajevo.<sup>3026</sup> On the very next day, the VJ General Staff responded by telegram: "We hereby [...] inform you that the Chief of General Staff of the Army of Yugoslavia ordered the following: 'Give /it/ to Ratko /so as to/ have this resolved'".<sup>3027</sup> Mihajlović recognised Perišić's initials at the top of the document<sup>3028</sup> and Mihajlović stated that the "Ratko" in question was Lieutenant-General Ratko Milovanović, a VJ administrator.<sup>3029</sup> The Trial Chamber finds that the fact that this request would be "resolved" shows that the sanctions were not enforced.

1063. On 8 June 1995, the Zvornik Infantry Brigade reported the receipt of weaponry from the VJ General Staff's Kragujevac TRZ, including 254,520 bullets.<sup>3030</sup> On 16 June 1995, the VRS Main Staff gave its official authorisation for a unit to take over 22 motor vehicles and 5 trailers from the VJ, and a VRS officer involved in the process noted that "it seems likely that the VJ will hand over some 50-100 more motor vehicles and other [material supplies] in the future".<sup>3031</sup>

<sup>3023</sup> Ex. P623, VJ General Staff Engineering Administration Consent for Weapons and Military Equipment Delivery to the VRS, 15 May 1995.

<sup>3024</sup> Ex. P622, Approval by the Engineering Administration of the Land Forces of the VJ General Staff Addressed to Military Post 9808, 16 May 1995. *See also* Ex. P621, Approval by the Engineering Administration of the Land Forces of the VJ General Staff Addressed to Military Post 9808, 11 March 1994 (document that may relate to same items); Mladen Mihajlović, T. 3892-3894, 3896-3897.

<sup>3025</sup> Ex. D56, Request from Ratko Mladić to the VJ General Staff, 26 May 1995 (bearing handwritten notes of percentages of materials approved by VJ); Ex. D57, Approval and Rejection by the Engineering Administration Sent to the Cabinet of the Chief of the VJ General Staff, 30 May 1995; Mladen Mihajlović, T. 3980-3982 (private session); Ex. D58, Letter from the Cabinet of the Chief of the VJ General Staff to the VRS Main Staff, 31 May 1995; Mladen Mihajlović, T. 3983-3984 (partly private session).

<sup>3026</sup> Ex. P624, Request from Ratko Mladić to Perišić for Ammunition, 19 June 1995. This document appears to have a duplicate in Ex. P2726, although the latter appears to have an error in translation, erroneously stating that the telegram response comes from the Chief of the VRS Main Staff rather than the Chief of the VJ General Staff. *See* Miodrag Simić, T. 10200.

<sup>3027</sup> Ex. P624, Request from Ratko Mladić to Perišić for Ammunition, 19 June 1995, p. 3. *See* Mladen Mihajlović, T. 3965.

<sup>3028</sup> Ex. P624, Request from Ratko Mladić to Perišić for Ammunition, 19 June 1995; Mladen Mihajlović, T. 3902-3903.

<sup>3029</sup> Mladen Mihajlović, T. 3965.

<sup>3030</sup> Ex. P1235, Correspondence Between 1<sup>st</sup> Zvornik Command and VRS Main Staff, 8 June 1995. The Kragujevac TRZ was under VJ oversight. *See* Jugoslav Kodžopeljić, T. 12494.

<sup>3031</sup> Ex. P1205, VRS Correspondence on Reception of Logistical Assistance from the VJ, 30 June 1995.

1064. On 17 June 1995, the SRK Command addressed a “very urgent” letter to the VRS Main Staff asking for the immediate preparation of documentation necessary for representatives of the Corps to retrieve weaponry in the FRY, namely 273,000 bullets and 11,000 shells, as “it has been agreed with the responsible people in the VJ that the requested [materiel] should be obtained and immediately delivered to the unit”.<sup>3032</sup> The SRK followed with a separate yet similar request to the VRS Main Staff concerning 120,000 bullets and 1,850 shells, as agreed upon with VJ representatives.<sup>3033</sup> In addition, Dragomir Milošević later notified the VRS Main Staff that the VJ had made two mortars available to the SRK.<sup>3034</sup> The VRS Main Staff’s involvement in these transactions with the VJ again reasonably establishes that they were part of the official logistical assistance process.<sup>3035</sup>

1065. The Kragujevac TRZ equally supplied 350,280 rounds to the VRS via the VJ’s 30<sup>th</sup> Personnel Centre on 17 June 1995,<sup>3036</sup> soon followed by 567,000 bullets and 46 rockets.<sup>3037</sup> Later that month, Perišić agreed with the proposal of the Ground Troops Sector of the VJ General staff that a 152mm M37 howitzer should be “ceded permanently [...] for the needs of the VRS”.<sup>3038</sup>

1066. On 5 July 1995, the VJ General Staff provided 38 radio devices, 146 telephones and other communications equipment to the VRS.<sup>3039</sup> On 1 August 1995, the Kragujevac TRZ provided 6,599 bullets of various calibres and 60 mines to the VRS.<sup>3040</sup> A letter from General Novica Simić of the Eastern Bosnia Corps Command, dated 2 August 1995, indicates that the Posavina Light Infantry Brigade had obtained from the VJ, with the permission of the VRS Main Staff, 1,680 shells, 1,200 rockets, 180 bullet rounds and 33 pieces for machine-gun barrels.<sup>3041</sup>

1067. Between 16 and 23 September 1995, the Eastern Bosnia Corps received from the FRY a total of 1,046,035 bullets of various calibres, 934 mortar shells, 150 rockets, 72 rounds for RRB 64mm, 1,999 semi-automatic rifles, 50 machine guns, 18 cannons and 15 pieces of “LRL 128mm

<sup>3032</sup> Ex. P1226, SRK Command Request to VRS Main Staff for Ammunition, 17 June 1995.

<sup>3033</sup> Ex. P1225, SRK Command Request to VRS Main Staff for Ammunition, 22 June 1995.

<sup>3034</sup> Ex. P1229, SRK Command Request to VRS Main Staff for Logistical Assistance, 7 July 1995.

<sup>3035</sup> See Ex. P1245, Drina Corps Command Internal Memo, 24 October 1993; Ex. P1802, Order by VRS Commander, 19 July 1995.

<sup>3036</sup> Ex. P588, Matériel List, 17 June 1995 (indicating 30<sup>th</sup> PC as recipient). The VJ General Staff provided certain military supplies to the VRS and SVK via the 30<sup>th</sup> and 40<sup>th</sup> PCs pursuant to a decision of the SDC that was applied by Perišić. See Ex. P1009, Order of FRY President, 18 February 1994; Ex. P628, Directive from Perišić Regarding Disciplinary Proceedings, 15 August 1994; Stamenko Nikolić, who was the head of the VJ’s personnel administration, agreed that military supplies officially provided to the 30<sup>th</sup> and 40<sup>th</sup> PCs were actually intended for the VRS and SVK, Stamenko Nikolić, T. 10630-10632.

<sup>3037</sup> Ex. P589, Matériel List, 22 June 1995.

<sup>3038</sup> Ex. P1256, VJ General Staff Internal Memo Regarding VRS Request for Assistance, 26 June 1995.

<sup>3039</sup> Ex. P1812, Order by Military Post 2082, 5 July 1995.

<sup>3040</sup> Ex. P590, Matériel List, 1 August 1995. While the receipt sheet does not specify the recipient’s identity, it indicates that the recipient was based in Zvornik, a town in RS. MP-14, T. 3601. The Trial Chamber finds that this raises a reasonable inference that the VRS was the recipient of these military supplies.

M-71”.<sup>3042</sup> Whereas the Eastern Bosnia Corps’s report to the VRS Main Staff simply states that this weaponry originated from the “FRY”, the only reasonable inference is that it was provided by the VJ General Staff or the FRY special purpose industries.<sup>3043</sup> For the reasons stated above, the only reasonable inference is that the Eastern Bosnia Corps was referring to officially-approved assistance when it informed the VRS Main Staff that it had procured these supplies from the FRY, as Mladić ordered that VRS units who engaged in unauthorised procurement would face disciplinary measures.<sup>3044</sup> The Trial Chamber concludes that the Eastern Bosnia Corps’s report equally shows that the sanctions were not enforced.

1068. The RS MOD determined that the VRS obtained immense quantities of weaponry between August 1994 and November 1995, precisely the period of sanctions by the FRY on RS; to wit 61,590,737 rounds of rifle ammunition, 92,125 rounds of “[o]ther infantry ammunition”, 73,184 rounds of mortar ammunition, 14,615 rounds of artillery ammunition, 5,915 rounds of tank ammunition, 1,708 missiles, 298,593 items of “[anti-aircraft] ammunition and missiles”, 60 aerial bombs, as well as 108,995 items of “[l]aunch equipment and other NVO /weapons and military equipment”.<sup>3045</sup> The RS MOD’s report merely identifies this weaponry as “[p]urchases and donations” without specifying its source.<sup>3046</sup> Nevertheless, the trial record solely establishes that the VRS received ammunition from the VJ and the FRY special purpose industries.<sup>3047</sup> No evidence establishes that the VRS received ammunition from any country other than the FRY.<sup>3048</sup>

1069. Overall, the FRY Supreme Defence Council continued to agree on logistical assistance to the VRS and SVK during the sanctions period,<sup>3049</sup> and Perišić himself urged the SDC to keep on authorising this assistance.<sup>3050</sup> Yet, Defence witness Siniša Borović, who was Perišić’s Chef de Cabinet between November 1994 and December 1996,<sup>3051</sup> advanced that he was “not familiar with any decisions made by General [Perišić] which would violate the embargo”.<sup>3052</sup> Borović went as far as claiming that no documents establish that the VJ assisted the VRS in violation of the military

<sup>3041</sup> Ex. P1203, VRS Order Regarding Redistribution of Ammunition, 2 August 1995.

<sup>3042</sup> Ex. P1206, VRS Internal Correspondence on Ammunition Received from the VJ and Request for More Ammunition to be Assigned, 30 September 1995.

<sup>3043</sup> See *infra* section VI.C.9.

<sup>3044</sup> Ex. P1245, Drina Corps Command Internal Memo, 24 October 1993; Ex. P1802, Order by VRS Commander, 19 July 1995.

<sup>3045</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p 5.

<sup>3046</sup> *Ibid.*

<sup>3047</sup> See *infra* section VI.C.9.(a).

<sup>3048</sup> *Ibid.*

<sup>3049</sup> Ex. P749, Minutes from the 36<sup>th</sup> Session of the SDC held on 12 May 1995, p. 5; Ex. P720, Minutes from the 38<sup>th</sup> Session of the SDC held on 27 June 1995, p. 3.

<sup>3050</sup> Ex. P786, Stenographic Transcript of the 37<sup>th</sup> Session of the SDC, 7 June 1995, p. 42; Ex. P763, Minutes from the 39<sup>th</sup> Session of the SDC, 29 July 1995, pp 4-5.

<sup>3051</sup> Siniša Borović, T. 13881, 14160.

<sup>3052</sup> Siniša Borović, T. 14190.

sanctions.<sup>3053</sup> In his view, the VJ granted “very few” of the VRS’s requests even before the sanctions.<sup>3054</sup> The Trial Chamber does not find Borović’s testimony credible in light of the overwhelming evidence to the contrary.

### 3. The Koran Depot in Republika Srpska

1070. The VJ supplied the VRS’s military depot in Koran, RS, which was affiliated with the VRS’s 27<sup>th</sup> Rear Base in Sokolac.<sup>3055</sup> The base formerly belonged to the JNA but was taken over by the VRS after the war began.<sup>3056</sup> The Koran Depot’s purpose was to supply the VRS with weapons, ammunition, artillery, equipment, mines and, in part, fuel.<sup>3057</sup> Within the VRS, it mainly supplied the SRK but also the Drina Corps, 2<sup>nd</sup> Krajina Corps and other units.<sup>3058</sup>

1071. A large quantity of ammunition was stored at the Koran Depot before the conflict in BiH started, which the VRS obtained when it took over the base from the VJ by September 1992.<sup>3059</sup> That ammunition was exhausted by the end of 1992.<sup>3060</sup> Because there was no capacity to manufacture infantry ammunition in RS,<sup>3061</sup> the Koran Depot subsequently received approximately 70% of its ammunition from the VJ and approximately 30% from manufacturers in Serbia, mainly from Užice.<sup>3062</sup> The supplies provided by these manufacturers included infantry ammunition from the *Prvi Partizan* depot in Užice, mortar rounds from *Krušik*, Valjevo and 120mm ammunition from Čačak.<sup>3063</sup>

1072. Supplies from the VJ arrived constantly at the Koran Depot, and even more frequently when the VRS was conducting an offensive.<sup>3064</sup> According to MP-14, “far fewer” deliveries occurred after the FRY imposed sanctions on the VRS, although “the supply did continue”.<sup>3065</sup>

1073. The standard procurement procedure was for the VRS to send the Koran Depot a notice concerning an incoming order of ammunition from the VJ, and for the Koran Depot to send trucks to Serbia to retrieve the ammunition from VJ military depots<sup>3066</sup> or for the VJ to send its own

<sup>3053</sup> Siniša Borović, T. 14183-14184.

<sup>3054</sup> Siniša Borović, T. 14190.

<sup>3055</sup> MP-14, T. 3505-3506, 3679-3680 (closed session).

<sup>3056</sup> MP-14, T. 3505-3506 (closed session).

<sup>3057</sup> MP-14, T. 3517, 3522 (closed session).

<sup>3058</sup> MP-14, T. 3517, 3522-3523 (closed session).

<sup>3059</sup> MP-14, T. 3517, 3521-3522 (closed session).

<sup>3060</sup> MP-14, T. 3523-3524 (closed session).

<sup>3061</sup> MP-14, T. 3524 (closed session). Only hand-grenades were produced in Doboj, Banja Luka and Trebinje, *Ibid.*

<sup>3062</sup> MP-14, T. 3524 (closed session).

<sup>3063</sup> MP-14, T. 3617 (closed session).

<sup>3064</sup> MP-14, T. 3525 (closed session).

<sup>3065</sup> *Ibid.*

<sup>3066</sup> MP-14, T. 3526-3528 (closed session).

delivery trucks directly.<sup>3067</sup> On certain instances, long convoys of twenty trucks would effectuate deliveries.<sup>3068</sup> The biggest convoy consisted of over twenty trucks containing upwards of 500 tonnes of artillery and infantry ammunition.<sup>3069</sup> MP-14 was unsure, however, of the precise date of this delivery, recollecting that it occurred in either the “late summer for [sic] early autumn in 1993”.<sup>3070</sup> Because there is doubt that this particular convoy delivery occurred after Perišić was appointed Chief of VJ General Staff on 26 August 1993,<sup>3071</sup> the Trial Chamber will not rely on the evidence of this delivery.

#### 4. The Pretis Military Factory in Republika Srpska

1074. *Pretis* was an industrial company and factory that produced weaponry for the VRS in Vogošća, a suburb of Sarajevo.<sup>3072</sup> The military conflict in the vicinity of the *Pretis* factory “did not greatly affect security” so that all of its manufacturing and technological facilities remained “intact” and “in working order”<sup>3073</sup> until NATO bombed the factory in September 1995.<sup>3074</sup> *Pretis* produced artillery ammunition ranging from 57 to 220 calibres, “the latest new caliber”;<sup>3075</sup> as well as shells,<sup>3076</sup> mines<sup>3077</sup> and modified air bombs.<sup>3078</sup> *Pretis* did not produce small arms ammunition, as the technology for such production was different and was carried out in other factories in Valjevo, Serbia, for the *Krušik* company, as well as Bugojno and other locations.<sup>3079</sup> *Pretis* also purchased mines, flash bombs, rifle clips, cartridges and bullets from the Kragujevac TRZ in Serbia.<sup>3080</sup>

<sup>3067</sup> MP-14, T. 3615-3616 (closed session).

<sup>3068</sup> MP-14, T. 3616 (closed session).

<sup>3069</sup> MP-14, T. 3616-3617 (closed session).

<sup>3070</sup> *Ibid.*

<sup>3071</sup> Ex. P196, Decree of the President of the FRY, 26 August 1993.

<sup>3072</sup> MP-14, T. 3634, 3640-3643 (closed session); Ex. P601 (under seal); Ex. P506, Transcript of Nikola Tošović Deposition, 14 December 2008, T. 88. The *Pretis* plant that produced shells was different from the *Pretis* plant that produced German Golf automobiles, MP-14, T. 3634 (closed session).

<sup>3073</sup> Ex. P508, Memorandum on Production Capacity of *Pretis* Factory, 20 September 1994, p. 2.

<sup>3074</sup> MP-14, T. 3655-3656 (closed session).

<sup>3075</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 21-22; MP-14, T. 3634 (closed session). See e.g. Ex. P511, RS MOD Authorisation to *Pretis* to Conclude a Barter Agreement, 26 November 1993.

<sup>3076</sup> MP-14, T. 3634, 3643-3644, 3647 (closed session); Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 14, 25; Ex. P506, Transcript of Nikola Tošović Deposition, 14 December 2008, T. 80; Ex. P512, Barter Agreement Between *Pretis* and Kragujevac Technical Overhaul Institute (“TRZ”), 24 July 1995; Ex. P602, Letter from *Pretis* to the VRS Main Staff, 4 April 1994.

<sup>3077</sup> MP-14, T. 3647 (closed session); Ex. P602, Letter from *Pretis* to the VRS Main Staff, 4 April 1994; Ex. P513, Contract Between *Pretis* and Kragujevac TRZ, 20 July 1995.

<sup>3078</sup> MP-14, T. 3652-3654 (closed session); Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 61-63; Ex. P603, Letter from *Pretis* to the VRS Main Staff, 18 January 1995; Ex. P604, Request Addressed to VRS Main Staff by Milorad Motika, 10 May 1994.

<sup>3079</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 22.

<sup>3080</sup> Ex. P513, Contract Between *Pretis* and Kragujevac TRZ, 20 July 1995.

(a) Status of *Pretis* as a Company

1075. Nikola Tošović, who spent his entire career working as a technician for *Pretis* and ultimately became chief of technical services for the Vogošća brigade of the SRK,<sup>3081</sup> could not give an exact answer when asked under whose umbrella *Pretis* fell, as there were “all sorts of connections: Belgrade, government of Republika Srpska”.<sup>3082</sup> The company had a “representative office” in Belgrade that sold *Pretis*’ products for a service commission, although it “could only clinch minor deals”.<sup>3083</sup> According to Tošović, *Pretis* operated as a commercial company, buying raw materials to manufacture its products, which it sold on the open market.<sup>3084</sup>

1076. Tošović was also unsure about which organ regulated *Pretis* from 1994 until the end of the war.<sup>3085</sup> Tošović was not explicitly asked who regulated *Pretis* before 1994. He believed that *Pretis* was part of the *Unis* corporation, which operated in the metal processing industry. General Abaz Deronja was in charge of all of *Unis*, including *Pretis*. Tošović did not specify for which army General Abaz Deronja worked. *Unis*’ budget “came from the orders it received because it produced also for export, and [...] nobody gave it money”.<sup>3086</sup>

1077. Witness MP-14 described *Pretis* as a “half civilian, half military” facility under the RS government.<sup>3087</sup> He was not absolutely sure if it was overseen by the RS MOD or VRS Main Staff during the war, although he indicated that *Pretis* “could decide on its own which ammunition and what quantities of ammunition to deliver to whom” until 1994, when the VRS Main Staff ordered *Pretis* to send precise quantities of ammunition to designated units.<sup>3088</sup> On the other hand, a document indicates that the RS MOD sought to exercise authority over *Pretis*.<sup>3089</sup>

1078. The evidence described below shows that the RS MOD and VRS Main Staff had competing claims of authority over *Pretis*, which was a point of contention between them.<sup>3090</sup>

<sup>3081</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 4-5.

<sup>3082</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 30-31.

<sup>3083</sup> Ex. P506, Transcript of Nikola Tošović Deposition, 14 December 2008, T. 88.

<sup>3084</sup> Ex. P506, Transcript of Nikola Tošović Deposition, 14 December 2008, T. 87.

<sup>3085</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 31.

<sup>3086</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 29-30.

<sup>3087</sup> MP-14, T. 3602.

<sup>3088</sup> MP-14, T. 3636-3638 (closed session).

<sup>3089</sup> Ex. D748, RS MOD Approval for Exports by *Pretis*, 25 January 1994.

<sup>3090</sup> See *infra* section VI.C.4.(c).

(b) Relationship between the VJ and *Pretis*(i) Presence of the Accused at *Pretis* in January 1994

1079. On 8 January 1994, a meeting was held between several politicians and military commanders, including Momčilo Perišić and Ratko Mladić, at the Park Hotel in Vogošća.<sup>3091</sup> Mladić invited Tošović, his cousin, to a festive lunch with Perišić and other persons following the meeting.<sup>3092</sup> After Mladić introduced Tošović to Perišić as a “captain first class in charge of logistics in the army”,<sup>3093</sup> Perišić briefly addressed Tošović and the rest of the logistics personnel “in passing”: “he told us that they were short of ammunition, that we were short of ammunition, that we should save every bullet, and that we should try and use the resources that existed in companies. For instance, *Pretis* had quite a substantial supply of shells, bullets, lying around in warehouses”.<sup>3094</sup>

1080. When asked whether Perišić seemed to be aware of the situation at *Pretis*, Tošović responded:

[Perišić] knew very well what *Pretis* was and what it meant for the entire state of Yugoslavia. It was an excellent artillery ammunition factory with a large capacity, very substantial capacity; and he knew very well what could be found lying around in every corner of the factory, and he knew that with what was lying around, something could be made. And that’s why he suggested that to us, and who better suited for such suggestion than us logistics men.<sup>3095</sup>

(ii) Involvement of the VJ in *Pretis*’ Production

1081. The VJ General Staff paid the salaries of monitors placed inside *Pretis* to inform the VJ base command about the quantity and type of ammunition that *Pretis* produced in RS.<sup>3096</sup> Notably,

<sup>3091</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 7, 12; Ex. P507, Diary of Nikola Tošović, 1994, p. 2. Tošović recorded this event in his personal diary, although he did not personally attend the meeting. Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 6-7, 10. On direct-examination, Tošović stated that, to his knowledge, the meeting concerned a situation in the area of the SRK, and was attended by the presidents of the crisis staffs of various municipalities, who were responsible for both civilian and military matters. Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 20. However, on cross-examination, Tošović admitted that he “really did not know the reason for that meeting” and that he also did not know whether it was a pre-arranged meeting or a chance encounter. Ex. P506, Transcript of Nikola Tošović Deposition, 14 December 2008, T. 77-78.

<sup>3092</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 6-7, 16-18; Ex. P507, Diary of Nikola Tošović, 1994, p. 2. The following persons also attended the lunch: “Galić”, the commander of the SRK, “Panić”, the commander of the special units from Pančevo, “Rajko Koprivica”, the president of the Vogošće municipality, “Ratko Hadžić”, president of the Ilijas municipality, “Mirko Krajišnik”, a technician in the Rajlovac Brigade, “Tadija”, an artillery expert, and two individuals with the last name “Krsmanović”, one being an active officer who also worked as an engineer at *Pretis*, and the other an assistant commander of the “Corp. for logistics”, Ex. P507, Diary of Nikola Tošović, 1994, p. 2; Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 16-18.

<sup>3093</sup> Ex. P506, Transcript of Nikola Tošović Deposition, 14 December 2008, T. 79.

<sup>3094</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 13-14. *See also* Ex. P506, Transcript of Nikola Tošović Deposition, 14 December 2008, T. 79-80; Ex. P507, Diary of Nikola Tošović, 1994, p. 2.

<sup>3095</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 15-16.

<sup>3096</sup> MP-14, T. 3639 (closed session).



Colonel Radomir Ećimović, a VRS engineer on the VJ payroll, was in charge of military inspections at *Pretis*.<sup>3097</sup> Further, Major Marković, a *Pretis* engineer paid by the VJ, was responsible for modifying air-bombs, as well as appending the appropriate fuses to shells and mines.<sup>3098</sup>

1082. Before *Pretis* could begin manufacturing weaponry, the Military Technical Institute in Belgrade, itself subordinated to the FRY MOD,<sup>3099</sup> examined documents containing the proposed design for particular weapons.<sup>3100</sup> The Military Technical Institute would coordinate with *Pretis* to see if the weapons were properly designed, such as whether a shell would function. 3101

1083. The VJ subsequently assisted *Pretis* in testing weapons once they had been produced. Rockets produced by *Pretis* were tested on the firing range of the VJ's Technical Testing Centre at Nikinci in May 1994,<sup>3102</sup> as were bullets<sup>3103</sup> and artillery ammunition in May 1995.<sup>3104</sup> According to a report by Dušan Kovačević, then RS Minister of Defence, FRY assistance in testing VRS weaponry was needed:

From the very outset of combat activities in the territory of Republika Srpska a need has appeared for the examining of the quality of ammunition, the continuity of the production of which has been kept up at the *PRETIS – HOLDING* Enterprise in Vogošća. [...] Republika Srpska is not and has not been in a position to furnish and put into operation a training ground for testing the quality of weapons and military equipment, nor would that prove rentable for the time being. For this reason, existing training grounds in the territory of the FR Yugoslavia were used, in particular so the one in Nikinci.<sup>3105</sup>

1084. *Pretis* also depended on the assistance of the Kragujevac TRZ, one of its main trading partners.<sup>3106</sup> *Pretis* sent the Kragujevac TRZ artillery casings, which the Kragujevac TRZ cleaned and sent back to *Pretis*, where they were re-filled with new gunpowder and reusable up to five times.<sup>3107</sup> *Pretis* would not have been able to produce ammunition without overhauling by the Kragujevac TRZ,<sup>3108</sup> a facility under the VJ General Staff's control.<sup>3109</sup>

<sup>3097</sup> MP-14, T. 3646 (closed session); Ex. P602, Letter from *Pretis* to the VRS Main Staff, 4 April 1994.

<sup>3098</sup> MP-14, T. 3646-3647 (closed session).

<sup>3099</sup> Radojica Kadrijević, T. 13611. *See also* Ex. D553, Internal VJ Letter re the Manufacturing of Weapons by the RS, 22 June 1995 (Noting that the FRY MOD, not VJ, oversees the provision of technical documents for the manufacturing of ammunition).

<sup>3100</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 28.

<sup>3101</sup> *Ibid.*

<sup>3102</sup> Ex. P1058, Memorandum of *Pretis* Holding, 21 May 1994. The Nikinci weapon-testing facility was subordinated to the VJ General Staff, Radojica Kadrijević, T. 13682.

<sup>3103</sup> Ex. P1057, Letter from *Pretis* Holding Vogošća, 10 May 1995.

<sup>3104</sup> Ex. P1059, Memorandum of *Pretis* Factory, 13 June 1995.

<sup>3105</sup> Ex. P1061, RS MOD Memo Addressed to the RS Government, 11 July 1993. *See also* Radojica Kadrijević, T. 13683 (mentioning that *Pretis* used the VJ's Nikinci weapon-testing facility).

<sup>3106</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 38, 40-43; Ex. P509, Procurement Plan (Survey of Incoming Material By Partner), 1 January – 31 December 1994, p. 1.

<sup>3107</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 41-44, 64-66. *See* Ex. D416, RS MOD Agreement, 26 November 1993 (proposed barter contract whereby *Pretis* would obtain artillery

1085. The Defence submits that the Prosecution has failed to establish a “nexus” between Perišić and *Pretis*’ supply of material to the VRS.<sup>3110</sup> To the contrary, the Trial Chamber finds that Perišić and the VJ General Staff provided an important measure of operational support to *Pretis*.

(iii) Importation of Raw Materials and Components from the FRY

1086. *Pretis* lacked the raw materials and components necessary to manufacture ammunition from late 1992 or early 1993 onwards.<sup>3111</sup> The Trial Chamber was presented with differing estimates of the overall extent to which *Pretis*’ military production depended on materials imported from the FRY. A 20 September 1994 document from *Pretis*’ director states: “The sanctions imposed by Serbia on RS have had disastrous consequences on supplies of raw materials, because the factory relies almost 100% on supplies from SR Yugoslavia”.<sup>3112</sup> Tošović was shown the document and agreed with Motika’s assessment that military production was disastrous and that *Pretis* relied on Serbian assistance, although he disagreed that *Pretis* exclusively depended on Serbia for 100% of its materials, as it received steel from Russia, for instance.<sup>3113</sup> Moreover, MP-14 opined that *Pretis* could not have manufactured artillery without receiving key components from the FRY.<sup>3114</sup>

1087. Gunpowder was procured from Lučani, explosive charges from Barič and tin from Sevojno.<sup>3115</sup> *Pretis* relied on “powder charge” from the *Krušik* military factory in Valjevo in order to produce mines.<sup>3116</sup> Fuses were also obtained from Serbia and shell components (iron blocks) from Nikšić, Montenegro, in the FRY.<sup>3117</sup> Components for pyrotechnic materials used in casings and canons were obtained from Lučani, Barič, and Valjevo.<sup>3118</sup> *Pretis*’ director expected an imminent truck delivery of 12,000 kg of TNT and 8,000 kg of copper tubing from the FRY in August 1995.<sup>3119</sup>

1088. *Pretis* dispatched Ećimović to the FRY in November 1992 “to obtain raw materials for continuing the production of weapons and military equipment”.<sup>3120</sup> While that event preceded

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gunpowder, artillery test ammunition, ignition gunpowder, artillery fuses, artillery cartridges and gunpowder charges from the Kragujevac TRZ in exchange for a quantity of shell “jackets” of “equivalent value”).

<sup>3108</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 69.

<sup>3109</sup> Jugoslav Kodžopeljić, T. 12494.

<sup>3110</sup> Defence Final Brief, paras 709-714.

<sup>3111</sup> MP-14, T. 3643-3644, 3647-3650, 3652-3653 (closed session).

<sup>3112</sup> Ex. P508, Memorandum on Production Capacity of *Pretis* Factory, 20 September 1994, pp 6-7.

<sup>3113</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 34-36.

<sup>3114</sup> MP-14, T. 3649-3650 (closed session).

<sup>3115</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 24-25.

<sup>3116</sup> Ex. P602, Letter from *Pretis* to the VRS Main Staff, 4 April 1994, p. 1.

<sup>3117</sup> MP-14, T. 3643-3644 (closed session).

<sup>3118</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 57-58, 61-64.

<sup>3119</sup> Ex. P1063, Copy of Letter From *Pretis* Holding, 11 August 1995.

<sup>3120</sup> Ex. P1065, *Pretis* Letter Regarding Purchase of Raw Materials From the FRY, 17 November 1992.

Perišić's appointment as Chief of VJ GŠ,<sup>3121</sup> it shows *Pretis*' reliance on raw materials from the FRY.

1089. The Prosecution contends that Perišić was involved in the FRY's provision of raw materials to *Pretis*.<sup>3122</sup> The Trial Chamber is not satisfied that the evidence establishes this fact. Overall, the evidentiary record does not prove that Perišić or the VJ General Staff were involved in deliveries of raw materials and components from the FRY to *Pretis*.

(c) Supply of Weapons Produced by *Pretis* to the VRS

1090. A letter from *Pretis*' director reads that, "[s]ince the war broke out [...] *Pretis* factory's special-purposes production has been to manufacture artillery ammunition for the VRS and VJ".<sup>3123</sup> The bulk of the ammunition produced by *Pretis* during the war was sent to the VRS's military fronts, while a smaller proportion was supplied to the VJ.<sup>3124</sup> Tošović was unable to say, however, whether *Pretis* supplied a particular corps within the VRS.<sup>3125</sup> However, MP-14 stated that *Pretis* mostly supplied the 3<sup>rd</sup> Sarajevo Brigade, while a large number of ammunition would also go to the VRS's 27<sup>th</sup> Logistics Base in Renovića and the VRS's Koran Depot.<sup>3126</sup>

1091. The Koran Depot cooperated with *Pretis* during the war by delivering empty shells that *Pretis* would refill with gunpowder, before returning them to the Koran depot.<sup>3127</sup> The Koran Depot received ammunition from *Pretis* twice or thrice per week on average, although there were delivery convoys everyday during certain weeks.<sup>3128</sup> The SRK, Drina Corps and other VRS units also brought their used shells to *Pretis* to be refilled with gunpowder.<sup>3129</sup> Additionally, the VRS Krajina Corps reportedly obtained from *Pretis* 800 bullets of various calibres, 800 bullets for D-30 howitzers and 700 mortar mines.<sup>3130</sup>

1092. Dušan Kovačević, the former RS Minister of Defence, claimed that the SRK could get their ammunition directly from *Pretis* without prior authorisation from the RS MOD, as General Mladić would go to *Pretis* and simply "order" the factory manager to cease supplying anyone except for the unit(s) designated by Mladić himself:

<sup>3121</sup> Ex. P196, Decree of the President of the FRY, 26 August 1993.

<sup>3122</sup> Prosecution Final Brief, paras 293-299.

<sup>3123</sup> Ex. P1059, Memorandum of *Pretis* Factory, 13 June 1995.

<sup>3124</sup> MP-14, T. 3650-3651 (closed session). See also Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 25-26.

<sup>3125</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 26.

<sup>3126</sup> MP-14, T. 3499, 3505-3506, 3651-3652 (closed session).

<sup>3127</sup> MP-14, T. 3635 (closed session).

<sup>3128</sup> MP-14, T. 3638 (closed session).

<sup>3129</sup> MP-14, T. 3635 (closed session).

<sup>3130</sup> Ex. P1213, Correspondence Between the 1<sup>st</sup> Krajina Corps Command and the VRS Main Staff Regarding Reception of Military Equipment, 11 July 1994.

[Mladić] would bring his security there and would often threaten the manager that he would either be removed, replaced, or liquidated. He forced *Pretis* to produce ammunition for a particular unit. This practice was also employed by some local commanders of the Sarajevo-Romanija Corps. They knew that if a platoon went there or a considerable number of armed soldiers led by a commander, they would simply lay siege to the production line, wait for the eventual product, they would simply take it, load it onto their vehicles, and be off.<sup>3131</sup>

1093. Kovačević regarded these as unauthorised “wanton and arbitrary action[s] being taken by individuals, even if they were members of the army” that “actually happened quite often, despite which it was impossible to prevent it. All those who made incursions of this kind would normally hold people at gun point while making their threats. [...] [The RS MOD] had no power to issue any orders to the Main Staff of the VRS” or “to stop occurrences such as these”.<sup>3132</sup>

1094. The Trial Chamber notes that, based on the foregoing evidence, it cannot reasonably exclude the possibility that Mladić and his subordinates procured weaponry from *Pretis* without permission from the RS MOD or by force. But this fact would be irrelevant in the context of a procurement procedure organised by Perišić in conjunction with Mladić and the VRS Main Staff, not the RS MOD.<sup>3133</sup> Besides, the RS MOD’s alleged lack of control over Mladić and the VRS Main Staff with regard to *Pretis* does not raise doubts regarding other evidence demonstrating the VJ General Staff’s assistance to *Pretis*’ production process.

1095. The Trial Chamber further notes that, while Kovačević claimed that Mladić and VRS members unlawfully seized weaponry from *Pretis*, Đorđe Đukić conversely claimed that Momčilo Krajišnik, the former President of the RS Assembly, cooperated with the RS MOD to distribute *Pretis*’ weaponry without the approval of the VRS Main Staff.<sup>3134</sup> In addition, Mladić mentioned that a number of VRS commanders improperly took certain weaponry from RS-based military factories without permission from the VRS Main Staff and RS MOD, although Mladić stated that these commanders had obtained the “help and tacit agreement” of the factory managers,<sup>3135</sup> contrary to Kovačević who mentioned forceful takeovers by Mladić and his subordinates against the *Pretis* manager’s wishes.<sup>3136</sup>

1096. This particular evidence is inconclusive but suggests, at most, that the relationship between the VRS Main Staff and RS MOD was dysfunctional and discordant. In this regard, it is noteworthy that Kovačević himself commented on the existence of “open clashes” between the RS MOD and

<sup>3131</sup> Dušan Kovačević, T. 12603-12604.

<sup>3132</sup> Dušan Kovačević, T. 12617.

<sup>3133</sup> See *supra* section VI.B.2-3.

<sup>3134</sup> Ex. D395, Transcript of Interview with Đorđe Đukić, 29 February 1996, pp 2-3.

<sup>3135</sup> Ex. D417, VRS Main Staff Order, 3 December 1994.

<sup>3136</sup> Dušan Kovačević, T. 12603, 12617.

VRS Main Staff, “personified by General Ratko [Mladić]”; as well as clashes and “personal resentment” between Mladić and Karadžić.<sup>3137</sup>

##### 5. Provision of Modified Air-Bombs

1097. “Modified air-bombs” were bombs originally built to be launched from the air but that were modified to be launched from the ground by installing rocket motors that would be triggered electronically.<sup>3138</sup>

1098. Modified air bombs were in part the result of the imposition of a no-fly zone over BiH in October 1992, which precluded the VRS from using their aircraft bombs normally, and led the VRS to devise means of propelling them by rockets from the ground.<sup>3139</sup> According to Đorđe Đukić, the idea to use these weapons originated with the Eastern Bosnia Corps of the VRS, commanded by Novica Simić.<sup>3140</sup> “As far as I can remember”, Đukić said, “on one occasion the late General Rajko Balać spoke to General Mladić about this method of using aerial bombs”.<sup>3141</sup> Mladić eventually ordered that possibilities be explored for producing modified air-bomb launchers at the level of the Corps.<sup>3142</sup> “[T]he initial launches of this modified rocket system *failed*”.<sup>3143</sup> Đukić added: “I know that the first systems used a single rocket engine for propulsion and that this is what probably caused the launches to fail. After the rocket battery was built with two or three engines, the launches probably became more successful [...] After Mladić probably satisfied himself that the system was efficient, he issued an order to all the corps to proceed with building launchers”.<sup>3144</sup> The launchers were built in the Herzegovina, Drina, Eastern Bosnia, Sarajevo-Romanija and 1<sup>st</sup> Krajina Corps.<sup>3145</sup>

1099. Đorđe Đukić did not explain who managed to develop a successful technical model for modifying air-bombs. He stated, however, “I am certain that, apart from Mladić and Balać, no one from the Main Staff of the Army of Republika Srpska worked on this program”.<sup>3146</sup>

<sup>3137</sup> Dušan Kovačević, T. 12612-12613, 12760, 12766-12767.

<sup>3138</sup> MP-14, T. 3652 (closed session); Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 4; Ex. P76, Supplementary Statement of Đorđe Đukić on Modified Rocket System, 4/29 February 1996, p. 1; Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1989.

<sup>3139</sup> Martin Bell, T. 3188.

<sup>3140</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 4; Ex. P76, Supplementary Statement of Đorđe Đukić on Modified Rocket System, 4/29 February 1996, p. 1.

<sup>3141</sup> Ex. P76, Supplementary Statement of Đorđe Đukić on Modified Rocket System, 4/29 February 1996, p. 1.

<sup>3142</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 4.

<sup>3143</sup> Ex. P76, Supplementary Statement of Đorđe Đukić on Modified Rocket System, 4/29 February 1996, p. 1 (emphasis added).

<sup>3144</sup> Ex. P76, Supplementary Statement of Đorđe Đukić on Modified Rocket System, 4/29 February 1996, p. 1.

<sup>3145</sup> Ex. P76, Supplementary Statement of Đorđe Đukić on Modified Rocket System, 4/29 February 1996, pp 1-2.

<sup>3146</sup> Ex. P76, Supplementary Statement of Đorđe Đukić on Modified Rocket System, 4/29 February 1996, p. 1.

1100. The evidence shows that the VJ General Staff played a key role in devising the successful technical model by which aerial bombs were modified. Ivan Đokić, a technical engineer<sup>3147</sup> who served as chief of the VJ General Staff's Aeronautical Administration between 1994 and 2000,<sup>3148</sup> denied being the "architect" of the modified air-bombs but admitted being a member of a VJ General Staff team that developed the modified air-bomb model.<sup>3149</sup> Đokić acknowledged that he "headed" the sector that designed the electronic part of the ignition system for modified air-bombs.<sup>3150</sup> Perišić himself described Đokić as "a very intuitive man who successfully designed and modified an aircraft bomb to fit the launcher".<sup>3151</sup> Asked if Perišić's statement accurately reflects what he did, Đokić agreed: "It does, and it's consistent with my previous answer that we modified the electric – the electronic system for the ignition of the engine in my sector".<sup>3152</sup>

1101. Đokić denied that the air-bombs modified by his team were sent to the VRS.<sup>3153</sup> He claimed that these weapons were only given to the VJ General Staff's Artillery Administration and were never sent anywhere, remaining in the possession of the Serbian military to this day.<sup>3154</sup> The Trial Chamber finds that the evidence does not conclusively establish that the VJ supplied *completed* modified air-bombs to the VRS. On the other hand, the only reasonable inference presented by the evidentiary record is that the VJ General Staff shared with the VRS the technical model by which air-bombs were successfully modified. The evidence indeed shows that the VRS's initial technical model was unsuccessful<sup>3155</sup> and that the successful model was developed by Ivan Đokić's team in the VJ General Staff.<sup>3156</sup> It is clear from Đokić's testimony that the VRS did not independently develop a successful technical model.

1102. Đokić was adamant that he did not oversee the actual launching of modified air-bombs, although he admitted travelling to Bosnia in late 1994 to help resolve operational problems with the modified air-bombs in the VRS's possession.<sup>3157</sup> On 31 May 1995, Mladić wrote a letter to Perišić stipulating that the Eastern Bosnia Corps had been "using a modified apu-13mt rocket launcher [...] *constructed with a Yugoslav Army team's expert assistance*".<sup>3158</sup> Mladić asked Perišić for six

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<sup>3147</sup> Ivan Đokić, T. 14490.

<sup>3148</sup> Ivan Đokić, T. 14337.

<sup>3149</sup> Ivan Đokić, T. 14489.

<sup>3150</sup> Ivan Đokić, T. 14490.

<sup>3151</sup> Ex. P2197, Transcript of the Collegium of the Chief of the VJ General Staff, 28 October 1995, p. 57.

<sup>3152</sup> Ivan Đokić, T. 14492.

<sup>3153</sup> *Ibid.*

<sup>3154</sup> *Ibid.* The Artillery Administration was an organ of the VJ General Staff. Mile Novaković, T. 13033.

<sup>3155</sup> Ex. P76, Supplementary Statement of Đorđe Đukić on Modified Rocket System, 4/29 February 1996, p. 1.

<sup>3156</sup> Ivan Đokić, T. 14489-14492; Ex. P2197, Transcript of the Collegium of the Chief of the VJ General Staff, 28 October 1995, p. 57.

<sup>3157</sup> Ivan Đokić, T. 14490.

<sup>3158</sup> Ex. P2723, Request from Ratko Mladić to Perišić for Nitrogen Tanks, 31 May 1995 (emphasis added). *See also* Ivan Đokić, T. 14484.

nitrogen-filled tanks for the launcher.<sup>3159</sup> The request bears a handwritten note from Perišić stating “Check also with Đokić”,<sup>3160</sup> thereby indicating that Perišić gave his agreement in principle. That same date, Mladić asked Perišić to dispatch an expert team led by Đokić to assist the VRS in resolving problems with its rockets and “modified anti-aircraft defence equipment”.<sup>3161</sup> Mladić stated that Đokić was “familiar with the essence of the problem and is willing to help”.<sup>3162</sup> Perišić handwrote the following note on Mladić’s request: “Give it to Đokić / Let him arrange it if he can / And report back to me today”.<sup>3163</sup> Đokić admitted that he participated in this mission.<sup>3164</sup>

1103. Modified air-bombs lacked guiding systems and it was consequently impossible to adequately predict their trajectory and target.<sup>3165</sup> Their usage on civilian areas of Sarajevo was not legitimate, particularly since they served to terrify and kill civilians.<sup>3166</sup> Đokić stated that he did not become aware until after the war that modified air-bombs were fired on Sarajevo civilians, and that these weapons were “not at all planned nor designed to be used in urban communities”, a practice that he described as “totally inappropriate and wrong”.<sup>3167</sup>

1104. The *Pretis* military factory in Bosnia produced modified air-bombs for the VRS.<sup>3168</sup> As previously noted, Major Marković, a *Pretis* engineer on the VJ payroll, was responsible for modifying air-bombs.<sup>3169</sup> The Trial Chamber recalls that the only reasonable inference presented by the evidentiary record is that the modification of air-bombs at *Pretis* was based on the successful technical model developed by Ivan Đokić and the VJ General Staff.

1105. Only 100kg and 250kg air-bombs were modified at *Pretis*, as plans to manufacture 500kg and 1,000kg modified air-bombs were thwarted by the NATO bombing of the factory in September 1995.<sup>3170</sup> During the war, *Pretis* neither manufactured the air-bombs themselves nor the rocket

<sup>3159</sup> Ex. P2723, Request from Ratko Mladić to Perišić for Nitrogen Tanks, 31 May 1995; Ivan Đokić, T. 14484.

<sup>3160</sup> *Ibid.*

<sup>3161</sup> Ex. P2722, Request from Ratko Mladić to Perišić for Expert Assistance, 31 May 1995; Ivan Đokić, T. 14481-14483.

<sup>3162</sup> Ex. P2722, Request from Ratko Mladić to Perišić for Expert Assistance, 31 May 1995.

<sup>3163</sup> Ex. P2722, Request from Ratko Mladić to Perišić for Expert Assistance, 31 May 1995; Ivan Đokić, T. 14482-14483.

<sup>3164</sup> Ivan Đokić, T. 14483.

<sup>3165</sup> Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1990; Ex. P479, Transcript of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 643-644; Hubertus J.W. Bruurmijn, T. 2643-2645, 2698-2699.

<sup>3166</sup> Ex. P66, Transcript of Thomas Knustad from *Prosecutor v. D. Milošević*, T. 1990-1992; Ex. P479, Transcript of Thorbjørn Øvergård from *Prosecutor v. D. Milošević*, T. 643-644. See *supra* section V.A.4.(e), (f), (h).

<sup>3167</sup> Ivan Đokić, T. 14494.

<sup>3168</sup> MP-14, T. 3646-3647, 3652-3654 (closed session); Ex. P75, Witness Statement of Đorde Đukić, 4/29 February 1996, p. 4; Ex. P76, Supplementary Statement of Đorde Đukić on Modified Rocket System, 4/29 February 1996, p. 2.

<sup>3169</sup> MP-14, T. 3646-3647 (closed session).

<sup>3170</sup> MP-14, T. 3654-3656 (closed session). In May 1994, *Pretis* sought to obtain *Grad* 122mm rocket engines for modified air-bombs from the FRY MOD by urging Mladić to ask Perišić to intervene on *Pretis*’ behalf. According to MP-14, this particular request concerned 1,000kg modified air-bombs that were never

motor engines installed on the air-bombs, and *Pretis* had to procure these items in order to modify the air-bombs.<sup>3171</sup>

1106. *Pretis* obtained certain air-bombs from the reserves left behind by the VJ in Bosnia,<sup>3172</sup> a period preceding Perišić's appointment as Chief of General Staff. The modified air-bombs assembled by *Pretis* were sent to the Koran Depot.<sup>3173</sup> Starting in 1995, part of them were also directly delivered to the 3<sup>rd</sup> Sarajevo Brigade for usage in Sarajevo, while the rest of the air-bombs were sent to other units, including the Drina Corps, as well as the Bijeljina Base in the area of the East Bosnia Corps.<sup>3174</sup>

1107. Several order sheets indicate that the SRK and other VRS units received modified air-bombs from *Pretis*. On 19 April 1995, the VRS Main Staff directed *Pretis* to produce at least ten modified air-bombs.<sup>3175</sup> On 16 May 1995, it organised *Pretis*' production of four modified air-bombs for the SRK's needs.<sup>3176</sup> It subsequently made arrangements for *Pretis* to prepare eleven modified air-bombs for the needs of the 1<sup>st</sup> Trebava Infantry Brigade.<sup>3177</sup> On 20 June 1995, the VRS Main Staff coordinated *Pretis*' production of fourteen modified air-bombs for the SRK, as well as fifteen modified air-bombs for the VRS's 27<sup>th</sup> Logistics Base.<sup>3178</sup> The next day, it made a separate arrangement for the VRS's 35<sup>th</sup> Logistics Base to deliver twenty-nine air-bombs to *Pretis* so they could be modified with rocket motors and thereafter be supplied to the 27<sup>th</sup> Logistics Base.<sup>3179</sup> On 28 June 1995, it planned *Pretis*' delivery of five air-bombs to the Ilidža Brigade,<sup>3180</sup> a unit that was part of the SRK.<sup>3181</sup>

1108. The VJ General Staff further assisted the VRS with additional aspects of firing these weapons. Mladić's diary indicates as "resolved" an apparent request to Perišić for an aerial bomb launcher.<sup>3182</sup> Witness MP-14 testified that *Grad* engines were used to launch modified air-

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manufactured because of the NATO bombing. Ex. P604, Request Addressed to VRS Main Staff by Milorad Motika, 10 May 1994; MP-14, T. 3654-3656 (closed session).

<sup>3171</sup> MP-14, T. 3651-3653 (closed session).

<sup>3172</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 4.

<sup>3173</sup> MP-14, T. 3654 (closed session).

<sup>3174</sup> *Ibid.*

<sup>3175</sup> Ex. P606, Letters from VRS Main Staff Regarding Air Bombs, 19 April 1995.

<sup>3176</sup> Ex. P605, Document from VRS Main Staff, Logistics Sector, 16 May 2009. *See* MP-14, T. 3652, 3657-3658 (closed session).

<sup>3177</sup> Ex. P607, Main Staff VRS Order, 28 May 1995. *See* MP-14, T. 3659-3660 (closed session).

<sup>3178</sup> Ex. P608/P609, VRS Order to *Pretis* Regarding Supply of Air Bombs, 20 June 1995. *See* MP-14, T. 3660 (closed session).

<sup>3179</sup> Ex. P610, Order of the VRS Main Staff Related to Air Bombs to be Delivered to *Pretis*, 21 June 1995. *See* MP-14, T. 3661-3662 (closed session).

<sup>3180</sup> The order also refers to 410 bullets and 100 mines. Ex. P978, Order Regarding Ammunition, 28 June 1995.

<sup>3181</sup> Borivoje Tešić, T. 1988-1989.

<sup>3182</sup> Ex. P2935, Excerpt from Ratko Mladić's Notebook, 27 December 1993.



bombs.<sup>3183</sup> The record demonstrates that the VJ General Staff supplied certain *Grad* engines to the VRS, as Perišić “ordered” that 200 *Grad* engines “be handed over to VRS” in June 1995.<sup>3184</sup>

## 6. Provision of Fuel

1109. A memorandum from the 1<sup>st</sup> Krajina Corps Command outlines the procedure for VRS units obtaining fuel from the FRY based on guidelines from the VJ General Staff and VRS Main Staff: “Issue of fuel will be done on the Yugoslav Army filling stations as follows: a) Diesel fuel D-2 on the ‘Topčider’ barracks filling station. b) Gasoline fuel MB-98 on the [VJ General Staff] Headquarters Administration filling station”.<sup>3185</sup> General Mladić also believed that the VRS could obtain fuel from the 608<sup>th</sup> Logistics Base of the VJ.<sup>3186</sup>

1110. In an intercepted conversation between Perišić and Slobodan Milošević on 2 May 1995, Perišić recounted that General Mladić had complained about the VRS’ fuel shortage being “a big problem”, and Perišić noted that 700 tonnes of fuel were at the customs office, waiting to be delivered to the VRS.<sup>3187</sup>

1111. On 16 June 1995, the SRK Command wrote to the VRS Main Staff asking permission to import 38,600 litres of fuel for itself and 12,400 litres for the Igman Infantry Brigade.<sup>3188</sup> The letter specifies that the transfer had been approved by the VJ General Staff.<sup>3189</sup>

1112. Pursuant to Perišić’s confidential directives, the VJ routinely issued fuel for particular VRS vehicles, including those transporting Mladić, Milan Gvero and other VRS Generals.<sup>3190</sup> As

<sup>3183</sup> MP-14, T. 3654-3655 (closed session).

<sup>3184</sup> Ex. P1255, VJ General Staff Internal Memo Regarding VRS Request for Assistance, 28 June 1995. Another exhibit confirms Perišić’s decision. *See* Ex. P2731, Documents Relating to Urgent Request of Mladić to Perišić on Transfer of 200 Motors Purchased for the VRS to the RS, 27 June 1995.

<sup>3185</sup> Ex. P996, 1<sup>st</sup> Krajina Corps Command Order, 20 December 1993.

<sup>3186</sup> Ex. P2158, Document Issued by Ratko Mladić Regarding Logistical Support, undated, p. 2. The 608<sup>th</sup> Logistics Base was identified as a VJ base by two witnesses. Miodrag Simić, T. 10155; Mladen Mihajlović, T. 3886.

<sup>3187</sup> Ex. P1316, Intercepted Conversation, 2 May 1995, p. 3.

<sup>3188</sup> Ex. P995, SRK Request for Approval for Importing Fuel From the FRY, 16 June 1995.

<sup>3189</sup> *Ibid.*

<sup>3190</sup> Ex. P876, Order of the VJ General Staff on the Issuance of Materiel, 10 May 1994 (30 litres for the “needs” of Gvero); Ex. P909, VJ General Staff Order to Issue Material Supplies, 19 January 1994 (90 litres to transport wounded VRS soldiers); Ex. P910, Cabinet of the Chief of the VJ General Staff Order to Issue Material Supplies, 19 January 1994 (70 litres for an ambulance); Ex. P911, Cabinet of the Chief of the VJ General Staff Order to Issue Material Supplies, 6 July 1994 (45 litres for a medical vehicle); Ex. P1154, Order of the VJ Regarding Issuance of Material Supplies, 5 January 1994 (40 litres at the behest of VRS General Đorđe Đukić); Ex. P1155, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 14 January 1994 (50 litres at the behest of VRS General Milivoj Borić); Ex. P1156, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 20 January 1994 (80 litres Mladić’s “needs”); Ex. P1157, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 20 January 1994 (80 litres at the behest of VRS Colonel Milorad Gavrić); Ex. P1158, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 25 January 1994 (100 litres for the VRS generally); Ex. P1159, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 1 February 1994 (80 litres for Mladić’s “needs”); Ex. P1160, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 17 February 1994 (80 litres for Mladić’s “needs”); Ex. P1161, Order of the VJ Relating to

previously mentioned, the Trial Chamber also heard testimony that the VJ dispatched convoys of civilian trucks to deliver fuel to the VRS.<sup>3191</sup>

1113. Certain documents stipulate that Perišić approved the provision of 2,000kg of “oil, type UAMS”, 5,000 kg of “oil, type ZUON”<sup>3192</sup> and 2,000 litres of “HUNT-S” oil.<sup>3193</sup>

1114. Hence, the Trial Chamber does not deem Siniša Borović credible in his claim that “[s]upplying the Army of Republika Srpska and the Army of Republic of Serbian Krajina with fuel in an organised manner was not something that was carried out [by the VJ]”.<sup>3194</sup>

1115. However, in assessing the provision of fuel, the Trial Chamber has also chosen not to rely on various documents on provision of fuel lacking the indicia of reliability discussed above, as they do not convincingly show that the procurement was part of the logistical assistance process approved by Perišić and the VJ General Staff in conjunction with the VRS Main Staff.<sup>3195</sup>

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Issuance of Material Supplies to the VRS, 8 March 1994 (80 litres “for the needs of” VRS Captain Ratomir Maksimović); Ex. P1162, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 15 March 1994 (80 litres for Mladić’s “needs”); Ex. P1163, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 21 March 1994 (40 litres for Mladić’s “needs”); Ex. P1164, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 25 March 1994 (48 litres for the VRS’s “needs” generally); Ex. P1165, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 31 March 1994 (60 litres for the VRS’s “needs”); Ex. P1166, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 1 April 1994 (60 litres for the VRS’s “needs” generally); Ex. P1167, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 4 April 1994 (180 litres for the VRS’s “needs” generally); Ex. P1168, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 5 April 1994 (50 litres for the VRS’s “needs” generally); Ex. P1169, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 5 April 1994 (50 litres for Mladić’s “needs”); Ex. P1170, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 26 April 1994 (90 litres for Mladić’s “needs”); Ex. P1171, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 3 May 1994 (50 litres for the VRS’s “needs” generally); Ex. P1172, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 9 May 1994 (60 litres for the VRS’s “needs” generally); Ex. P1173, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 13 May 1994 (30 litres for Gvero’s “needs”); Ex. P1174, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 19 May 1994 (60 litres for Mladić’s “needs”); Ex. P1175, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 23 May 1994 (60 litres for Mladić’s “needs”); Ex. P1176, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 2 June 1994 (40 litres for Gvero’s “needs”); Ex. P1177, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 6 June 1994 (40 litres for Gvero’s “needs”); Ex. P1178, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 9 June 1994 (25 litres for Mladić’s “needs”); Ex. P1179, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 21 June 1994 (40 litres for Gvero’s “needs”); Ex. P1180, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 18 July 1994 (80 litres for Mladić’s “needs”); Ex. P1181, Order of the VJ Relating to Issuance of Material Supplies to the VRS, 18 July 1994 (80 litres for Mladić’s “needs”); Ex. P1828, Order by the VJ Chief of General Staff, 5 May 1994 (60 litres for Mladić’s “needs”); Ex. P1829, Order by the VJ Chief of General Staff, 1 July 1994 (100 litres for Mladić’s “needs”).

<sup>3191</sup> Milomir Kovačević, T. 6056, 6058, 6065-6074, 6114.

<sup>3192</sup> Ex. P1270, VJ Order Regarding Supply of Ammunition to 30<sup>th</sup> PC, 31 March 1994.

<sup>3193</sup> Ex. P1272, VJ Order Regarding Supply of Ammunition to 30<sup>th</sup> PC, 22 May 1994.

<sup>3194</sup> Siniša Borović, T. 14000.

<sup>3195</sup> Ex. P993, Document Sent by the Commander of the 4<sup>th</sup> Podrinje Light Infantry Brigade to the Drina Corps Command, 7 October 1993 (fuel from “Belgrade Military Post 9809”, with no mention of Perišić or the General Staff); Ex. P992, VRS Main Staff Cable, 14 November 1995 (VRS Main Staff notified several units that fuel had been imported from the FRY but did not specify if it had been procured with the assistance of the VJ General Staff); Ex. P994, SRK Request Regarding Fuel Supply Through VJ, 3 May 1995 (states that the VJ assisted with the delivery of fuel purchased on the FRY market, although no mention of the VJ General Staff in what may have been a clandestine transaction “through confidential persons in the [VJ]”).

## 7. Lack of Payment for Military Supplies

1116. Momčilo Perišić's directives referred to "Economic assistance"<sup>3196</sup> and "Financial assistance" from the VJ to the VRS and did not mention the need for remuneration.<sup>3197</sup> At the monthly coordination meetings that Perišić chaired, Mladić informed the audience of the VRS's needs and asked for the VJ's help.<sup>3198</sup> Perišić referred on various occasions to *giving* supplies to the VRS.<sup>3199</sup> Đukić's statement further demonstrates that the object of his meetings with Perišić at the headquarters of the VJ General Staff in Belgrade was to solicit aid free of charge.<sup>3200</sup> Indeed, the aforestated material lists make no reference to payment. Instead, a dispatch note reflects the VJ General Staff's order that "ammunition is to be issued free of charge".<sup>3201</sup>

1117. Mladić himself told the RS National Assembly that nearly half of the VRS's total ammunition was provided by the VJ "as humanitarian aid".<sup>3202</sup> The only reasonable inference from this language is that this ammunition was not paid for. Mladić further distinguished ammunition procured through VJ "aid" from purchased ammunition.<sup>3203</sup> Đorđe Đukić himself stated that the RS MOD paid FRY manufacturers only "[o]ccasionally".<sup>3204</sup> Milan Babić too explained that RS did not pay for certain weapons because it lacked sufficient funds, as he witnessed after participating in a meeting with Karadžić and other individuals.<sup>3205</sup> Tellingly, a VRS Main Staff tabular report of ammunition obtained in 1994 does not indicate a price next to the ammunition obtained from the VJ, whereas it includes a price next to the ammunition separately procured from the RS government.<sup>3206</sup>

1118. In the course of Mladić and Perišić's visit to the *Krušik* weapons factory, Perišić was recorded as explaining that the object of the meeting was to see "what we can offer as assistance", "what can be delivered with and without payment" and "what is possible by way of

<sup>3196</sup> Ex. P1626, Official Note from the Meeting of the VJ Supreme Command Staff, 27 September 1993, p. 4.

<sup>3197</sup> Ex. P878, Tasks Set by Perišić at the Supreme Command Staff Meeting of 27 September 1993, 26 October 1993, p. 3.

<sup>3198</sup> MP-80, T. 8323-8325 (closed session).

<sup>3199</sup> Ex. P1470, Intercepted Conversation, 22 December 1995, p. 5; Ex. P629, Telegram from the VRS 3<sup>rd</sup> Podrinje Mountain Infantry Brigade to the VRS Main Staff and the VJ General Staff, 24 September 1993; Mladen Mihajlović, T. 3935 (private session); Ex. P625, Request from Ratko Mladić to Perišić Regarding Communications Equipment, 7 October 1993. *See also* Ex. P626, Response from the Chief of the Communications Administration to the Cabinet of the Chief of the VJ General Staff, date illegible.

<sup>3200</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, pp 3-4.

<sup>3201</sup> Ex. P1269, VJ Order Regarding Supply of Ammunition to VRS, 19 November 1993.

<sup>3202</sup> Ex. P312, Transcript of the Tape Recording of the 50<sup>th</sup> Session of the National Assembly, 15 and 16 April 1995, p. 51. The FRY's sanctions against RS barred the delivery of goods except those identified as "humanitarian aid". Miodrag Simić, T. 9996.

<sup>3203</sup> Ex. P312, Transcript of the Tape Recording of the 50<sup>th</sup> Session of the National Assembly, 15 and 16 April 1995, p. 51.

<sup>3204</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 4.

<sup>3205</sup> Ex. P53 (under seal).

compensation”,<sup>3207</sup> thereby demonstrating that part of the weaponry supplied to the VRS was free of charge and part was paid for.

1119. VRS weapons produced by *Pretis* were tested at no cost at the VJ’s Technical Testing Centre at Nikinci, as reported by the RS Minister of Defence: “[T]he use of the training ground/s in the territory of the FR Yugoslavia was carried out *free of charge*, with all available equipment, means, and necessary manpower. There was never a single case of the military controllers from Republika Srpska encountering any lack of understanding whatsoever”.<sup>3208</sup>

1120. On 15 January 1995, the VRS Main Staff reported that the VJ had “selflessly been offering us humanitarian assistance and services which are extremely important for Republika Srpska”, and encouraged the RS Prime Minister to offer the VJ “a gift, at least once, as a token of our gratitude and attention”, namely “2000m<sup>3</sup> of lumber” for the VJ’s purposes.<sup>3209</sup>

1121. Payment was demanded in certain cases. On 16 March 1994, the SDC concluded: “Given that in 1994 military industry production is the only source of weapons and military equipment supplies, Republika Srpska and the RSK must provide the necessary funds for their needs”.<sup>3210</sup> Similarly, after Mladić wrote to the VJ General Staff to propose that a factory in Kruševac, Serbia, produce a disabling chemical agent (“CS”) for its anti-sabotage and anti-terrorist activities, Perišić’s Chief of Cabinet responded:

We agree that this is a very important substance and that the procedure on getting the final product should be accelerated. [...] Since the final products are needed by both the VJ and the VRS, and since we are talking of urgent needs, and everything is made more complicated due to the difficulties in securing the finances, it would be appropriate that, in order to accelerate the whole process and the set up of the section of a factory and the production of the [chemical agent], the GŠ VRS [Main Staff] participated in financing the set up of the section of a factory according to its means, in the part where the cost is borne by the investor.<sup>3211</sup>

In this instance, the VJ General Staff expected the VRS Main Staff to pay for the production of the chemical agent “according to its means”, thereby suggesting that the VJ General Staff would cover the remaining amount. The Defence argues that it cannot be known whether this chemical agent

<sup>3206</sup> Ex. P1214, Annual Financial Statement of the Plan of Tasks and Financing of the VRS for 1994, 17 February 1995, pp 19-21.

<sup>3207</sup> Ex. P2928, Excerpt from Ratko Mladić’s Notebook, 7 July 1994, p. 1.

<sup>3208</sup> Ex. P1061, RS MOD Memo Addressed to the RS Government, 11 July 1993, p. 2 (emphasis added). The Nikinci facility was overseen by the VJ General Staff. Radojica Kadjević, T. 13682.

<sup>3209</sup> Ex. P1211, Correspondence Between the VRS Main Staff and the RS Prime Minister Regarding the Construction of a Material Gift for the VJ, 15 January 1995.

<sup>3210</sup> Ex. P710, Minutes of the 19<sup>th</sup> Session of the SDC, 16 March 1994, p. 2. A RS MOD report on weaponry procured during the sanctions period lists millions of weapons under the general category of “[p]urchases and donations”, and is therefore unhelpful in distinguishing weaponry that was purchased from weaponry that was donated. Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 5.

was produced by “the military part of the plant or the civilian part of the plant”.<sup>3212</sup> Regardless of how production was technically arranged at the factory, the Trial Chamber finds that the correspondence plainly demonstrates that the agent was produced for military purposes and that the VJ General Staff was involved in the process.

1122. A November 1995 report by the RS MOD stated that the assistance from state-owned military companies in FRY was linked to its ability to pay for their services.<sup>3213</sup> The same report nonetheless posited that the VJ assented to an agreement that would “help” the VRS by “covering all costs and debts” that the RS had incurred in its dealings with the VJ General Staff’s Čačak facility “from the beginning of the war to the end of 1994”, the debt amounting to “about four million dinars”.<sup>3214</sup> The VJ had also “allowed [the VRS] to use the facilities and services of the *Moma Stanojlović* Airforce Complex in Batajnica for free from the beginning of the war until the end of 1994”.<sup>3215</sup> The VJ-VRS agreement encompassed the “delivery of essential spare parts, assembly sets and machinery from their stores, technical documentation and all other forms of assistance for the Army of Republika Srpska to fight successfully”, manifestly free of charge.<sup>3216</sup>

1123. Free assistance from the VJ was crucial to the VRS because its financial situation was “extremely poor” and had worsened between August 1994 and November 1995, partly due to the FRY’s “economic blockade” against RS.<sup>3217</sup> “[F]inancial resources were certainly not sufficient to satisfy the [VRS]’s overall requirements”, which led to the “[i]mpossibility of compensation” for certain supplies.<sup>3218</sup>

1124. On the other hand, the RS MOD technically had to purchase supplies it obtained from FRY special purpose industries, such as *Prvi Partizan* in Užice, *Sloboda* in Čačak and *Krušik* in Valjevo.<sup>3219</sup> Unlike the VJ, the FRY state companies that delivered military supplies to the VRS’s

<sup>3211</sup> Ex. P1139, Correspondence Between VRS Commander Mladić and VJ on Start of Industrial Production of “CS” Chemical Agent, 26 January 1994, p. 5.

<sup>3212</sup> Defence Final Brief, paras 715-717 (citing Radojica Kadjević, T. 13624-13627).

<sup>3213</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 6.

<sup>3214</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 7. The Čačak facility was administered by the VJ General Staff. Jugoslav Kodžopeljić, T. 12494.

<sup>3215</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 7 (italics in original).

<sup>3216</sup> *Ibid.*

<sup>3217</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 18.

<sup>3218</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 9.

<sup>3219</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 4; Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 7 (“The engagement of these industries from the FRY is linked to our ability to pay for their services, primarily that of special-purpose production enterprises”). The *Sloboda* factory appears to be a different facility from the Čačak overhaul facility. See generally Jugoslav Kodžopeljić, T. 12494.

Koran Depot always sent an invoice for payment.<sup>3220</sup> Invoices were submitted to the RS MOD.<sup>3221</sup> Notably, on 27 June 1993, the VRS Main Staff reported having made a contract to buy 2 million bullets from *Prvi Partizan* and to have 1 million damaged shells overhauled by the *Fasau* company, also based in Užice; and asked the RS MOD for permission to conduct these transactions.<sup>3222</sup> On 22 February 1993, the 1<sup>st</sup> Krajina Corps Command notified the VRS Main Staff that it had made an agreement to purchase 2 million bullets from *Prvi Partizan* for the sum of 250,000 Deutschmarks.<sup>3223</sup> The letter states: “We hereby ask the [Main Staff VRS] to purchase this same quantity of ammunition or to allow us to buy the aforementioned quantity through donors from municipal assemblies in the zone of the 1<sup>st</sup> [Krajina Corps]”.<sup>3224</sup> In July 1994, the SDC indicated that RS and RSK had provided funds for their needs in FRY military materiel.<sup>3225</sup> The VRS Main Staff reported that it had spent 1,954,192 dinars on purchasing ammunition between March and December 1994,<sup>3226</sup> presumably from the FRY since no evidence establishes that the VRS received ammunition from any other country.<sup>3227</sup>

1125. In practice, the RS and the VRS had difficulty complying with their contracts whenever the VJ or FRY government demanded payment. As of November 1993, the VRS had a debt of 8 million U.S. dollars to military companies, a situation that “practically prevented further purchases of production material, which comes mainly from the Federal Republic of Yugoslavia”.<sup>3228</sup> RS recognised that it was able to effect “very few payments to weapons and ammunition producers, both in Republika Srpska and the FRY”.<sup>3229</sup> For instance, in January 1994, the RS MOD advised the VJ General Staff that it could not pay in full its debt of 547,541 German marks for the past overhaul of VRS equipment at the Čačak TRZ.<sup>3230</sup> RS proposed to pay only part of the debt in the amount of 135,678 marks while making the following plea: “Taking into consideration the financial situation

<sup>3220</sup> MP-14, T. 3617-3618 (closed session).

<sup>3221</sup> MP-14, T. 3617-3618 (closed session). Two “dispatch notes” for deliveries of military supplies to the VRS from manufacturers in Serbia were introduced into evidence, although neither mentions a purchase price. *See* Ex. P597, Dispatch Note of Krušik, 4 November 1993; Ex. P598, Dispatch Note of Krušik, 20 December 1993; MP-14, T. 3618-3620, 3724-3727 (closed session).

<sup>3222</sup> Ex. D51, Letter from the VRS Main Staff to the RS Ministry of the Defence, 27 June 1993; MP-14, T. 3731 (closed session). The letter does not mention the price of these transactions.

<sup>3223</sup> Ex. D50, Letter from Commander of the 1<sup>st</sup> Krajina Corps to the VRS Main Staff, 22 February 1993; MP-14, T. 3728-3729 (closed session).

<sup>3224</sup> Ex. D50, Letter from Commander of the 1<sup>st</sup> Krajina Corps to the VRS Main Staff, 22 February 1993.

<sup>3225</sup> Ex. D455, FRY MOD Letter, 29 July 1994.

<sup>3226</sup> Ex. P1214, Annual Financial Statement of the Plan of Tasks and Financing of the VRS for 1994, 17 February 1995, pp 4-6.

<sup>3227</sup> *See infra* section VI.C.9.(a).

<sup>3228</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, p. 5.

<sup>3229</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, p. 2.

<sup>3230</sup> Ex. P1066, Memo Addressed to the Logistical Sector of the VJ General Staff Regarding Payments for Repairs of the VRS Technical Means, 31 January 1994.

in the VRS and the situation in the Čačak TRZ, we hope that you will accept our proposal of partial settlement of the debt to the Čačak TRZ”.<sup>3231</sup>

1126. Jugoslav Kodžopeljić, who oversaw the Čačak facility for the VJ General Staff,<sup>3232</sup> insistently claimed that RS systematically paid for services provided by that facility or would otherwise be sued: “It is certain that the [Čačak] overhaul institute signed contracts, and based on the contracts, payments had to be effected. If payments were not effected, then the commercial court would hear the case and see why the payments had not been effected. I never received information that a payment had not been effected”; “payments were effected in one of the agreed ways. The payment could be the so-called barter, the exchange of certain parts and elements. *And I guarantee you that everything was paid.* If payment was envisaged, payment was effected [...] *It is impossible for a payment not to be received* because that would merit proceedings to be instituted to recover the debt”.<sup>3233</sup> The Trial Chamber does not find Kodžopeljić credible on this point as well. Along with other evidence demonstrating the VRS’ frequent inability to pay, Ex. P1066<sup>3234</sup> and the aforementioned Ex. P1534 directly concern the Čačak facility,<sup>3235</sup> and contradict Kodžopeljić’s claim.<sup>3236</sup>

1127. On 10 January 1994, Perišić warned the SDC that it had failed to take into account the VRS and SVK’s financing needs in logistical assistance, which he estimated at 522 million dollars and 307 million dollars respectively.<sup>3237</sup> Perišić still believed that the VRS and SVK should pay for certain supplies, pointing out that “in the current situation there is no chance we can provide assistance to the ones over there, except if they compensate us. For instance, we give them 100,000 pieces of ammunition, they give us the money, we put in the production to produce it”.<sup>3238</sup> Slobodan Milošević agreed and noted that Karadžić had agreed to set aside 20 million dollars in reserves from the RS National Bank for such purposes.<sup>3239</sup>

1128. At a subsequent Supreme Defence Council meeting in June, Perišić reported that the VJ was facing financial difficulties (“reserve supplies have been depleted and we have no money to buy new ones”), and expressed frustration that the VRS and SVK were still not paying for military

<sup>3231</sup> *Ibid.*

<sup>3232</sup> Jugoslav Kodžopeljić, T. 12313.

<sup>3233</sup> Jugoslav Kodžopeljić, T. 12516-12517 (emphasis added).

<sup>3234</sup> Ex. P1066, Memo Addressed to the Logistical Sector of the VJ General Staff Regarding Payments for Repairs of the VRS Technical Means, 31 January 1994.

<sup>3235</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 7.

<sup>3236</sup> On Kodžopeljić’s lack of credibility, *see also supra* section VI.C.2.(a).

<sup>3237</sup> Ex. P791, Stenographic Transcript of the 17<sup>th</sup> Session of the SDC, 10 January 1994, pp 4-5, 56.

<sup>3238</sup> Ex. P791, Stenographic Transcript of the 17<sup>th</sup> Session of the SDC, 10 January 1994, p. 83.

<sup>3239</sup> Ex. P791, Stenographic Transcript of the 17<sup>th</sup> Session of the SDC, 10 January 1994, p. 84.

supplies received from the VJ.<sup>3240</sup> He added: “We don’t have anything to give them in these budget conditions because that would directly affect our reserves. If we reduce our reserves, which are minimal, we would put ourselves in danger in case of a conflict on the southern borders towards Albania or in Kosovo itself”.<sup>3241</sup> Perišić also criticised the RS and RSK political leadership for relying excessively on funding from the FRY: “[T]hey didn’t earmark any funds for the army, they did this only superficially. They have no laws or a defined budget for the army and so on. They rely solely on us and come to us with demands”.<sup>3242</sup> He emphasised: “Most equipment has to be repaired and we do that. This requires considerable funds which we do not have. We propose that they find a solution – we will do the repair, but they have to reimburse the costs either as compensation or otherwise. These costs have amounted to 560,000 DEM in 1993. They haven’t paid a single penny of this amount”.<sup>3243</sup> “Another example is reimbursement for fuel. They come here, we give them fuel but we are not reimbursed”.<sup>3244</sup>

1129. Perišić’s sentiment was echoed by Zoran Lilić, the FRY President, who dismissed a suggestion by Pavle Bulatović – the FRY Defence Minister who technically oversaw the special purpose industries’ contracts – that the VRS and SVK would henceforth pay for the military supplies, as Lilić told Bulatović: “They said the same thing last time, and before that and every time. I think there is no point in discussing this at all”; to which Perišić concurred: “They’re not giving anything”.<sup>3245</sup> However, neither Perišić nor the other attendants suggested that the FRY’s logistical assistance to the VRS and SVK should be discontinued. Instead, Perišić stressed that it was necessary to continue helping the VRS and SVK because they would otherwise start losing territories.<sup>3246</sup> Perišić went on to encourage the SDC to approve the grant of ammunition and spare parts for the VRS and SVK.<sup>3247</sup>

1130. Two weeks later, the SDC reiterated: “The Federal Defence Ministry shall use [FRY] funds, as well as funds secured by RS and the RSK for their needs, to organise the production and purchase of materiel and technical equipment”.<sup>3248</sup> But no evidence indicates that these resolutions were enforced and that the VRS and SVK eventually started paying for a significant proportion of the supplies they obtained. Rather, Mihajlović thereafter wrote in a memorandum that the VJ

<sup>3240</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 39.

<sup>3241</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 38.

<sup>3242</sup> *Ibid.*

<sup>3243</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 39.

<sup>3244</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 40.

<sup>3245</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 42.

<sup>3246</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, pp 38-39.

<sup>3247</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 39.

<sup>3248</sup> Ex. P754, Minutes from the 23<sup>rd</sup> Session of the SDC held on 21 July 1994, p. 3.



General Staff “approves the redistribution of engineering military equipment and arms, *without remuneration*”.<sup>3249</sup>

1131. Towards the end of the war, Perišić said “I could have retained the material reserves” but “[w]e gave all we had always” and “did not receive a single Dinar for giving”.<sup>3250</sup>

1132. In 1998, several years after the war, the *Krušik* military factory in Valjevo, Serbia, informed military post Vlasenica - Han Pijesak, a former VRS base, that it still had to settle its financial debt for 540 mines provided by *Krušik* in 1994, thereby demonstrating that this materiel was supplied without payment during the war.<sup>3251</sup> Another 1998 document indicates that the Bijeljina Special Brigade Police-MUP had yet to settle its debt to *Krušik* for materiel supplied in 1994.<sup>3252</sup>

1133. While the bulk of the evidence suggests that the VJ usually gave logistical assistance to the VRS free of charge or at significantly reduced cost, the VRS Krajina Corps reported having purchased in the FRY a total of 3,617,440 bullets of various calibres and 4,618 mines with their own funds.<sup>3253</sup> Additionally, in May 1995, General Dragomir Milošević notified the VRS Main Staff that the SRK purchased part of its supplies: “Over the past three or four months we have been obtaining fuel by buying it on the open market in the FRY [...] which has been paid for by social funds and businesses in the Corps’ zone of responsibility”.<sup>3254</sup>

1134. *Pretis* itself obtained certain materials through sale contracts,<sup>3255</sup> although it was atypical for *Pretis* to purchase materials during the war given the shortage of money to pay for materials.<sup>3256</sup> *Pretis* commonly engaged in “barter agreements” whereby it offered to provide other products as a form of non-monetary payment.<sup>3257</sup>

<sup>3249</sup> Ex. P622, Approval by the Engineering Administration of the Land Forces of the VJ General Staff Addressed to Military Post 9808, 16 May 1995 (emphasis added). See Mladen Mihajlović, T. 3896-3898.

<sup>3250</sup> Ex. P2203, Transcript of the Collegium of the Chief of the VJ General Staff, 6 November 1995, p. 3. See Miodrag Starčević, T. 6787-6788.

<sup>3251</sup> Ex. D458, Note to Han Pijesak from *Krušik* Valjevo; Radojica Kadjević, T. 13659-13662.

<sup>3252</sup> Ex. D459, Overview of Debt of Bijeljina MUP – *Krušik* Valjevo; Radojica Kadjević, T. 13662-13663.

<sup>3253</sup> Ex. P1213, Correspondence Between the 1<sup>st</sup> Krajina Corps Command and the VRS Main Staff Regarding Reception of Military Equipment, 11 July 1994. Certain VRS units directly bought ammunition with funds obtained from private donors without resorting to the VRS Main Staff, MP-14, T. 3729 (closed session).

<sup>3254</sup> Ex. P994, SRK Request Regarding Fuel Supply Through VJ, 3 May 1995.

<sup>3255</sup> See Ex. P1064, Exchange Contract Between *Krušik* DD and *Pretis*, 8 August 1994 (*Pretis* purchased detonators, gun cartridges, and primary charges for shells from the *Krušik* military company in Valjevo, Serbia for a total value of 1,277,920 dinars, the prices of the items being set by the VJ and FRY Defence Ministry); Ex. P513, Contract Between *Pretis* and *Kragujevac* TRZ, 20 July 1995 (*Pretis* purchased 10,000 mines, 200 flash bombs, 2,000 automatic rifle clips, 5,000 cartridges, and 2,000,000 bullets from the *Kragujevac* TRZ, the price to be determined in the “annexes to the contract”). See also Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 41.

<sup>3256</sup> Ex. P506, Transcript of Nikola Tošović Deposition, 14 December 2008, T. 101, 104.

<sup>3257</sup> Ex. P506, Transcript of Nikola Tošović Deposition, 14 December 2008, T. 87-88, 104-107. See also Ex. P511, RS MOD Authorisation to *Pretis* to Conclude a Barter Agreement, 26 November 1993 (The RS Defence Ministry, acting on behalf of *Pretis*, proposed a “barter agreement” to the VJ General Staff’s *Kragujevac*

## 8. Military Training of VRS Troops

1135. At the outset, the Defence submits that Perišić had no authority over the training of VRS troops by the VJ, and argues that the decision to train them was made by the SDC, not Perišić.<sup>3258</sup>

1136. An order by the VJ Chief of General Staff, dated 23 August 1993, regulated the instruction of VRS personnel in target and anti-aircraft shooting at the Pasuljanske Livade base.<sup>3259</sup> The Trial Chamber finds, however, that this particular order was presumably issued by Momčilo Perišić's predecessor, as Perišić did not officially become Chief of General Staff before 26 August 1993.

1137. On 25 December 1993, Momir Bulatović addressed the SDC about the "training of recruits", emphasising that "we can only do this by observing the law – military cooperation between the FRY and other state entities. We cannot send children there".<sup>3260</sup> Perišić, then serving as VJ Chief of General Staff, agreed: "*That's what we suggested too – to receive them here, train them, and then they can go*".<sup>3261</sup>

1138. On 16 March 1994, Perišić told the SDC that the VRS and SVK had requested training for their cadets.<sup>3262</sup> Perišić noted that the VJ's academies and schools could train 240 cadets, provided the SDC provided a sufficient budget.<sup>3263</sup> Based on Perišić's advice, the SDC agreed that "240 students shall be enrolled at the Military Academy and the Military College for the needs of the Army of Republika Srpska and the Army of the RSK" and that "funds necessary for their education will be provided by the Federal Government".<sup>3264</sup>

1139. On 11 July 1994, referring to non-commissioned officers serving in the VRS, Perišić told the SDC: "we are educating these people; they are completing the academy here; we are sending

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Institute whereby *Pretis* would provide 2,900 pieces of cast jackets of different types in exchange for artillery gunpowder, artillery ammunition for training, gunpowder, artillery igniters, artillery percussion caps and gunpowder charges for 155mm bullets); Ex. P512, Barter Agreement Between *Pretis* and Kragujevac Technical Overhaul Institute ("TRZ"), 24 July 1995 (*Pretis* agreed to provide the *Kragujevac* TRZ with construction timber, rail truck wheel struts, construction steel, steel reinforcing bars, petrol engine and rail truck bearings, valued at a total in exchange for bullets, shells, base charges for shells, each side of the transaction valuing an estimated 2,345,500 dinars); Ex. P1250, Correspondence From VRS Main Staff to RS Defence Ministry Regarding Allocation of Equipment, 29 January 1994 ("A decision for securing 100 tonnes of explosives (of the requested 150 tonnes) in exchange for 125mm ammunition for M-84 tanks is currently in the procedure. Once the decision is issued, the VJ Supplies Administration will sign a barter agreement with *Pretis*"); Ex. D416, RS MOD Agreement, 26 November 1993 (Proposed barter contract whereby *Pretis* would obtain artillery gunpowder, artillery test ammunition, ignition gunpowder, artillery fuses, artillery cartridges and gunpowder charges from the Kragujevac TRZ in exchange for a quantity of shell "jackets" of "equivalent value").

<sup>3258</sup> Defence Final Brief, paras 780-784.

<sup>3259</sup> Ex. P941, VJ General Staff Information Addressed to the MOD, 30 August 1993 (referring to VJ Chief of General Staff order No. 47-11, 23 August 1993).

<sup>3260</sup> Ex. P781, Stenographic Transcript of the 16<sup>th</sup> Session of the SDC, 25 December 1993, p. 16.

<sup>3261</sup> *Ibid.* (emphasis added).

<sup>3262</sup> Ex. P783, Stenographic Transcript of the 19<sup>th</sup> Session of the SDC, 16 March 1994, p. 22.

<sup>3263</sup> *Ibid.*

<sup>3264</sup> Ex. P710, Minutes of the 19<sup>th</sup> Session of the SDC, 16 March 1994, p. 2.

them there; the president should sign the decree on commissioning them”.<sup>3265</sup> Perišić equally participated in an SDC decision stating that “480 students from the 30<sup>th</sup> and 40<sup>th</sup> personnel centres are to be admitted to courses in VJ military schools and academies”.<sup>3266</sup> Petar Škrbić also testified that certain graduates from the VJ Military Academy entered the VRS, although the number decreased during the course of the war.<sup>3267</sup> Still, in 1994, for example, the VRS took in 31 non-commissioned officers and 28 officers with the rank of 2<sup>nd</sup> lieutenant who had graduated from the VJ Military Academy.<sup>3268</sup>

1140. The Trial Chamber therefore finds that Perišić, as the head of the VJ, had authority over the general training process, was supportive of efforts to have the VJ train VRS troops and was involved in the SDC’s decision to authorise this assistance.

1141. In addition, the Defence submits that the Prosecution has failed to prove that Perišić “exercised any authority with regard to the training of the 10<sup>th</sup> Sabotage Detachment”.<sup>3269</sup>

1142. According to Dražen Erdemović, approximately 50 members of the VRS’s 10<sup>th</sup> Sabotage Detachment followed another training course led by VJ officers at the VJ barracks in Pančevo, Serbia, in late November or early December 1994.<sup>3270</sup> The training focused on handling ammunition, laying explosives, destroying buildings and general fitness.<sup>3271</sup> Erdemović’s account is corroborated by a document referring to the completed “twenty-day training course” for the VRS’s 10<sup>th</sup> Sabotage Detachment in Pančevo, and mentioning an “agreement” for the VJ to dispatch its three instructors to the VRS garrison in Bijeljina, RS, in order to continue the training.<sup>3272</sup> When VJ instructors came to Bijeljina, they changed their VJ license plates into VRS plates in order to maintain secrecy, and received permits that would enable them to avoid being stopped at checkpoints.<sup>3273</sup> The instructors subsequently travelled to Vlasenica, where they again trained the VRS’s 10<sup>th</sup> Sabotage Detachment in weapon and explosive usage for two to three weeks in early 1995.<sup>3274</sup> These training sessions were intended to remain secret.<sup>3275</sup> The members of the 10<sup>th</sup>

<sup>3265</sup> Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, p. 49.

<sup>3266</sup> Ex. P760, Minutes from the 32<sup>nd</sup> Session of the SDC held on 1 February 1995, p. 1.

<sup>3267</sup> Petar Škrbić, T. 11735.

<sup>3268</sup> *Ibid.*

<sup>3269</sup> Defence Final Brief, para. 1094.

<sup>3270</sup> Dražen Erdemović, T. 7944. Erdemović did not attend this training.

<sup>3271</sup> Dražen Erdemović, T. 7945.

<sup>3272</sup> Ex. P2521, Request of Zdravko Tolimir to the VJ General Staff to Send Three Instructors to Train the 10<sup>th</sup> Sabotage Detachment, 1 February 1995, p. 1. *See also* Dražen Erdemović, T. 7948.

<sup>3273</sup> Dražen Erdemović, T. 7947-7948.

<sup>3274</sup> Dražen Erdemović, T. 7947-7949.

<sup>3275</sup> Dražen Erdemović, T. 7948-7949.

Sabotage Detachment who were trained by the VJ officers participated in the takeover of Srebrenica in July 1995.<sup>3276</sup>

1143. A February 1995 letter from Dragomir Milošević, the Commander of the SRK, to General Mladić indicates that Perišić approved training of the 10<sup>th</sup> Sabotage Detachment:

We have no officers in the SRK who could provide specialised training with sufficient quality, although there is enough interest in this kind of training. For this reason, we contacted the VJ Special Forces Corps in Belgrade, with the intention have them send us, for a short period, several officers who would provide the specialised part of training on Jahorina with high quality. [...] [VJ officers] agreed to train 20 soldiers for sabotage and reconnaissance operations, and ten soldiers for anti-sabotage and anti-terrorist operations. Accommodations and meals would be provided in Pančevo [Serbia] [...] [W]e hereby ask you to obtain approval through General PERIŠIĆ, so that the VJ Special Forces Corps could provide the training. *As they stated, based on the said approval, training is already being provided to the 10<sup>th</sup> DIO [Sabotage and Reconnaissance Detachment] of the GŠ VRS [Main Staff].*<sup>3277</sup>

1144. Besides Dragomir Milošević's letter, the Trial Chamber recalls that Perišić had authority over the VJ's training of VRS troops, and therefore finds that the only reasonable conclusion is that Perišić authorised the training of the 10<sup>th</sup> Sabotage Detachment.

1145. The Trial Chamber was presented with additional evidence concerning the VJ's training of VRS troops and Perišić's approval thereof.

1146. On 30 August 1993, VJ General Ljubomir Bajić wrote to the FRY MOD in regard to the imminent arrival of 264 VRS servicemen to continue their training in target and anti-aircraft shooting, as approved by Perišić.<sup>3278</sup> General Bajić specified that the VRS troops would cross the RS-FRY border "wearing plain clothes", and asked the FRY MOD to "make sure with the Serbia MUP that the [VRS personnel] cross the border unimpeded".<sup>3279</sup>

1147. In 1993 and 1994, the VJ's 72<sup>nd</sup> Brigade trained VRS special forces, teaching them how to implement special tactics and how to handle special weapons and equipment.<sup>3280</sup> The VRS special forces were allowed to keep the weapons that the VJ gave them for their training, such as snipers and other special weapons.<sup>3281</sup> The staff of the VJ 72<sup>nd</sup> Brigade that conducted the training considered that it was normal to provide the VRS with these weapons because the VJ and VRS were the same army.<sup>3282</sup> Perišić and other VJ commanders attended certain training sessions to

<sup>3276</sup> Dražen Erdemović, T. 7949.

<sup>3277</sup> Ex. P932, SRK Command Memo to the VRS Main Staff Regarding Training, 2 February 1995 (emphasis added).

<sup>3278</sup> Ex. P941, VJ General Staff Information Addressed to the MOD, 30 August 1993 (referring to VJ Chief of General Staff order No. 47-11, 23 August 1993).

<sup>3279</sup> *Ibid.*

<sup>3280</sup> MP-11, T. 8945-8947, 9014-9015.

<sup>3281</sup> MP-11, T. 8946.

<sup>3282</sup> MP-11, T. 8946-8947.

monitor the progress of the VRS special forces and to see if further training supplies were needed.<sup>3283</sup>

1148. Similarly, the VJ General Staff provided a month of training in reconnaissance and sabotage to the VRS and SVK in Banja Luka in April 1994.<sup>3284</sup> As reflected in the official gazette, the VJ arranged to send an officer to RS in order to train the Drina Corps' Zvornik Light Infantry Brigade in reconnaissance and sabotage between 1 September and 30 November 1993,<sup>3285</sup> as well as another officer to continue training between 8 November 1993 to 7 March 1994.<sup>3286</sup>

1149. On 20 April 1995, Perišić's Cabinet approved Mladić's demand that two VJ officers from the Pančevo Security and Intelligence Training Centre be allowed to continue their training of VRS commanding officers at the Banja Luka Military School Centre until 3 May 1995.<sup>3287</sup> On 19 May 1995, the VJ General Staff approved the VRS's request for a specialist to provide sniper training to VRS soldiers and their instructors.<sup>3288</sup> Kadijević identified Perišić's initials on the document, acknowledged that the sniper instructor would train the instructors of other snipers, and explained that the sniper instructor was "sent to the 30<sup>th</sup> Personnel Centre, which is where officers were sent within the Army of Yugoslavia in order to send them to the VRS".<sup>3289</sup>

1150. VRS troops were regularly trained by VJ units in Pančevo, Serbia.<sup>3290</sup> The VJ provided a training course for the saboteurs of the East Bosnia Corps between 15 and 30 April 1994.<sup>3291</sup> In May 1994, the VRS made arrangements to send three soldiers to attend a 15-day VJ training in reconnaissance and sabotage.<sup>3292</sup> Between 25 July and 10 August 1994, 30 soldiers of a Drina Corps manoeuvre battalion were scheduled for training.<sup>3293</sup> The Drina Corps Command specified that "[r]eception, accommodation, food and training of the soldiers shall be regulated by the [Yugoslav Army Special Units Corps] Command".<sup>3294</sup> Drina Corps Units were expected to be trained in air defence firing between 24 August and 10 September 1994.<sup>3295</sup> Another report notes that VRS

<sup>3283</sup> MP-11, T. 8947. The witness did not specify whether Perišić attended training sessions pertaining to sniping or other skills.

<sup>3284</sup> Ex. P2176, Documents Regarding the Cooperation between VRS, SVK and VJ in April and May 1994, p. 12.

<sup>3285</sup> Ex. P2844, Stupar Temporary Assignment of VJ Saboteur to VRS, 1 September 1993.

<sup>3286</sup> Ex. P2846, Stupar Temporary Assignment of VJ to Drina Corps, 4 November 1993.

<sup>3287</sup> Ex. P2719, Documents Relating to a Request from Ratko Mladić to Perišić Regarding Training of Officers, 15 and 20 April 1995. *See* Petar Škrbić, T. 11925.

<sup>3288</sup> Ex. P2721, Documents Relating to a Request from Ratko Mladić to Perišić Regarding Provision of Sniper Training, May-July 1995 (see above for discussion of date of first document).

<sup>3289</sup> Radojica Kadijević, T. 13719-13722.

<sup>3290</sup> MP-11, T. 8946.

<sup>3291</sup> Ex. P942, Lt. Col. Todorović Order to VP 8486-1 Pančevo, 5 April 1994.

<sup>3292</sup> Ex. P870, Memorandum on Training Issued by VP 7469 Zvornik, 9 May 1994.

<sup>3293</sup> Ex. P1804, Order by Drina Corps Command, 18 July 1994.

<sup>3294</sup> *Ibid.*

<sup>3295</sup> Ex. P928, Zvornik Infantry Brigade Command Order Regarding Training, 15 August 1994.

soldiers were trained in using shells in September 1994.<sup>3296</sup> The VRS and VJ also made arrangements to train “30 combatants” of the Drina Corps in 1994.<sup>3297</sup> Following a separate arrangement, Vujadin Popović reported that the VJ had agreed to give a three-month “security” training to an unspecified number of Drina Corps “subordinate officers”, starting in March 1995.<sup>3298</sup>

1151. A subsequent order from Dragomir Milošević refers to the “education of officers and non-commissioned officers” of the SRK by the VJ.<sup>3299</sup> Another dispatch from him stipulates that the VJ has consented to train SRK units in policing and reconnaissance necessary for combat operations.<sup>3300</sup>

1152. Various other exhibits document the VJ’s regular training of VRS troops in various locations. A VRS report recounts how “VJ senior officers” trained 42 VRS soldiers in tactical fire and in operating artillery and hand-held rocket launchers in Batajnica, near Belgrade, in December 1994.<sup>3301</sup> The report indicates that the VJ expended significant resources in this training: “Besides the classroom training, that is, theoretical part of the training, we had organised a daily plane fly-over, which gave us exceptional conditions for the monitoring and the training with real targets, arriving and departing”.<sup>3302</sup> The VJ provided training to ten marksmen of the 1<sup>st</sup> Krajina Corps.<sup>3303</sup> The VJ conducted training sessions on operating anti-aircraft light artillery for the 1<sup>st</sup> Krajina Corps,<sup>3304</sup> the Drina Corps,<sup>3305</sup> and SRK.<sup>3306</sup> In December 1993, the VRS asked the VJ General Staff to provide military experts to give a presentation at a conference entitled “VRS: material support, the situation, requirements and possibilities”, which would be attended by top VRS officers.<sup>3307</sup> The requested VJ experts had previously provided training to the VRS and “carried out their task impeccably”.<sup>3308</sup>

<sup>3296</sup> Ex. P937, Report of Combat Training in the FRY of the 18<sup>th</sup> SVK Mixed Artillery Regiment.

<sup>3297</sup> Ex. P867, Drina Corps Command Order to the 1<sup>st</sup> Zvornik Infantry Brigade Command, 18 July 1994.

<sup>3298</sup> Ex. P869, Drina Corps Intelligence-Security Department (OB) Information, 13 February 1995.

<sup>3299</sup> Ex. P1007, Order Regarding Training of SRK Units in 1995, 29 January 1995, p. 5.

<sup>3300</sup> Ex. P868, SRK Command Dispatch to Seven Units Regarding Training, 2 March 1995.

<sup>3301</sup> Ex. P931, Reports on Training Results, 21 December 1994, pp 1-2.

<sup>3302</sup> Ex. P931, Reports on Training Results, 21 December 1994, p. 1.

<sup>3303</sup> Ex. P921, 1<sup>st</sup> Krajina Corps Command Dispatch Order to Eight Units Regarding Training, 24 November 1994.

<sup>3304</sup> Ex. P922, 1<sup>st</sup> Krajina Corps Command Regular Combat Report to the VRS Main Staff, 24 August 1994; Ex. P933, VRS Main Staff Order Regarding List of Servicemen to Report to Batajnica for Training, 11 October 1995.

<sup>3305</sup> Ex. P923, Memo Sent by VP 4795 Belgrade Regarding Report on Training Results, 27 May 1994; Ex. P924, Drina Corps Command Dispatch Order to Two Units Regarding Training, 24 November 1994; Ex. P925, Drina Corps Command Orders, 3 October 1995; Ex. P926, Drina Corps Command Dispatch Order to Two Units Regarding Training, 24 November 1994; Ex. P930, 1<sup>st</sup> Milići Light Infantry Brigade Command Order Regarding Training, 18 August 1994; Ex. P933, VRS Main Staff Order Regarding List of Servicemen to Report to Batajnica for Training, 11 October 1995.

<sup>3306</sup> Ex. P931, Reports on Training Results, 21 December 1994, pp 3-7; Ex. P933, VRS Main Staff Order Regarding List of Servicemen to Report to Batajnica for Training, 11 October 1995.

<sup>3307</sup> Ex. P1819, Request by VRS and Authorisation by VJ General Staff, 1 December 1993.

<sup>3308</sup> *Ibid.*

1153. Dragomir Milošević stressed that VJ training of SRK units was necessary to “ensure the best possible results in the fight against *poturicas*”, a derogative term for Muslims.<sup>3309</sup> He admitted that the SRK lacked officers to provide specialised training.<sup>3310</sup> Another SRK request to the VJ states: “Since we do not have appropriate personnel, we ask that the training instructors bring the training curriculum with them”.<sup>3311</sup>

1154. In sum, the Trial Chamber finds that Perišić authorised the VJ to regularly train VRS troops.

#### 9. Other Sources of Logistics

1155. In assessing whether the VRS received substantial assistance from the VJ, it is necessary to consider the extent to which the VRS relied on logistics from separate sources.

##### (a) Supplies and Training from Other Countries

1156. The *Pretis* factory procured part of its steel from Slovenia and Russia. *Pretis* received some of its gunpowder from Slovenia in addition to Serbia.<sup>3312</sup> At a relatively early stage of the war, RS and RSK further agreed on a protocol designed to facilitate cooperation in the exchange and production of ammunition and military equipment,<sup>3313</sup> although the evidentiary record does not establish that this protocol led to significant exchanges.

1157. At a meeting on 15 March 1994 in Belgrade, Mladić intimated to Slobodan Milošević and Zoran Lilić, among others, that FRY assistance was important because of the “impossibility of importing” from other countries.<sup>3314</sup> Mladić then suggested that efforts be made to obtain assistance from additional “friendly and neutral states”.<sup>3315</sup>

1158. According to Đorđe Đukić, the VRS had contacts with officials from Russia’s Directorate for the Export of Military Material, who offered to aid with ammunition, mines and other explosive devices.<sup>3316</sup> Mladić and Đukić visited Russia respectively in March 1995 and December 1995 in order to make arrangements for aid.<sup>3317</sup> The Defence relies on Đukić’s statement to contend that the VRS actually obtained mines, ammunition and explosives from Russia.<sup>3318</sup> Đukić stated that no

<sup>3309</sup> Ex. P868, SRK Command Dispatch to Seven Units Regarding Training, 2 March 1995.

<sup>3310</sup> Ex. P932, SRK Command Memo to the VRS Main Staff Regarding Training, 2 February 1995.

<sup>3311</sup> Ex. P2717, Order of VRS Main Staff Chief of Staff Milavanovic to VJ General Staff, 25 February 1995.

<sup>3312</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 24-25, 35-36.

<sup>3313</sup> Ex. D573, VRS and SVK Agreement on Merging Ammunition Production, 1 June 1993.

<sup>3314</sup> Ex. P2940, Excerpt from Ratko Mladić’s Notebook, 15 March 1994, p. 12.

<sup>3315</sup> Ex. P2940, Excerpt from Ratko Mladić’s Notebook, 15 March 1994, p. 13.

<sup>3316</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 5.

<sup>3317</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 5. *See also* Ex. D396, Transcript of Interview with Đorđe Đukić, 29 February 1996 (Describing his visit to Russia in late December 1995).

<sup>3318</sup> Defence Final Brief, page 190, fn. 1153, citing Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 5.

weaponry was supposed to be obtained from these Russian contacts until after 15 January 1996, a date following the end of the Indictment period.<sup>3319</sup> And Đukić did not even know whether an agreement was ultimately reached.<sup>3320</sup> No evidence establishes that the VRS obtained weaponry from Russia.

1159. Dušan Kovačević, the former RS Defence Minister, was contacted by Israel's Mossad around March 1995 "about quite a large number of Mujahedin being dispatched to Bosnia-Herzegovina".<sup>3321</sup> In this respect, Mladić's diary reads: "From Israel – they offer joint combat against extreme Islam – offer the training of our men in Greece at their expense. They offer us special weapons for 500 men – snipers for free – they said it came to Bihać, I don't know whether it was given to Serbia".<sup>3322</sup> Kovačević specified that Israel's offer of assistance only applied to the VRS's fight against the mujahedins.<sup>3323</sup> But no evidence was presented that Israel's offer of assistance was actually fulfilled.

1160. Similarly, Mladić's diary mentions unfruitful efforts to try and procure ammunition from Greece: "Agreement regarding take-over of ammunition from Greece – they are not very interested; they are very difficult regarding this; they are being followed by the CIA".<sup>3324</sup>

1161. The Defence argues that "[m]embers of the VRS not only attended schools and academies in Belgrade but also those in such countries as Greece and France", for which it cites Milenko Jevđević.<sup>3325</sup> However, Jevđević was speaking of training from *September 1998 to August 1999*, several years after the Bosnian war.<sup>3326</sup> The Trial Chamber therefore does not find this evidence relevant and supportive of the Defence's claim.

1162. Witness MP-14 testified that *Pretilis* used certain "French bombs" in order to manufacture modified air-bombs.<sup>3327</sup> MP-14 did not specify if these bombs were imported from France before or during the war, or whether they were assembled based on a French technical model, or procured otherwise. No evidence was presented at trial that the VRS obtained logistical assistance from France during the war.

<sup>3319</sup> The Russian contacts were supposed to send their offer to the VRS by that date. Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 5. Đukić also stated that the equipment was supposed to be purchased, albeit "at the best possible price". Ex. D396, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 3.

<sup>3320</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 5.

<sup>3321</sup> Dušan Kovačević, T. 12746-12747.

<sup>3322</sup> Ex. D419, Excerpt from Ratko Mladić's Notebook, 11 March 1995, p. 2 (underline in original). *See also* Dušan Kovačević, T. 12746-12747.

<sup>3323</sup> Dušan Kovačević, T. 12746.

<sup>3324</sup> Ex. D419, Excerpt from Ratko Mladić's Notebook, 11 March 1995, p. 2.

<sup>3325</sup> Defence Final Brief, para. 788.

<sup>3326</sup> Milenko Jevđević, T. 11110.

<sup>3327</sup> MP-14, T. 3654-3655 (closed session).



1163. Ned Krayishnik, a Serb individual who had emigrated to Canada before the war,<sup>3328</sup> fundraised money in Canada's Serb community and personally delivered roughly \$45,000 for RS interests, including the military, "the media and propaganda".<sup>3329</sup> Certain other individuals from the Serb diaspora made donations too.<sup>3330</sup>

1164. In April 1993, the VRS Main Staff noted that "there are no imports, except from the FRY".<sup>3331</sup> Similarly, a November 1993 report by the VRS Main Staff and RS MOD did not identify any country providing logistical assistance besides the FRY: "Since the beginning of combat operations, the [VRS] has relied on several different supply sources. The basic sources of supply included the Army's own reserve, the Republic reserve, Republika Srpska's production, and various forms of assistance *from the Federal Republic of Yugoslavia*".<sup>3332</sup> By the same token, when General Mladić identified the sources of VRS weaponry in his report to the RS National Assembly, he did not specify that any aid had been provided by any country besides the FRY through the VJ.<sup>3333</sup>

1165. Michael Williams, the UNPROFOR Director of Information, reviewed all classified reports in the UN's possession<sup>3334</sup> and never saw a "report or even an allegation that the VRS was supplied by some force other than Yugoslavia or other than Serbia".<sup>3335</sup> Further, as indicated by his remarks during an SDC session, Momčilo Perišić himself did not believe that the VRS had another significant source of assistance: "They rely *solely on us* and come to us with demands".<sup>3336</sup> In an interview conducted after the war, Perišić said, while referring to the FRY, RS and RSK, that there was "one single army" that "was getting its logistics support mostly from the Federal Republic of Yugoslavia".<sup>3337</sup>

1166. Ivan Đokić, the Defence's expert witness on logistical assistance, whose testimony is discussed in a separate section,<sup>3338</sup> advanced in his report that, besides the FRY, "the most probable

<sup>3328</sup> Ned Krayishnik, T. 9464-9465.

<sup>3329</sup> Ned Krayishnik, T. 9469-9476.

<sup>3330</sup> Rajko Petrović, T. 13759, 13763.

<sup>3331</sup> Ex. P149, Analysis of the Combat Readiness and Activities of the VRS in 1992, April 1993, p. 96.

<sup>3332</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, p. 1 (emphasis added).

<sup>3333</sup> Ex. P312, Transcript of the Tape Recording of the 50<sup>th</sup> Session of the National Assembly, 15 and 16 April 1995, p. 51. *See also supra* section VI.B.5.

<sup>3334</sup> Ex. P2372, Transcript of Michael Charles Williams from *Prosecutor v. S. Milošević*, 24 June 2003, T. 22893-22894.

<sup>3335</sup> Michael Williams, T. 6468. Williams added that VJ support was further evidenced by "the ability of both the Croatian Serbs and Bosnian Serbs to undertake some operations for which they did not on the surface of it have sufficient logistical and technical capability. [O]ne aspect of this, for example, would be helicopter flights. Another aspect of this would be the strengthening of the air defence system in Bosnia in the course of 1994. I mean, you cannot simply build an air defence system out of nothing". Ex. P2372, Transcript of Michael Charles Williams from *Prosecutor v. S. Milošević*, 24 June 2003, T. 22955.

<sup>3336</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 38 (emphasis added).

<sup>3337</sup> Ex. P2879, Video "JNA – srpska verzija sloma" Serbian Version of the Breakup, p. 27.

<sup>3338</sup> *See infra* section VI.E.

sources of supply” for RS were Israel, Russia and Ukraine.<sup>3339</sup> To support, Đukić cited an article from the Stockholm Peace Research Institute (SPRI).<sup>3340</sup> The SPRI article provides a “summary of possible/suspected sources” of arms to the VRS during the war and lists “FRY, Israel, Russia, Ukraine” as sources.<sup>3341</sup> This statement by the SPRI did not rely on primary investigation or direct evidence of arms transfers. The SPRI noted that “Bosnian Serb forces are also reported to have received weapons shipments organized by Russian intermediaries, including D-30 artillery pieces and T-72 tanks”.<sup>3342</sup> For this proposition the SPRI report cited a report from “*Jane’s Global Update*”, which is not part of the trial record.<sup>3343</sup> The SPRI report also posited that “there are reports that the intelligence services of Ukraine, Greece and Israel, supplied arms to Bosnian Serb forces”.<sup>3344</sup> For support it cited a report by the Netherlands Institute for War Documentation, which similarly is not in evidence.<sup>3345</sup> The Trial Chamber finds that the SPRI report’s listing of Israel, Russia and Ukraine as “possible/suspected sources” lacks weight since it does not rest on primary investigation or direct evidence, but on reports that are not part of the evidentiary record.

1167. In sum, the trial record conclusively demonstrates that the FRY was the VRS’s primary source of weaponry. The evidence of material from other sources does not raise a reasonable doubt that the FRY was the primary source of weaponry, as the trial record shows that the VRS obtained no more than a limited proportion of its weaponry from any country other than the FRY.

1168. On the other hand, the trial record shows that the VRS procured appreciable quantities of fuel from the Croat Republic of Herceg-Bosna and RSK. According to Đorde Đukić, the RS government made arrangements to purchase fuel from “Croatian representatives” in mid-1993, thereby leading to the delivery of 7,000 to 10,000 tonnes of fuel to the VRS.<sup>3346</sup> Đukić apparently alluded to representatives of the Croat Republic of Herceg-Bosna.<sup>3347</sup> While Đukić mentioned that these trade arrangements ended by the beginning of 1995, smaller quantities were subsequently obtained from Croatian sources at the local level.<sup>3348</sup> Kovačević concurred with Đukić’s account but stated that the VRS had provided ammunition in exchange for the fuel.<sup>3349</sup>

<sup>3339</sup> Ex. D507, Đukić Report on Logistical Assistance, p. 23.

<sup>3340</sup> See Ex. D800, United Nations Case Study on Arms Embargoes, 2007.

<sup>3341</sup> Ex. D800, United Nations Case Study on Arms Embargoes, 2007, p. 10.

<sup>3342</sup> Ex. D800, United Nations Case Study on Arms Embargoes, 2007, p. 12.

<sup>3343</sup> Ex. D800, United Nations Case Study on Arms Embargoes, 2007, pp 10, 12, fns 62, 81.

<sup>3344</sup> Ex. D800, United Nations Case Study on Arms Embargoes, 2007, p. 12.

<sup>3345</sup> Ex. D800, United Nations Case Study on Arms Embargoes, 2007, pp 4, 12, fns 12, 82.

<sup>3346</sup> Ex. D397, Transcript of Interview with Đorde Đukić, 29 June 1996, pp 1-3. See also Ex. D758, Excerpt from Ratko Mladić’s Notebook, 9 January 1994 (mentioning receipt of at least 4,000 tonnes of oil from Croatia).

<sup>3347</sup> Ex. D397, Transcript of Interview with Đorde Đukić, 29 June 1996, pp 1-3. Kovačević testified that Đukić’s statement concerned the Herceg-Bosna Croats. Dušan Kovačević, T. 12682.

<sup>3348</sup> Ex. D397, Transcript of Interview with Đorde Đukić, 29 June 1996, p. 2; Ex. P75, Witness Statement of Đorde Đukić, 4/29 February 1996, p. 5.

<sup>3349</sup> Dušan Kovačević, T. 12680-12683.

1169. A document authored by General Milivoj Petković of the Croat Republic of Herceg-Bosna also refers to providing oil to RS authorities in exchange for unspecified other products.<sup>3350</sup> Around the same time frame, the Defence Council of the Croat Republic of Herceg-Bosna addressed a letter to the RS MOD concerning over 1.5 million rounds and approximately 4,000 shells, among other equipment.<sup>3351</sup> It states that the Croat Republic of Herceg-Bosna would “take charge of the items” supplied by RS, which appears to have been the sender, not the recipient.<sup>3352</sup>

1170. In August 1994, the VRS Main Staff equally reached an agreement with the RSK government to obtain 25,000 litres of D-2 fuel and 15,000 litres of MB fuel from the RSK’s reserves.<sup>3353</sup> Milomir Kovačević also advanced that the VRS obtained part of its fuel from Bulgaria and Romania.<sup>3354</sup>

1171. Pyers Tucker deemed that the only logical place where the VRS’s fuel could possibly come from was the FRY.<sup>3355</sup> His testimony is not convincing in this regard because the VRS had other sources of fuel. However, the trial record does not establish that the VRS obtained significant quantities of weaponry from any country beside the FRY.

(b) Weaponry Purchased Directly from FRY Military Factories

1172. In addition to the weaponry supplied free of charge from the VJ’s reserves, the VRS technically had to purchase the distinct quantity of weaponry it obtained directly from the FRY military factories (special purpose industries), which were officially managed by the FRY MOD.<sup>3356</sup>

1173. Mladić reported to the RS National Assembly that, with regard to weaponry used in battle from the beginning of the war until 15 April 1995, merely 9.11% of the total infantry ammunition was “imported, *i.e.* bought” whereas 47.2% came from VJ “aid”, only 0.26% of expended artillery

<sup>3350</sup> Ex. D750, Report on Cooperation between VRS MOD and HVO, 17 January 1994. *See also* Ex. D749, RS and HVO on Coordinating Prices of MTS, 6 November 1993 (referring to trade arrangements between RS and the Croatian Republic of Herceg-Bosna).

<sup>3351</sup> Ex. D751, HVO Request for Transport of MTS from RSK, 8 January 1994.

<sup>3352</sup> *Ibid.*

<sup>3353</sup> Ex. D508, Order on Release of Fuel from Dvor na Uni for the Use of the VRS, 23 August 1994.

<sup>3354</sup> Trucks from the Borovica Transport Company transported fuel from Bulgaria and Romania into RS and RSK. The VJ and MUP had no involvement in these particular fuel transactions. Milomir Kovačević, T. 6117-6120. *See also* Ex. D576, Contract for Purchase of Fuel by VRS from Private *Bosna* Company, May 1994 (Contract between RS government and *Bosna*, a Bulgarian company, to purchase 4 million litres of D-1 fuel for 4.6 million Deutschmarks).

<sup>3355</sup> Pyers Tucker, T. 9169-9170.

<sup>3356</sup> *See e.g.* MP-14, T. 3617-3618 (closed session). *See also supra* sections VI.B.5, VI.C.7.

ammunition was imported/bought whereas 34.4% came from VJ “aid”, and 4.9% of anti-aircraft ammunition was imported/bought whereas 52.4% came from VJ “aid”.<sup>3357</sup>

1174. Mladić did not specify from which country the “imported, *i.e.* bought” weaponry came. The trial record solely establishes that the VRS received ammunition from the VJ and the FRY special purpose industries.<sup>3358</sup> No evidence establishes that the VRS received ammunition from any country other than the FRY.<sup>3359</sup> Insofar as the “imported, *i.e.* bought” weaponry came from FRY special purpose industries, Mladić’s report demonstrates that a far greater proportion of the VRS’s ammunition came from VJ “aid” than from the special purpose industries, as demonstrated by the vast majority of the evidence at trial. For example, a VRS annual report shows that the VJ provided the majority of the VRS’s infantry ammunition in 1994, as well as approximately a fourth of its shells, whereas the rest came “[f]rom the RS Government”.<sup>3360</sup> That report does not identify the FRY’s special purpose industries or the FRY MOD as a source of supply.

(c) Ammunition Reserves in Republika Srpska

1175. According to a VJ General Staff report prepared for the international community, the JNA left behind 72,390 shells and 5,791 rounds of various types after it withdrew from BiH territory.<sup>3361</sup> In addition, prior to his appointment as RS Minister of Defence in January 1993, Dušan Kovačević worked on logistical matters for the VRS and participated in a commission assessing the state of VRS reserves that concluded its work in November 1992.<sup>3362</sup> Kovačević testified that ammunition was available in the Rudo, Višegrad, Ustikolina and Renovica depots.<sup>3363</sup> In his view, “[t]owards the end of 1991, there was anything between 16.000 and 19.000 tonnes of ammunition which belonged to the reserves of the Supreme Command of the JNA”.<sup>3364</sup>

About 50 per cent of that quantity – or rather, between 8-, and 9.000 tonnes of ammunition from those depots were transported to the territory of Yugoslavia. About 8.000 tonnes remained either in the depots or most of it was distributed across the territory and stored in somewhat smaller depots. [...] [I]n the general area of Podrinje there were about 8.000 tons of various kinds of ammunition. [...] [I]n the Mrkonjić Grad depot, I personally saw that about 1.000 tonnes of different calibre of ammunition were stored there after having been transported from Slovenia and

<sup>3357</sup> Ex. P312, Transcript of the Tape Recording of the 50<sup>th</sup> Session of the National Assembly, 15 and 16 April 1995, p. 51.

<sup>3358</sup> See *supra* section VI.C.9.(a).

<sup>3359</sup> *Ibid.*

<sup>3360</sup> Ex. P1214, Annual Financial Statement of the Plan of Tasks and Financing of the VRS for 1994, 17 February 1995, pp 19-21.

<sup>3361</sup> Ex. D381, List II of Army Property Left in SR BiH after Withdrawal of JNA. See Jugoslav Kodžopeljić, T. 12259-12260, 12272, 12274. The JNA left behind additional assets after its withdrawal from BiH territory. See Ex. D380, List I of Army Property Left in BiH after Withdrawal of JNA (tanks and other vehicles); Ex. D382, List III of Army Property Left in SR BiH after Withdrawal of JNA (miscellaneous items); Ex. D543, Report from the VJ to the Federal MOD, 8 January 2004 (firearms, artillery weapons, tanks and other vehicles).

<sup>3362</sup> Dušan Kovačević, T. 12528-12532, 12840.

<sup>3363</sup> Dušan Kovačević, T. 12837.

<sup>3364</sup> *Ibid.*

Croatia. About 1500 tonnes of ammunition had been brought over there from the Konjić and Gabela depots. Also, about 1.000 tonnes of ammunition was transported there from the territorial Defence of Bosnia-Herzegovina which had previously been stored in the JNA depots, and, subsequently, all of that was taken over by the VRS.<sup>3365</sup>

1176. In November 1993, the VRS Main Staff and RS MOD mentioned that, aside from FRY assistance and military production in RS, reserves were one of the “basic sources of supply”.<sup>3366</sup> In briefing the RS National Assembly on weaponry used during the war until April 15 1995, General Mladić identified the following sources of supply: total infantry ammunition (1.49% RS production, 42.2% reserves, 9.11% imports/purchases and 47.2% VJ “aid”), total artillery ammunition (26.2% RS production, 39% reserves, 0.26% imports/purchases and 34.4% VJ “aid”), total anti-aircraft ammunition (none from RS production, 42.7% reserves, 4.9% imports/purchases and 52.4% VJ “aid”).<sup>3367</sup> Mladić’s report therefore stipulates that reserves were a significant source of weaponry besides VJ “aid”.

1177. The Defence argues that Mladić’s figures are flawed because he deliberately underestimated ammunition reserves in RS in order to demand more logistical assistance.<sup>3368</sup> The Defence notably cites statements by Milan Ninković and Dušan Kovačević for this proposition.<sup>3369</sup>

1178. After Mladić’s presentation to the RS National Assembly, Ninković, Kovačević’s successor as Defence Minister,<sup>3370</sup> intervened to state that Mladić’s data should have been “harmonised” with data in the possession of the RS MOD.<sup>3371</sup> “[W]e do not accept that part and, excuse me, I claim that it is not true”, Ninković said.<sup>3372</sup> Ninković did not provide figures to support his position. According to Kovačević, “[a]lmost always most of the deputies felt that the requests were exaggerated, that Republika Srpska was unable to meet them, and that the VRS ought to take a more reasonable stance in that regard”.<sup>3373</sup> Branko Simić, a deputy, also contested Mladić’s presentation to the RS National Assembly, telling him that he “had no insight into the materiel supplies of the Serbian army” and was unfamiliar with how much was given by local sources in RS.<sup>3374</sup>

<sup>3365</sup> *Ibid.*

<sup>3366</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, p. 1.

<sup>3367</sup> Ex. P312, Transcript of the Tape Recording of the 50<sup>th</sup> Session of the National Assembly, 15 and 16 April 1995, p. 51.

<sup>3368</sup> Defence Final Brief, paras 732-741.

<sup>3369</sup> *Ibid.*

<sup>3370</sup> Dušan Kovačević, T. 12773-12774.

<sup>3371</sup> Ex. P312, Transcript of the Tape Recording of the 50<sup>th</sup> Session of the National Assembly, 15 and 16 April 1995, pp 71-72.

<sup>3372</sup> Ex. P312, Transcript of the Tape Recording of the 50<sup>th</sup> Session of the National Assembly, 15 and 16 April 1995, p. 72; *See also* Dušan Kovačević, T. 12764-12765.

<sup>3373</sup> Dušan Kovačević, T. 12761.

<sup>3374</sup> Dušan Kovačević, T. 12764-12765; Ex. P312, Transcript of the Tape Recording of the 50<sup>th</sup> Session of the National Assembly, 15 and 16 April 1995, p. 73.

1179. The Trial Chamber is mindful of the fact that this disagreement occurred in the context of ongoing tensions between, on one side, the VRS Main Staff and Mladić, and on the other side the political branch, namely the RS Presidency and MOD that Ninković and Kovačević represented.<sup>3375</sup> Relations between Mladić and Karadžić had become “quite tense” and were marked by clashes and “personal resentment” so that Karadžić unsuccessfully tried to have the Supreme Command dismiss or remove Mladić from his position in the spring of 1995.<sup>3376</sup>

1180. Kovačević likewise posited that Mladić’s assessment before the RS National Assembly was incorrect since it did not incorporate RS MOD data:

We had information to the effect that a far larger amount of assets had been produced in the RS. We also had information indicating that a far greater quantity of goods had been imported. Having been the ones who paid for them, we had accurate information about it. We also had figures indicating the quantities held in the reserves belonging to the former JNA, and we also had figures about the amount of proceeds from the purchases done by municipalities and local authorities.<sup>3377</sup>

1181. Kovačević added that “[i]n the course of the war, nobody ever responded to my request and explain what had happened to that ammunition. Everybody knew that that ammunition had been distributed across the territory and that that ammunition was under the control of the local brigades and the local authorities”.<sup>3378</sup> Kovačević stated that certain reserves “were being kept a secret from the [VRS] Main Staff” because VRS units “at lower levels, at the levels of brigade, had been hiding their resources and giving false images of resources to Mladić”.<sup>3379</sup> Kovačević added that, at the end of 1993, the VRS still had sufficient reserves of ammunition and “[t]here were only a couple of types of ammunition that were in short supply”.<sup>3380</sup> Kovačević acknowledged that the VRS faced a shortage of supplies from 1994 onwards, but claimed that it was not a genuine issue because the VRS Main Staff misevaluated its ammunition needs and existing reserves:

<sup>3375</sup> Dušan Kovačević, T. 12612-12613.

<sup>3376</sup> Dušan Kovačević, T. 12760, 12766-12767. According to Kovačević, General Milovanović was offered Mladić’s position but refused it, and most of the generals were against Mladić’s removal. Mladić arrested the generals who did not support him, including Dragomir Milošević, whereas Karadžić had the ministers who opposed the measure arrested as well, including Ninković. Karadžić nonetheless issued a decree reassigning Mladić as advisor to the president of the republic and supreme commander, although Mladić opposed this measure and remained Commander of the VRS Main Staff until his retirement in 1996. Dušan Kovačević, T. 12767, 12772-12775. Đukić gave a similar version of these events, although he stated that Dragomir Milošević stood with the other generals who supported Mladić. Đukić also described the personal rivalry and friction between Karadžić and Mladić. Ex. D398, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 2 (statement features two dates).

<sup>3377</sup> Dušan Kovačević, T. 12763.

<sup>3378</sup> Dušan Kovačević, T. 12838. Kovačević added: “After the signing of the Dayton Accord, the peace forces located in the territory of Sokolac municipality in a village between Sokolac and Olovo, several dozens of hundreds of tonnes, and if I can remember properly, over 300 tonnes of ammunition and explosive, which proves that I am right. And this information was publicised by SFOR members. [...] In the course of 1996 and 1997, SFOR units found huge quantities of ammunition hidden in the territory of Republika Srpska and confiscated all those”, Dušan Kovačević, T. 12838.

<sup>3379</sup> Dušan Kovačević, T. 12880-12881.

<sup>3380</sup> Dušan Kovačević, T. 12667, 12844, 12882-12883.

From the start of 1994, the problem of shortage of ammunition and fuel became gradually more prominent. This was a problem that I personally and the members of the Main Staff were confronted with because we received requests for ammunition. *I believed the requests to be exaggerated and unrealistic. Such quantities of ammunition were neither necessary nor was it easy to obtain them in such quantities at such short notice.* I normally instructed them to go to apply to their local brigades and to inspect the weapons depots they had, but they would see that *they had ammunition in enough – in sufficient quantities* which could be used in a rational manner, rather than applied to the state to use its resources to obtain ammunition that was already there.<sup>3381</sup>

1182. The Trial Chamber does not discount the fact that the VRS had access to significant military reserves left behind by the JNA upon its withdrawal from Bosnia or that some VRS units may have miscommunicated the state of their supplies to the VRS Main Staff. It is conceivable that Mladić's figures were somehow exaggerated or otherwise not entirely accurate. However, the Trial Chamber does not find Kovačević credible in generally claiming that the VRS did not face critical shortages of ammunition. Not only is it plausible that Mladić and VRS commanders were in a better position than the RS MOD to assess the needs for their own operations and the level of reserves in military depots, but Kovačević's depiction of the VRS reserves as generally satisfactory is contradicted by the great bulk of the evidence adduced at trial.

1183. A September 1992 report from VRS General Đorđe Đukić emphasised: "The SRJ reserves are limited".<sup>3382</sup> The large quantity of ammunition left behind by the JNA at the Koran Depot was itself depleted by the end of 1992.<sup>3383</sup> In April 1993, the VRS Main Staff described the state of its ammunition reserves as "very bad", "critical" and in need of replenishment,<sup>3384</sup> stating: "Reserves of material resources, starting with those of significance for the troops, are *exhausted*, some have also been destroyed, so that their continued supply cannot be guaranteed without *external intervention, importation, production or something similar*".<sup>3385</sup>

1184. In July 1993, General Manojlo Milovanović, Deputy Chief of Staff for the VRS Main Staff,<sup>3386</sup> informed the VJ General Staff that the VRS had been involved in intense fighting in the past six months and was in need of assistance: "[We] spent huge quantities of material means which *we cannot replenish from our own resources*"; and proceeded to request over a million bullets and

<sup>3381</sup> Dušan Kovačević, T. 12667 (emphasis added). In March 1995, Kovačević was named secretary of a RS committee working on the procurement of weaponry for the VRS. The committee also included General Mladić. Ex. D421, Decision of the President of the RS, 28 March 1995.

<sup>3382</sup> Ex. P1200, Correspondence Between the Main Staff of the Army of the Serbian BiH and the 1<sup>st</sup> Krajina Corps Command Relating to Supply of Ammunition, 12 September 1992.

<sup>3383</sup> MP-14, T. 3517, 3521-3524 (closed session).

<sup>3384</sup> Ex. P149, Analysis of the Combat Readiness and Activities of the VRS in 1992, April 1993, pp 96, 131.

<sup>3385</sup> Ex. P149, Analysis of the Combat Readiness and Activities of the VRS in 1992, April 1993, p. 94 (emphasis added).

<sup>3386</sup> MP-80, T. 8656 (closed session).

over a thousand shells and rockets.<sup>3387</sup> Nevertheless, Kovačević asserted that Milovanović's assessment that the VRS's own resources were essentially depleted was incorrect.<sup>3388</sup>

1185. An excerpt from General Mladić's diary, dated 17 August 1993, states that "[f]eeding the army is a problem, as are fuel and ammunition", and that "[m]aterial reserves have been exhausted".<sup>3389</sup> In November 1993, the VRS Main Staff and RS MOD—headed by Kovačević himself—similarly reported that the substantial consumption of supplies was depleting the army's reserves and incoming replenishments from the FRY:

The level of consumption in the Army, during the passed period, kept exceeding the level of supplies of technical equipment and materiel received from our production and from the various forms of assistance from the Federal Republic of Yugoslavia. This increased the Army's consumption of both its own reserve and products from the state reserve, which caused the lack of certain means, especially quartermaster means to be felt in some units as early as the first half of 1993. The shortage was partially overcome through the use of local resources, municipalities, and a number of companies and other economic organisations.<sup>3390</sup>

1186. Mladić emphasised in November 1993 as well that "[t]he Material Reserves of the Army, as the main source of supply from the beginning of the war until present, have been exhausted".<sup>3391</sup> "Of 148 types of ammunition, 35% of these, the reserves of artillery and PA ammunition is zero".<sup>3392</sup> Mladić further described the VRS's general material situation as "alarming", stating that "the situation has been deteriorating and threatens to endanger the results achieved so far".<sup>3393</sup> Kovačević nonetheless advanced that Mladić's assessment was unreliable because existing reserves were not taken into account since the Ministries of Finance and Defence were not consulted.<sup>3394</sup> Yet, a report from Kovačević's own MOD found that the state of material support for the VRS was "poor" and "deteriorating" in November 1993, and stressed that "systematic solutions must be found to ensure that the Army received regular supplies of all the items it needs".<sup>3395</sup>

1187. Another contemporaneous report presents a dismal assessment of the situation faced by the 1<sup>st</sup> Krajina Corps, noting that "[e]stablishment reserves in food, clothing, *ammunition, fuel*, spare parts and other necessities were used up a *long time ago*", adding: "With /only/ about 100 tonnes of fuel available monthly or three to four tonnes daily, it is difficult to carry out tasks in peacetime, let

<sup>3387</sup> Ex. P2915, VRS Request to the VJ for the Provision of Ammunition, 18 July 1993 (emphasis added).

<sup>3388</sup> Dušan Kovačević, T. 12811.

<sup>3389</sup> Ex. P2917, Excerpt from Ratko Mladić's Notebook, p. 5.

<sup>3390</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, pp 1-2. *See also* Ex. P1251, Report on VRS Financial Situation, November 1993, p. 10.

<sup>3391</sup> Ex. P2918, VRS Main Staff Commander Memo Addressed to the Government of the RS, 1 November 1993.

<sup>3392</sup> Ex. P2918, VRS Main Staff Commander Memo Addressed to the Government of the RS, 1 November 1993, p. 2.

<sup>3393</sup> Ex. P2918, VRS Main Staff Commander Memo Addressed to the Government of the RS, 1 November 1993.

<sup>3394</sup> Dušan Kovačević, T. 12843.

<sup>3395</sup> Ex. D415, RS MOD Report to VRS Main Staff, 25 November 1993.



alone in time of war. The situation is the same with food, clothing, *ammunition* and so on, while some other functions of logistics support are at a complete standstill”.<sup>3396</sup>

1188. On 15 March 1994, at a meeting in Belgrade with Slobodan Milošević, Zoran Lilić and Radovan Karadžić, among others, Mladić stated: “we have a major problem of a very scanty logistical support for the army in all areas owing to *the exhaustion of the reserves, dwindling resources* [...] obsolescence of some of the equipment [...]. I am certain that we must do all we can to *supply the army with ammunition, new systems of RT /military hardware/*”.<sup>3397</sup>

1189. In May 1994, Radovan Karadžić wrote to Perišić to express grave concern about the VRS’s material situation:

Our army is exhausted and stretched out over a long front line. This too could be overcome however, but *the shortage of every type of ammunition cannot be overcome but through the provision of ammunition*. At some military lines, our soldiers are awaiting enemy infantry attacks with /just/ one or two ammunition clips in /their/ automatic rifles, respectively. [...] This, however, is a problem for the prime minister, but it does not hurt for you to know this as well.

General, Sir, I kindly request that you inform yourself through our GŠ /Main Staff/ about the equipment situation and you will realize that it is worse than what I could write you in a telegram. The consequences are grave already while they can become tragic, also.<sup>3398</sup>

Kovačević contended that the evaluation of the VRS’s situation made by Karadžić, his superior, was unreliable.<sup>3399</sup>

1190. On 3 May 1995, Dragomir Milošević expressed concern about the SRK’s situation and asked for the VJ’s immediate provision of weaponry and ammunition: “We find ourselves in a situation where there is a *great shortage* of the requested items [...]. We need the items [...] very urgently”.<sup>3400</sup> Milošević proceeded to dispatch a special representative to Belgrade to facilitate the procurement process.<sup>3401</sup> He thereafter requested another 200 aerial bombs from the VJ General Staff.<sup>3402</sup>

1191. On 23 August 1995, Mladić gave a presentation to the SDC in Belgrade and warned that the VRS faced “a lack of ammunition, particularly for high-calibre artillery weapons”.<sup>3403</sup> On 3 September 1995, Mladić wrote to the VJ General Staff to ask for firearms and ammunition, stating:

<sup>3396</sup> Ex. P2916, Report Regarding 1<sup>st</sup> Krajiški Corps and its Subordinate Commands and Units, 13 November 1993, pp 4-5 (emphasis added).

<sup>3397</sup> Ex. P2940, Excerpt from Ratko Mladić’s Notebook, 15 March 1994, pp 11-12 (emphasis added).

<sup>3398</sup> Ex. P2766, Cable from Karadžić to Perišić, 15 May 1994 (emphasis added).

<sup>3399</sup> Dušan Kovačević, T. 12848.

<sup>3400</sup> Ex. P1260, SRK Request to the VJ General Staff Regarding Ammunition and Weapons, 3 May 1995 (emphasis added).

<sup>3401</sup> Ex. P1260, SRK Request to the VJ General Staff Regarding Ammunition and Weapons, 3 May 1995.

<sup>3402</sup> Ex. P982, Request for Issue of Air Bombs Sent to VJ General Staff, 15 July 1995.

<sup>3403</sup> Ex. P713, Minutes from the 42<sup>nd</sup> Session of the SDC, 23 August 1995, p. 4.

“The weapons are necessary for the purpose of equipping the newly arrived conscripts from the [FRY] thus we ask you kindly to approve this. There is particularly a shortage of the ammunition we requested and we are not able to supply our units in accordance with the needs; and now it is necessary because the enemy’s offensive is in its full peak”.<sup>3404</sup>

1192. On 7 October 1995, Mladić asked Perišić for ten aerial bombs and stipulated “we do not have any such ammunition”.<sup>3405</sup> In November 1995, the RS MOD wrote that, “[w]ith regard to material supplies for the [VRS], the situation is even worse [than with financing the army]. Previous stocks have already been *exhausted* and the level of ammunition, explosive, weapons, military equipment, fuel and other material supplies is *critical*”;<sup>3406</sup> the VRS faces the “*exhaustion* of and inability to replenish stockpile reserves to conduct the war”.<sup>3407</sup> Mladić’s notes from a VRS Main Staff meeting on 7 December 1995, read: “The PoOb /logistics support/ situation is very critical. Food is the most critical”.<sup>3408</sup> Đukić likewise recognised that the VRS was facing a “difficult material situation” in late 1995.<sup>3409</sup>

1193. Furthermore, numerous exhibits indicate that the VRS heavily depended on supplies from the VJ, thereby demonstrating that the VRS’s reserves were insufficient. On 30 January 1994, Mladić requested over 12 million bullets and over 12,000 pieces of artillery ammunition from the VJ General Staff, asserting that these supplies “are *necessary* for combat security and supplying of units engaged in combat operations”.<sup>3410</sup> In May 1995, Mladić asked Perišić to provide 10,000 mines and 5 tonnes of plastic explosives because the VRS lacked a sufficient quantity for its operations.<sup>3411</sup> The following month, Mladić emphasised that, in light of ongoing combat operations in Sarajevo and the Sava river valley, “the expenditure of human and material resources of the VRS had been increased” and “[t]hat is precisely why, at this moment, the material assistance to the VRS from VJ, especially in ammunition, is *needed more than ever*”.<sup>3412</sup> On 19 June 1995, Mladić sent a “[v]ery urgent” message to Perišić stating that “the Muslim offensive is still going on strong” and that the SRK had consequently suffered significant casualties and were retreating in the general area

<sup>3404</sup> Ex. P2739, Request from Mladić to the VJ General Staff for Arms and Ammunition for the SRK, 3 September 1995.

<sup>3405</sup> Ex. P2746, Request from Ratko Mladić to Perišić for Air Bombs, 7 October 1995. *See also* Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 62.

<sup>3406</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 18 (emphasis added).

<sup>3407</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 2 (emphasis added).

<sup>3408</sup> Ex. D773, Excerpt from Ratko Mladić’s Notebook, 7 December 1995, p. 3.

<sup>3409</sup> Ex. D396, Transcript of Interview with Đorđe Đukić, 29 February 1996, p. 3.

<sup>3410</sup> Ex. P2768, Request from Ratko Mladić to the VJ General Staff Regarding Ammunition, 30 January 1994 (emphasis added).

<sup>3411</sup> Ex. P2781, Request from Ratko Mladić to Perišić for Engineering Equipment, 12 May 1995.

of Trnovo, near Sarajevo; and emphasising “*we need your urgent help* with the following quantities of ammunition”, namely 1,835,850 rounds of various calibres and 2,000 shells.<sup>3413</sup>

1194. The SRK Command similarly admitted its dependence on VJ supplies in early 1995, as it advised the VRS Main Staff that supplies from the VJ were necessary to “replenish” its units with ammunition, describing this support as “essential to our requirements”.<sup>3414</sup> On 22 June 1995, the SRK made arrangements to collect 120,000 bullets and 1,850 shells from the VJ, stressing that these supplies were necessary “because the situation on the front is exceptionally difficult”.<sup>3415</sup> That month the Zvornik Infantry Brigade itself averred that it was “look[ing] for ammunition with *desperate moves*”.<sup>3416</sup>

1195. Momčilo Perišić,<sup>3417</sup> Slobodan Milošević,<sup>3418</sup> Ratko Mladić<sup>3419</sup> and Radovan Karadžić<sup>3420</sup> themselves believed that the VRS would not have been able to wage war without the VJ’s help, thereby showing that they did not consider the VRS’s reserves sufficient.

1196. In sum, extensive evidence explicitly states that the VRS’s reserves were verging towards depletion as the war progressed and that the VRS was in serious need of supplies, although Kovačević maintained that the state of these reserves was generally satisfactory and not critical.<sup>3421</sup> Kovačević’s point is hardly corroborated and the Trial Chamber does not find it credible in light of the evidentiary record.

1197. Kovačević’s assertions are equally called into doubt by the record of a July 1994 Supreme Defence Council session.<sup>3422</sup> Pavle Bulatović, the FRY Defence Minister, told the SDC that he had met with the Defence Ministers of RSK and RS, namely Kovačević himself.<sup>3423</sup> “In their demands”, Bulatović explained, “they were precise and resolute in saying that *unless they receive assistance*

<sup>3412</sup> Ex. P2724, Request from Ratko Mladić to Momčilo Perišić for Ammunition and Rockets, 14 June 1995 (emphasis added).

<sup>3413</sup> Ex. P624, Request from Ratko Mladić to Perišić for Ammunition, 19 June 1995 (emphasis added). This document appears to have a duplicate in Ex. P2726, although the latter has an error in translation, as noted above. See Miodrag Simić, T. 10198-10200; Dušan Kovačević, T. 12857.

<sup>3414</sup> Ex. P1223, SRK Command Request to VRS Main Staff for Ammunition, 15 January 1995.

<sup>3415</sup> Ex. P1225, SRK Command Request to VRS Main Staff for Ammunition, 22 June 1995.

<sup>3416</sup> Ex. P1235, Correspondence Between 1<sup>st</sup> Zvornik Command and VRS Main Staff, 8 June 1995 (emphasis added).

<sup>3417</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC, 7 February 1994, p. 53; Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 38; Ex. P796, Stenographic Transcript of the 38<sup>th</sup> Session of the SDC, 27 June 1995, p. 12; Ex. P2743, Memo from the Chief of VJ General Staff, 11 August 1995; Ex. P1476, Intercepted Conversation, 7 October 1996, pp 4-5.

<sup>3418</sup> Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC, 30 August 1994, p. 47; Ex. P1476, Intercepted Conversation, 7 October 1996, pp 4-5.

<sup>3419</sup> Ex. P1282, Intercepted Conversation, undated, p. 6.

<sup>3420</sup> Ex. P2822, Minutes of 40<sup>th</sup> Session of the RS National Assembly, 1 and 11 May 1994, p. 57.

<sup>3421</sup> See e.g. Dušan Kovačević, T. 12811, 12843, 12848.

<sup>3422</sup> Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994.

<sup>3423</sup> Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, p. 39.

*this state will bear responsibility for their future*".<sup>3424</sup> Milošević stated in the session: "Kovačević reiterated that the situation is critical for the Republika Srpska and the RSK", and proposed to enter a contract with FRY special purpose industries to import weapons and military equipment into RS and RSK.<sup>3425</sup> (Slobodan Milošević derisively dismissed Kovačević's proposal, saying that RS and RSK could not enter into a contract directly with FRY special purpose industries but instead had to proceed through the FRY MOD and the VJ General Staff.)<sup>3426</sup> This evidence indicates that, contrary to what he testified in court, Kovačević thought that the VRS's situation was "critical" and that there was an important need to import weaponry from the FRY,<sup>3427</sup> thereby showing that RS's ammunition reserves were not remotely satisfactory.

1198. The Trial Chamber finds other reasons to doubt Kovačević's credibility. First, Kovačević was officially a member of the VJ on the 30<sup>th</sup> Personnel Center's payroll,<sup>3428</sup> and described himself as a longstanding personal friend of Perišić,<sup>3429</sup> which may have impaired his objectivity.

1199. Second, Kovačević generally denied that military goods continued to be secretly transported across the FRY-RS border and delivered to the VRS after the FRY officially imposed sanctions on RS in August 1994.<sup>3430</sup> It is conclusively established that logistical assistance continued and that the sanctions were mostly a façade.<sup>3431</sup> The Trial Chamber finds it highly implausible that Kovačević, the former RS Minister of Defence, would not know that fact. It is additionally noteworthy that, when presented with a RS MOD report listing millions of weapons procured during the sanctions period under a compound category of "[p]urchases and donations", Kovačević opined that the purchased weapons must have come from FRY special purpose industries.<sup>3432</sup> Kovačević's explanation therefore contradicted his own claim that weapons generally could not cross the border during the sanctions period.<sup>3433</sup>

<sup>3424</sup> Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, p. 39 (emphasis added).

<sup>3425</sup> Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, pp 40-41 (emphasis added).

<sup>3426</sup> Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, p. 41.

<sup>3427</sup> Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, pp 39-41.

<sup>3428</sup> Dušan Kovačević, T. 12532, 12732, 12740. *See* Ex. P1906, VJ Personnel File of Dušan Kovačević (notably Doc IDs 0611-5812 and 0611-5820); Ex. D406, RS Presidential Decree Appointing Dušan Kovačević, 19 January 1993; Ex. D407, Report of Taking Up of Duty by Dušan Kovačević, 19 January 1993.

In January 1993, Kovačević became the RS Minister of Defence, serving until August 1994, when Radovan Karadžić appointed him to a deputy minister post until his retirement in January 1996. Besides his ministerial positions, Kovačević concurrently served in both the VRS and VJ, and was promoted to VRS Major General by Karadžić in January 1993, while the *FRY SDC* likewise promoted him to Major General of the *VJ* in November 1993. Kovačević also was a member of the RS Supreme Command by virtue of his being Defence Minister. *See* Dušan Kovačević, T. 12531-12532, 12588, 12730-12732.

<sup>3429</sup> Dušan Kovačević, T. 12797.

<sup>3430</sup> Dušan Kovačević, T. 12850-12852.

<sup>3431</sup> *See supra* section VI.C.2.(c).

<sup>3432</sup> Dušan Kovačević, T. 12709; Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 5.

<sup>3433</sup> Dušan Kovačević, T. 12850-12852.

1200. Third, notwithstanding his senior membership in the VRS and service as RS Minister of Defence, Kovačević unbelievably professed not to know that the VRS used aerial bombs in Sarajevo: “Q: To your knowledge, sir, were you aware that the VRS was using aerial bombs in its bombardment of Sarajevo? A: I really don’t know about that, aside from what I read in the media about the shelling itself”.<sup>3434</sup>

(d) Fuel Reserves in Republika Srpska

1201. According to Siniša Borović, between 20,000 and 70,000 tonnes of fuel were left behind by the JNA in BiH and Croatia.<sup>3435</sup> Borović stated that “paramilitary forces” ended up taking possession of these fuel reserves, sometimes overpowering storage crews.<sup>3436</sup> Borović described these “paramilitary forces” as Serb, Muslim and Croat units operating outside the framework of the state armed forces.<sup>3437</sup> Borović did not state that these reserves were procured by the VRS.

1202. Dušan Kovačević advanced that the VRS possessed sufficient fuel reserves and did not experience problems until the beginning of 1994.<sup>3438</sup> Đorđe Đukić, the former VRS Assistant Commander for Logistics, further posited that “there were no problems regarding fuel provision until the beginning of 1995”, when VRS units started submitting “continuous requests to the government for fuel”.<sup>3439</sup> Đukić stated that approximately 40,000 tonnes of fuel and between 1,000 and 1,200 tonnes of kerosene were found in the reserves in the territory of RS.<sup>3440</sup> But the reserves Đukić mentioned would have been insufficient to fulfil the VRS’s needs according to a November 1993 joint report by the RS MOD and VRS Main Staff. The latter stated that the VRS’s “daily need for engine fuel varies around 37,000 litres of diesel fuel and 13,000 litres of super fuel”.<sup>3441</sup> This report also suggests that Đukić’s estimate may have been incorrect, as it stipulates that “fuel reserves were only 24,300 litres of diesel and 13,784 of super”.<sup>3442</sup>

1203. Another exhibit states that, in October 1995, the VRS Main Staff made arrangements to collect 338,000 litres of D-2 diesel fuel from a depot in Banja Luka.<sup>3443</sup> Kovačević testified that this procurement originated from a directorate in charge of commodity reserves.<sup>3444</sup> This document suggests that the VRS had access to greater fuel reserves than estimated by the RS MOD and VRS

<sup>3434</sup> Dušan Kovačević, T. 12864.

<sup>3435</sup> Siniša Borović, T. 13892.

<sup>3436</sup> *Ibid.*

<sup>3437</sup> Siniša Borović, T. 13893.

<sup>3438</sup> Dušan Kovačević, T. 12667.

<sup>3439</sup> Ex. D397, Transcript of Interview with Đorđe Đukić, 29 June 1996, p. 1.

<sup>3440</sup> *Ibid.*

<sup>3441</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, p. 5.

<sup>3442</sup> *Ibid.*

<sup>3443</sup> Ex. D413, VRS Main Staff Authorisation, 13 October 1995.

<sup>3444</sup> Dušan Kovačević, T. 12694.

Main Staff joint report two years earlier.<sup>3445</sup> On the other hand, this fuel may have been previously delivered to this depot from the FRY, as the record establishes that the VJ was involved in supplying certain VRS depots.<sup>3446</sup>

1204. The Trial Chamber finds that the exact quantity of fuel available in RS's reserves cannot be determined on the basis of the record adduced at trial. That being noted, the record otherwise demonstrates that VRS personnel recurrently reported problems due to low levels of fuel, thereby showing that fuel reserves were not sufficient from an early stage of the war.

1205. In April 1993, the VRS Main Staff reported that the state of fuel and ammunition reserves was "very bad, so that in 1993 it will be necessary to allocate much larger sums to bring the existing ordnance into a good state of repair and replenish material stocks".<sup>3447</sup> Mladić described the fuel situation as "a problem" in his diary in August as well.<sup>3448</sup> Mladić concluded in November 1993 that the VRS was facing a fuel shortage because its usage exceeded its replenishments, which could lead vehicles to be grounded:

In Sep and Nov, the army has been provided 984 tonnes of diesel D-2 and 48 tonnes of petrol MB-86 for the Army, and minimal monthly needs are 1100 tonnes of diesel D-2 and 600 tonnes of petrol MB-86. In a couple of days, any movement of the vehicles (combat or ordinary) will be impossible, the Communication centre might stop working, as well as hospitals and bakeries that run on this fuel, etc.<sup>3449</sup>

1206. The November 1993 RS MOD and VRS Main Staff joint report reiterated that "[t]he situation is critical enough to ground all vehicles".<sup>3450</sup>

1207. In August 1993, the Drina Corps Command noted that some units had not reported the quantities received from individually-owned gas stations and that "[t]he logical conclusion is that some units even have excess of fuel".<sup>3451</sup> But it noted that fuel otherwise was an issue, as requests for replenishment had generally become more frequent.<sup>3452</sup> The Drina Corps Command reckoned that "the problem cannot be resolved because the [FRY] does not have the corresponding quantities

<sup>3445</sup> See Ex. P1251, Report on VRS Financial Situation, November 1993, p. 5; Ex. D413, VRS Main Staff Authorisation, 13 October 1995.

<sup>3446</sup> See *supra* section VI.C.3.

<sup>3447</sup> Ex. P149, Analysis of the Combat Readiness and Activities of the VRS in 1992, April 1993, p. 131.

<sup>3448</sup> Ex. P2917, Excerpt from Ratko Mladić's Notebook, p. 5.

<sup>3449</sup> Ex. P2918, VRS Main Staff Commander Memo Addressed to the Government of the RS, 1 November 1993, pp 2-3.

<sup>3450</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, p. 5.

<sup>3451</sup> Ex. D411, Drina Corps Command Report Regarding Requests for Fuel, 1 August 1993.

<sup>3452</sup> *Ibid.*

of fuel, due to the stricter embargo measures” and “[d]irect purchase of fuel is impossible due to a lack of monetary resources”.<sup>3453</sup>

1208. The 1<sup>st</sup> Krajina Corps itself sternly cautioned the VRS Main Staff about that problem: “You are herewith informed and warned that we are not able to perform PoOb /logistical support/ of the units, due to lack of p/g /fuel/ [...] [I]f we urgently do not provide [fuel] for minimal functions, we will be forced to pull over [...] on the roads”.<sup>3454</sup> Another contemporaneous report by the 1<sup>st</sup> Krajina Corps restated that it had consumed its fuel reserves and consequently faced difficulties in carrying out its operations.<sup>3455</sup> UN intelligence reports similarly indicated that the VRS was “very short of fuel and spare parts”, and Pyers Tucker, a senior officer in the UNPROFOR military command from 1992 to 1993, frequently saw VRS vehicles stopped at roadsides after running out of fuel.<sup>3456</sup>

1209. In March 1994, Mladić said he was “certain” of the necessity to improve the supply of fuel to the VRS.<sup>3457</sup> In May 1994, Radovan Karadžić directly informed Momčilo Perišić that the VJ’s assistance was needed because the VRS was running out of fuel.<sup>3458</sup>

1210. Between August 1994 and November 1995, the RS MOD again reported “numerous problems” due to insufficient fuel.<sup>3459</sup> On 8 June 1995, the Zvornik Infantry Brigade reported that it faced a fuel shortage.<sup>3460</sup> In December 1995, Mladić noted: “We’re getting by with fuel”.<sup>3461</sup>

1211. In sum, the Trial Chamber finds that the evidence establishes that the VRS’s fuel reserves were insufficient to meet its military needs.

(e) Military Factories in Republika Srpska

1212. The Trial Chamber recalls Mladić’s estimate that military factories in RS were able to produce 26.2% of the total artillery ammunition but only 1.49% of the total infantry ammunition

<sup>3453</sup> Ex. D411, Drina Corps Command Report re Requests for Fuel, 1 August 1993. Kovačević deemed that VRS units had sufficient supplies of fuel as of the summer of 1993. Dušan Kovačević, T. 12690.

<sup>3454</sup> The message added that quartermaster support “has been realised in very difficult conditions” and “[n]utrition is poor and affects soldiers’ health”. Ex. P1231, Logistics Report From the Command of 1<sup>st</sup> Krajina Corps to the VRS Main Staff, 8 October 1993, pp 2-3.

<sup>3455</sup> Ex. P2916, Report Regarding 1<sup>st</sup> Krajiški Corps and its Subordinate Commands and Units, 13 November 1993, pp 4-5.

<sup>3456</sup> Pyers Tucker, T. 9088-9089, 9168-9169.

<sup>3457</sup> Ex. P2940, Excerpt from Ratko Mladić’s Notebook, 15 March 1994, p. 12.

<sup>3458</sup> Ex. P2766, Cable from Karadžić to Perišić, 15 May 1994.

<sup>3459</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 3.

<sup>3460</sup> Ex. P1235, Correspondence Between 1<sup>st</sup> Zvornik Command and VRS Main Staff, 8 June 1995.

<sup>3461</sup> Ex. D773, Excerpt from Ratko Mladić’s Notebook, 7 December 1995, p. 3.

used by the VRS through April 15 1995.<sup>3462</sup> Witness MP-14 indeed testified that RS factories lacked the capability to manufacture infantry ammunition.<sup>3463</sup>

1213. As early as September 1992, the VRS Main Staff had concluded that its situation was “very difficult since all ammunition factories [were] either closed or working at minimum capacity”.<sup>3464</sup> Slightly over a year later, VRS Main Staff and RS MOD again determined that RS was unable to produce sufficient quantities of weaponry at its own military factories and “cope with the high level of wartime consumption”.<sup>3465</sup>

1214. RS tried to “ensur[e] domestic production of a major portion of the Army’s needs in ammunition, mines and other explosive devices, and military equipment”.<sup>3466</sup> Between January and September 1993, RS companies delivered to the VRS 61,580 pieces of artillery missiles, 42,890 mortar shells, 870 rifle grenades, 15,670 hand grenades, 4,200 anti-personnel mines and 1,000 fuses.<sup>3467</sup> Yet, RS-based companies struggled to maintain production: “The problem of financing the special purpose industry in Republika Srpska has become not just a restricting factor in executing the planned or agreed level of production, it has also shut down some companies and caused other damages including breakdowns of expensive equipment due to inadequate maintenance etc”.<sup>3468</sup> Despite efforts to improve production, “[t]he level of consumption of both the Army’s material reserves and the Republic Reserve [...] was constantly beyond the level [of] renewing supplies”.<sup>3469</sup> The VRS Main Staff indicated that RS’s military industrial production was “a far cry from satisfying the material needs of VRS in 1994”.<sup>3470</sup>

1215. The VRS Main Staff and RS MOD considered that “the lack of financial means had a *catastrophic* impact on production for the Army, repairs of weapons and military equipment, supplies, that is, on the Army’s overall entire financial situation”.<sup>3471</sup> The production of food and clothes was also problematic due to the lack of financial means and organisation.<sup>3472</sup> “The lack of funds ma[de] it impossible to order clothing and footwear, and many soldiers [would] therefore

<sup>3462</sup> Ex. P312, Transcript of the Tape Recording of the 50<sup>th</sup> Session of the National Assembly, 15 and 16 April 1995, p. 51.

<sup>3463</sup> MP-14, T. 3524 (closed session).

<sup>3464</sup> Ex. P1200, Correspondence Between the Main Staff of the Army of the Serbian BiH and the 1<sup>st</sup> Krajina Corps Command Relating to Supply of Ammunition, 12 September 1992.

<sup>3465</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, p. 2.

<sup>3466</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, pp 4-5.

<sup>3467</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, p. 5.

<sup>3468</sup> *Ibid.*

<sup>3469</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, p. 10.

<sup>3470</sup> Ex. P1214, Annual Financial Statement of the Plan of Tasks and Financing of the VRS for 1994, 17 February 1995, p. 7.

<sup>3471</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, p. 3 (emphasis added). *See also* Ex. P1251, Report on VRS Financial Situation, November 1993, p. 10.

<sup>3472</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, pp 2-3, 6.



enter the winter time half dressed and without adequate footwear”.<sup>3473</sup> Mladić too reported that “a large number of soldiers are approaching the winter half-dressed, without adequate or no footwear whatsoever”.<sup>3474</sup> Mladić later notified Milošević, Lilić and Karadžić of the “inadequate functioning of the [RS] economy, primarily special-purpose production”.<sup>3475</sup>

1216. The VRS equally lacked adequate overhaul and technical facilities in RS. Mladić’s logistics strategic plan specified that the VJ General Staff’s technical maintenance facilities at Kragujevac and Čačak were “to assist with requests from the VRS and SVK Main Staffs”.<sup>3476</sup> The VJ General Staff’s overhaul of VRS weaponry, notably at the Kragujevac TRZ, and the supply of spare parts were a necessity for the VRS, as the RS MOD noted: “Only one of the four VRS logistics bases was equipped to carry out mid-echelon repair work, but even these activities were brought into question because of a lack of spare parts”.<sup>3477</sup> The RS MOD admitted that it was seeking to remedy this problem partly through the “[e]ngagement of repair depots and enterprises from the FRY to repair and maintain [material and technical equipment]” and “[u]se of FRY Army services in this area”.<sup>3478</sup> The VRS’s difficulties in repairing equipment were such that Mladić personally wrote to Perišić to urge him to speed up the VJ’s repair of two 130mm guns (“we are in dire need of it”).<sup>3479</sup> The VJ complied with the request and offered to repair more 130mm guns for the VRS.<sup>3480</sup> Mladić also urgently requested Perišić to dispatch an expert assistance team to fix problems with rockets and an anti-aircraft defence system.<sup>3481</sup> Similarly, the VJ General Staff’s Čačak Maintenance and Repairs Depot was involved in repairing military vehicles for the VRS.<sup>3482</sup>

1217. Perišić himself told the Supreme Defence Council that the VJ played a key role in repairing the VRS’s equipment, asking the following rhetorical question: “Do you think that the technical

<sup>3473</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, p. 6.

<sup>3474</sup> Ex. P2918, VRS Main Staff Commander Memo Addressed to the Government of the RS, 1 November 1993.

<sup>3475</sup> Ex. P2940, Excerpt from Ratko Mladić’s Notebook, 15 March 1994, p. 12.

<sup>3476</sup> Ex. P2158, Document Issued by Ratko Mladić Regarding Logistical Support, undated, p. 2.

<sup>3477</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 6. The Kragujevac TRZ was a facility under the VJ General Staff. Jugoslav Kodžopeljić, T. 12313-12314, 12414-12415, 12494; Siniša Borović, T. 13888.

<sup>3478</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p. 6.

<sup>3479</sup> Ex. P2720, Documents Relating to a Request from Ratko Mladić to Perišić Regarding Guns, 30 April and 5 May 1995.

<sup>3480</sup> Ex. P2720, Documents Relating to a Request from Ratko Mladić to Perišić Regarding Guns, 30 April and 5 May 1995. *See also* Ex. P865, Dispatch by the Cabinet of the VJ Chief the General Staff, 6 May 1995 (Cabinet of the VJ Chief of General Staff notifying VRS that 130mm gun has been repaired and is ready for pick-up in Nikšić).

<sup>3481</sup> Ex. P2722, Request from Ratko Mladić to Perišić for Expert Assistance, 31 May 1995.

<sup>3482</sup> Ex. P1218, Correspondence Between the TRZ Čačak and Military Post 7115 Šekovići on Repairs Carried out on Military Equipment, 16 October 1995 (failed attempt to repair tank). The Čačak facility was administrated by the VJ General Staff. Jugoslav Kodžopeljić, T. 12494.

equipment, which is in Republika Srpska or in the Republic of Serbian Krajina, would be functional if we did not engage the men from these depots?”<sup>3483</sup>

1218. Even though domestic production and overhaul capabilities were direly insufficient to fulfil the VRS’s needs, RS factories were able to produce or repair, between 18 August 1994 and 1 November 1995, 864,000 rounds of rifle ammunition, 163,508 rounds of other infantry ammunition, 131,071 units of mortar ammunition, 37,849 units of artillery of ammunition, 18,786 units of tank ammunition, 877 missiles and 279 aerial bombs.<sup>3484</sup> The Trial Chamber further recalls the evidence concerning the *Pretis* military factory in RS, which relied on operational support from the VJ General Staff.<sup>3485</sup>

(f) Local Sponsors in Republika Srpska

1219. Dušan Kovačević stated that RS’s local and municipal authorities, as well as wealthy local entrepreneurs, regularly made donations to VRS units.<sup>3486</sup> Local municipalities and companies earmarked certain funds and donated miscellaneous items to assist the VRS.<sup>3487</sup> At the 50<sup>th</sup> Session of the RS National Assembly, Branko Simić, a deputy, told Mladić:

You should visit the Serbian municipalities, I am there every day, certainly with regard to this treatment, I could not do that, and see the sums the Serbian people are giving through the municipalities for the Serbian army [...] There are municipalities, General, which have given up to two million and two hundred thousand DEM [and] from oil to all the necessary articles, even down to the small item of pepper, plus cash.<sup>3488</sup>

1220. Mladić’s notebook mentions a meeting with representatives of the Sokolac municipality, where a local official mentioned that 150,000 Deutschmarks had been “secured” and that “one parcel” would be given to “every soldier”,<sup>3489</sup> presumably as salary. Local sponsors purchased certain quantities of ammunition from FRY special purpose industries as well, providing them to VRS units.<sup>3490</sup> Such sponsors were increasingly involved in supplying local VRS units with ammunition after the FRY imposed sanctions on RS.<sup>3491</sup>

<sup>3483</sup> Ex. P796, Stenographic Transcript of the 38<sup>th</sup> Session of the SDC, 27 June 1995, p. 12.

<sup>3484</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 - November 1995, November 1995, p 5.

<sup>3485</sup> See *supra* section VI.C.4.

<sup>3486</sup> According to Kovačević, local political authorities identified donors, such as wealthy entrepreneurs, and ordered them to trade and purchase various kinds of goods for the purposes of the VRS, saying that they would be remunerated. Dušan Kovačević, T. 12601-12602, 12664-12665.

<sup>3487</sup> Dušan Kovačević, T. 12766.

<sup>3488</sup> Ex. P312, Transcript of the Tape Recording of the 50<sup>th</sup> Session of the National Assembly, 15 and 16 April 1995, p. 73. See also Dušan Kovačević, T. 12764-12765.

<sup>3489</sup> Ex. D760, Excerpt from Ratko Mladić’s Notebook, 3 March 1994.

<sup>3490</sup> Dušan Kovačević, T. 12673; Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 4.

<sup>3491</sup> “Normally this would be carried out without the knowledge of the Ministry of Defence, especially without the knowledge of the government, and sometimes even without the knowledge of the Main Staff”. Dušan Kovačević, T. 12669-12670.

1221. On 22 February 1993, the 1<sup>st</sup> Krajina Corps Command notified the VRS Main Staff that it had made an agreement to purchase 2 million bullets from *Prvi Partizan* for the sum of 250,000 Deutschmarks, writing: “We hereby ask the [Main Staff VRS] to purchase this same quantity of ammunition or to allow us to buy the aforementioned quantity through donors from municipal assemblies in the zone of the 1<sup>st</sup> [Krajina Corps]”.<sup>3492</sup> In May 1995, General Dragomir Milošević informed the VRS Main Staff that local sponsors had assisted the SRK in purchasing part of its fuel.<sup>3493</sup> Rajko Petrović recalled that, in order to avoid military service, one particular businessman had donated 300,000 Deutschmarks, although Petrović did not know whether he gave the sum to the government or the Serbian Democratic Party.<sup>3494</sup> Petrović added that the VRS received numerous donations from local individuals, associations and companies.<sup>3495</sup>

1222. Kovačević contended that “local-level authorities, such as municipal authorities, were *the most important and for the most part permanent* donors to their local units, normally brigade-level units”.<sup>3496</sup> The evidentiary record does not support Kovačević’s claim that such local sources were the “most important” source of assistance, which strikes the Trial Chamber as a great exaggeration. The record does not establish that the VRS obtained weaponry directly from such local sources but only that they occasionally assisted in the purchase of weapons.

1223. The difficult economic situation in RS could undercut these efforts, as illustrated by a November 1993 report by the 27<sup>th</sup> Motorised Brigade Command of the 1<sup>st</sup> Krajina Corps, which reads: “Business at municipal level (both the public and the private sectors), which has unselfishly assisted our units, is in such a state that it cannot do so anymore”.<sup>3497</sup>

(g) Unauthorised Donations of Weaponry by VJ Personnel

1224. The Trial Chamber recalls that Perišić instituted disciplinary proceedings against certain VJ commanders who gave military supplies directly to the VRS and SVK without formal permission.<sup>3498</sup> In particular, on 22 September 1994, Perišić instituted proceedings against Major General Boro Ivanović, Commander of the VJ Novi Sad Corps, for having violated orders by issuing equipment to the VRS and SVK without official approval, notably 2,320,441 units of

<sup>3492</sup> Ex. D50, Letter from Commander of the 1<sup>st</sup> Krajina Corps to the VRS Main Staff, 22 February 1993. *See also* MP-14, T. 3728-3729 (closed session).

<sup>3493</sup> Ex. P994, SRK Request Regarding Fuel Supply Through VJ, 3 May 1995.

<sup>3494</sup> Rajko Petrović, T. 13784-13787 (private session).

<sup>3495</sup> Rajko Petrović, T. 13761-13762, 13759.

<sup>3496</sup> Dušan Kovačević, T. 12601 (emphasis added).

<sup>3497</sup> Ex. P2916, Report Regarding 1<sup>st</sup> Krajiški Corps and its Subordinate Commands and Units, 13 November 1993, p. 4.

<sup>3498</sup> Ex. P628, Directive from Perišić Regarding Disciplinary Proceedings, 15 August 1994. *See also* Petar Škrbić, T. 11938-11940.

infantry ammunition, 11,991 mortar shells and 205,725 litres of fuel.<sup>3499</sup> Perišić also suspended Ivanović from duty.<sup>3500</sup> Yet, Slobodan Milošević and Zoran Lilić strongly disputed Perišić's allegations against Ivanović, finding them unsupported by Perišić's evidence.<sup>3501</sup> They severely rebuked Perišić and ordered him to reinstate Ivanović because he should be presumed innocent until proven guilty in proper court proceedings.<sup>3502</sup> According to Siniša Borović, who served as Perišić's Chef de Cabinet,<sup>3503</sup> Ivanović was eventually placed in another position and promoted.<sup>3504</sup>

(h) Smuggling

1225. While Mladić reported that the unauthorised smuggling of VJ materials was a problem, he distinguished it from official logistical assistance:

So far in this war, along with the regular supply of the VRS units and commands in accordance with the PoOb /Logistical Support/ plan, there existed parallel unit supply channels, used not only by authorised persons, but also by various suppliers, donors, and so on. Supplying commands and units through these additional channels resulted in an uncontrolled and unplanned outflow of all kinds of [equipment and materiel] from the VJ for purposes other than designated resulting in some of it even falling into enemy hands while at the same time, some individuals obtained enormous profit in this way, which justifiably caused profound dissatisfaction amongst the VJ and VRS members.<sup>3505</sup>

1226. Dušan Kovačević explained that Mladić issued this order pursuant to his request, and remarked on how profiteers were selling weaponry to enemy forces: "This was one of the painful issues to me as an individual and a professional. I could not accept in any way that members of the VRS locally, as well as sponsors, should be selling weapons and ammunition *to the opposite side*. This was an occurrence that was lethal to the VRS in which nobody wanted genuinely to dispense with [sic]. And it was very detrimental. There are individuals who are still wealthy thanks to the activities dating from that period".<sup>3506</sup>

1227. Đorđe Đukić likewise mentioned hearsay knowledge of "individual cases" of smuggling, such as that of Mirko Krajišnik, who unofficially obtained weapons and ammunition from the FRY for the needs of the Rajlovac Brigade in Sarajevo, and who was rumoured to be a smuggler of

<sup>3499</sup> Ex. D480, Decision of the Chief of the VJ General Staff to Bring a Member of VJ before the Military Disciplinary Court at the General Staff, 22 September 1994.

<sup>3500</sup> Ex. D481, Decree of the FRY President, 2 August 1994.

<sup>3501</sup> Ex. P792, Stenographic Transcript of the 27<sup>th</sup> Session of the SDC, 27 September 1994, pp 3, 12-15, 19-20, 22-23, 26, 32, 34-35, 37, 45-48, 50, 54.

<sup>3502</sup> Ex. P792, Stenographic Transcript of the 27<sup>th</sup> Session of the SDC, 27 September 1994, pp 12-14, 35-40, 44, 49, 52-53, 55, 59. *See also* Ex. P757, Minutes from the 27<sup>th</sup> Session of the SDC held on 27 September 1994, p. 2 (stating that Ivanović would remain Commander of the Novi Sad Corps).

<sup>3503</sup> Siniša Borović, T. 13881, 14160.

<sup>3504</sup> Siniša Borović, T. 13970.

<sup>3505</sup> Ex. P1259, VRS Main Staff Order, 24 October 1993.

<sup>3506</sup> Dušan Kovačević, T. 12670-12671 (emphasis added).

weapons and ammunition.<sup>3507</sup> Kovačević obtained information about how Krajišnik unlawfully conducted business outside the framework approved by the RS Ministry of Trade, although Kovačević did not believe that Krajišnik became wealthy as a result.<sup>3508</sup> Private individuals also smuggled non-military goods from the FRY into RS.<sup>3509</sup>

1228. Yugoslav Kodžopeljić's testimony itself suggests that smuggling from VJ facilities to the VRS was far from commonplace, as Kodžopeljić clearly denied knowledge of war profiteering concerning assets of VJ depots he oversaw, namely the Kragujevac and Čačak facilities, stating "I cannot confirm that" and "No, I can't recall any".<sup>3510</sup> Conversely, Siniša Borović affirmed that the VJ frequently had to block off its own depots to thwart smugglers.<sup>3511</sup>

1229. Carl Bildt, who served<sup>3512</sup> as the European Union co-Chairman of the International Conference on the Former Yugoslavia,<sup>3512</sup> testified that a "black market" for weapons existed in Bosnia but was not "major", adding: "Every war produces, and every sanctions produces black markets. There are always people who are prepared to make money independent of ethnicity and political loyalties in the middle of a war. And in this particular war, there was no difference".<sup>3513</sup> Bildt posited that smuggling primarily concerned fuel, beer and cigarettes, as there was "no need" to smuggle arms and ammunition because there was already an "abundance of weapons" in Bosnia.<sup>3514</sup> The Trial Chamber does not find Bildt's testimony convincing for several reasons. First, Bildt testified that international border monitors along the Drina River did not detect "any major" deliveries of weaponry from the FRY to RS after Milošević agreed to impose an embargo on RS.<sup>3515</sup> In fact, the evidentiary record establishes that major deliveries continued surreptitiously, undetected by international border monitors, who were unable to adequately control the border for either smuggling or secretive logistical assistance from the VJ.<sup>3516</sup> Second, Bildt's assessment that there was "no need" to smuggle weaponry into Bosnia is amply contradicted by the evidence concerning the VRS's dwindling reserves and its recurrent requests for assistance from the VJ.<sup>3517</sup>

1230. The Trial Chamber also heard evidence that smuggling occurred within the VRS's depots. At the VRS's 744<sup>th</sup> Logistics Base, "[l]ocal commanders forced their way into the depot in order to

<sup>3507</sup> Ex. P75, Witness Statement of Đorđe Đukić, 4/29 February 1996, p. 4.

<sup>3508</sup> Dušan Kovačević, T. 12782-12784 (private session).

<sup>3509</sup> See Ex. D156, Letter from the UN Secretary-General to the President of the UNSC 25 June 1995, p. 3 (mentioning that FRY Customs reported confiscating contraband at the RS border, such as petrol, diesel, cigarettes and food, although no ammunition or weapons were confiscated).

<sup>3510</sup> Yugoslav Kodžopeljić, T. 12434.

<sup>3511</sup> Siniša Borović, T. 13961.

<sup>3512</sup> Carl Bildt, T. 14244-14245.

<sup>3513</sup> Carl Bildt, T. 14328-14329.

<sup>3514</sup> Carl Bildt, T. 14329.

<sup>3515</sup> Carl Bildt, T. 14328.

<sup>3516</sup> See *supra* sections VI.B.3, VI.C.2.(c).

take fuel for their own purposes, without obtaining anyone's authorisation. The local authorities, too, would just simply go there and take fuel for their own needs and then resell it on the market. They would obtain certain funds from this which they then used to bankroll some of their other initiatives and needs".<sup>3518</sup>

1231. Overall, the evidentiary record provides no reasonable basis to conclude that a significant quantity of the VRS's needs in weaponry was fulfilled by smuggling. Rather, the record indicates that smuggling was the work of a relatively limited number of rogue individuals.

(i) Conclusion

1232. The Defence submits that "the haphazard record system used throughout the RS left clear accounting obstacles to having an accurate estimation of what the VRS had, used and received from any source nigh on impossible".<sup>3519</sup> In its view, "[t]he Trial Chamber is in effect being asked to speculate concerning the amount of materiel supplied to the VRS by all potential sources and to extrapolate from that, that a substantial amount of the materiel received by the VRS was provided by the VJ".<sup>3520</sup> The Defence argues that "[t]his invitation to speculate should be rejected as to do so would violate burden of proof the Prosecution must meet at this Tribunal".<sup>3521</sup>

1233. The Trial Chamber finds the Defence's claims unpersuasive. The VRS's primary sources of supply are not "impossible" to evaluate. The Trial Chamber has meticulously analysed the evidentiary record for other sources of support to the VRS. Such sources indeed existed. The trial record, however, demonstrates that the logistical assistance that the VRS received from the VJ with Perišić's approval was very important in comparison to other sources. In fact, the record clearly shows that the VRS depended on the VJ's assistance regardless of its other sources of supply.

10. Conclusions on Logistical and Technical Assistance to the VRS

1234. The Trial Chamber finds that Momčilo Perišić, as Chief of VJ General Staff, oversaw a system providing comprehensive military assistance to the VRS, and participated in the SDC's decision to license this aid. The VJ General Staff directly supplied considerable quantities of weaponry comprising a very large part of the VRS's munition requirements.

<sup>3517</sup> See *supra* section VI.C.9.(c).

<sup>3518</sup> Dušan Kovačević, T. 12641-12642 (private session).

<sup>3519</sup> Defence Final Brief, para. 742.

<sup>3520</sup> Defence Final Brief, para. 743.

<sup>3521</sup> Defence Final Brief, para. 743.

1235. In addition, the VJ General Staff played a key role in devising the technical model by which the VRS's aerial bombs were successfully modified. It further helped the VRS in multiple other areas, such as by providing fuel, technical experts, training, as well as operational support enabling the *Pretis* factory to produce weaponry.

1236. The VRS's general state of dependence on VJ support was acknowledged by Perišić himself,<sup>3522</sup> as well as Slobodan Milošević,<sup>3523</sup> Radovan Karadžić<sup>3524</sup> and Ratko Mladić.<sup>3525</sup>

1237. Finally, the Trial Chamber notes that important logistical and technical support was provided to the units involved in perpetrating the charged crimes: the Drina Corps, Krajina Corps and SRK.<sup>3526</sup> Numerous documents demonstrate that the VJ General Staff gave extensive quantities of weaponry to the Drina Corps.<sup>3527</sup> Documents likewise indicate that the Krajina Corps<sup>3528</sup> and SRK<sup>3529</sup> received logistical assistance. The VJ also helped fulfil the artillery needs of the Eastern Bosnia Corps,<sup>3530</sup> which spent "significant quantities of ammunition" while actively engaged in "the zones of responsibility of the 1<sup>st</sup> and 2<sup>nd</sup> Krajina Corps and Sarajevo-Romanija Corps".<sup>3531</sup> The VRS's Koran Depot, which obtained approximately 70% of its ammunition from the VJ, supplied

<sup>3522</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC, 7 February 1994, p. 53; Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 38; Ex. P2743, Memo from the Chief of VJ General Staff, 11 August 1995.

<sup>3523</sup> Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC, 30 August 1994, p. 47.

<sup>3524</sup> Ex. P2822, Minutes of the 40<sup>th</sup> Session of the RS National Assembly, 1 and 11 May 1994, p. 57.

<sup>3525</sup> Ex. P1282, Intercepted Conversation, undated, p. 6.

<sup>3526</sup> See generally *supra* sections VI.C.2.(b)-(c), VI.C.3, VI.C.4.(c), VI.C.5-6, 8.

<sup>3527</sup> Ex. P1512, Authorisation by the Drina Corps Command, 22 November 1993 (this authorisation was based on a VJ General Staff decision, as indicated by Ex. P1269); Ex. P572, Matériel List, 22 November 1993 (The translated document reads 1,936 rockets, although the original reads 50, see Yugoslav Kodžopeljić, T. 12357-12358); Ex. P574, Matériel List, 22 November 1993 (see MP-14, T. 3564-3565); Ex. P579, Matériel List, 24 November 1993 (the translated form features an erroneous date at its top right; boxes 40-41 of the translated form should also be blank as in the original; see MP-14, T. 3573-3574); Ex. P577, Matériel List, 23 November 1993 (see MP-14, T. 3571-3572); Ex. P578, Matériel List, 23 November 1993 (see MP-14, T. 3572-3573, 3709); Ex. P576, Matériel List, 23 November 1993 (the translated document misses the quantity of 192 howitzer rounds present in the original; see MP-14, T. 3570-3571); Ex. P582, Matériel List, 24 November 1993 (see MP-14, T. 3579-3580); Ex. P583, Matériel List, 25 November 1993 (see MP-14, T. 3588-3589); Ex. P584, Matériel List, 25 November 1993 (see MP-14, T. 3589). For a detailed summary of the quantities of ammunition described in these documents, see above.

<sup>3528</sup> Ex. P1232, Cable from 1<sup>st</sup> Krajina Corps Command to the VRS Main Staff, 13 January 1994; Ex. P1213, Correspondence Between the 1<sup>st</sup> Krajina Corps Command and the VRS Main Staff Regarding Reception of Military Equipment, 11 July 1994. For the reasons stated above, because the Krajina Corps officially informed the VRS Main Staff that it had obtained this material from the VJ, the only reasonable inference was that this material was officially approved by the VJ General Staff.

<sup>3529</sup> Ex. P1226, SRK Command Request to VRS Main Staff for Ammunition, 17 June 1995; Ex. P1225, SRK Command Request to VRS Main Staff for Ammunition, 22 June 1995; Ex. P1229, SRK Command Request to VRS Main Staff for Logistical Assistance, 7 July 1995.

<sup>3530</sup> Ex. P1203, VRS Order Regarding Redistribution of Ammunition, 2 August 1995; Ex. P2723, Request from Ratko Mladić for Perišić for Nitrogen Tanks, 31 May 1995. See also Ivan Đokić, T. 14484. Again, because the Eastern Bosnian Corps officially informed the VRS Main Staff that it had obtained the material in Ex. P1203 from the VJ, the only reasonable inference was that this material was officially approved by the VJ General Staff.

<sup>3531</sup> Ex. P1206, VRS Internal Correspondence on Ammunition Received from the VJ and Request for More Ammunition to be Assigned, 30 September 1995.

the SRK, Drina Corps and 2<sup>nd</sup> Krajina Corps.<sup>3532</sup> The *Pretis* factory in RS received significant operational support from the VJ General Staff, which placed technical monitors at *Pretis*, tested *Pretis*' weaponry at the VJ Nikinci facility, and overhauled its artillery casings at the Kragujevac TRZ.<sup>3533</sup> *Pretis* fulfilled part of the SRK, Drina Corps and Krajina Corps' needs in weaponry.<sup>3534</sup> *Pretis* mostly supplied the VRS's 3<sup>rd</sup> Sarajevo Brigade.<sup>3535</sup> The modified air-bombs that *Pretis* made were sent to the Koran Depot.<sup>3536</sup> Starting in 1995, *Pretis*' modified air-bombs were notably delivered to the SRK for usage in Sarajevo.<sup>3537</sup> *Pretis* produced modified air-bombs for the needs of the Drina Corps and the East Bosnia Corps as well.<sup>3538</sup> The Trial Chamber recalls its conclusion that the only reasonable inference presented by the evidentiary record is that the modification of air-bombs at *Pretis* was based on the successful technical model developed by Ivan Đokić and the VJ General Staff.<sup>3539</sup>

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<sup>3532</sup> MP-14, T. 3517, 3522-3524 (closed session). *See supra* section VI.C.3.

<sup>3533</sup> *See generally supra* section VI.C.4.(b).(ii).

<sup>3534</sup> MP-14, T. 3635; Ex. P1213, Correspondence Between the 1<sup>st</sup> Krajina Corps Command and the VRS Main Staff Regarding Reception of Military Equipment, 11 July 1994. *See supra* section VI.C.4.(c).

<sup>3535</sup> MP-14, T. 3499, 3505-3506, 3651-3652 (closed session).

<sup>3536</sup> MP-14, T. 3654 (closed session).

<sup>3537</sup> *See* MP-14, T. 3652, 3654, 3657-3660 (closed session). *See also* Ex. P606, Letters from VRS Main Staff Regarding Air-Bombs, 19 April 1995; Ex. P605, Document from VRS Main Staff, Logistics Sector, 16 May 2009; Ex. P608, VRS Order to *Pretis* re Supply of Air Bombs, 20 June 1995; Ex. P978, Order re: Ammunition, 28 June 1995.

<sup>3538</sup> MP-14, T. 3654 (closed session).

<sup>3539</sup> *See supra* section VI.C.5.



## D. Logistical and Technical Assistance to the SVK

### 1. Dependence of the SVK on VJ

1238. When the JNA withdrew from Croatia in 1991, the SVK took possession of a variety of weaponry and military equipment the JNA left behind.<sup>3540</sup> This included military tanks, armoured personnel carriers, infantry combat vehicles and ammunition with a total estimated value of at least 174,207,980 U.S. dollars.<sup>3541</sup> By June 1993, the SVK began to report serious shortages in military resources and looked more frequently for replenishment to the VJ.<sup>3542</sup> On 4 June 1993, Goran Hadžić, the RSK President, admitted to Slobodan Milošević that “[t]he amount of artillery ammunition is minimal, and fuel and grease are sufficient only for fire engagement for a short period of time” and that the RSK was “not financially in [a] position to make up for medium and general service which may be done by the institutions of the Yugoslav Army”.<sup>3543</sup> The special industry factory in Teslingrad supplied the SVK but its production of light mines was routinely hampered by shortages of raw materials.<sup>3544</sup>

1239. By March 1994, the situation within the SVK had become dire, which led to a growing dependence on VJ assistance.<sup>3545</sup> In March 1994, the SVK Main Staff addressed to Perišić a report on logistical assistance, in which it stressed that the “SVK has been short of between half a million and a million New Dinars on a daily basis”, that “[t]he RSK government is unable to sustain from the budget the expenses of maintaining the lowest standard in the army (bare survival)”.<sup>3546</sup> In July 1994 requests from the President of the RSK to Perišić for assistance contained declarations that “the planned development and reinforcement of the SVK is *directly dependent* on the delivery of

<sup>3540</sup> See Ex. D375, VJ General Staff Report on Destroyed, Captured, Abandoned and Damaged Materiel in the Republic of Croatia, July 1992; Ex. D376, List I of Army Property Left in Republic of Croatia After Withdrawal of JNA, undated; Ex. D377, List II of Army Property Left in Republic of Croatia After Withdrawal of JNA, undated; Ex. D378, List III of Army Property Left in Republic of Croatia After Withdrawal of JNA, undated; Ex. D379, List IV of Army Property Left in Republic of Croatia After Withdrawal of JNA, undated; MP-80, T. 8354-8355 (closed session).

<sup>3541</sup> Ex. D375, VJ General Staff Report on Destroyed, Captured, Abandoned and Damaged Materiel in the Republic of Croatia, July 1992. See also Ex. D376, List I of Army Property Left in Republic of Croatia After Withdrawal of JNA, undated; Ex. D377, List II of Army Property Left in Republic of Croatia After Withdrawal of JNA, undated; Ex. D378, List III of Army Property Left in Republic of Croatia After Withdrawal of JNA, undated; Ex. D379, List IV of Army Property Left in Republic of Croatia After Withdrawal of JNA, undated; MP-80, T. 8354-8355 (closed session); Mile Novaković, T. 13095-13097.

<sup>3542</sup> Ex. P320, Letter from the President of the RSK to the President of the Republic of Serbia, 4 June 1993. See also Ex. P317, Aide Mémoire of the Chief of the Office of the SVK Commander to the VJ General Staff, 17 December 1993, pp 13-14; Ex. P1029, SVK Report Regarding Logistical Assistance, 6 March 1994, p. 5; Ex. P2621, Aide-Memoire for Coordination in the VJ General Staff, July 1994, pp 10-11; Mile Novaković, T. 13098; MP-80, T. 8338-8339, 8354-8355 (closed session).

<sup>3543</sup> Ex. P320, Letter from the President of the RSK to the President of the Republic of Serbia, 4 June 1993.

<sup>3544</sup> Ex. D171 (under seal), p. 2; MP-80, T. 8629-8630 (closed session).

<sup>3545</sup> See Ex. P782, Stenographic Transcript of 18<sup>th</sup> Session of the SDC, 7 February 1994, p. 53; Ex. P1029, SVK Report Regarding Logistical Assistance, dated 6 March 1994, pp 2-5, 10; Ex. P1125, Request by the RSK to the VJ for Assistance in Recruitment and Equipment of the SVK, 21 July 1994, p. 1.

<sup>3546</sup> Ex. P1029, SVK Report Regarding Logistical Assistance, 6 March 1994, p. 5.

military and technical equipment by the VJ in accordance with the achieved agreement” and that “past co-operation created [an] important foundation for further development of the SVK”.<sup>3547</sup> Other reports on logistical assistance by the SVK indicate that, at times, the VJ General Staff was regularly receiving requests for ammunition and weapons.<sup>3548</sup>

## 2. Delivery of Weaponry and Military Equipment to the SVK

### (a) Provision of Weapons and Ammunition

1240. The Trial Chamber was presented with evidence regarding the VJ’s provision of weapons and ammunition to the SVK from as early as February 1993 until November 1995.

1241. On 10 February 1993, at the 7<sup>th</sup> Session of the SDC, the then Chief of the VJ General Staff Života Panić stated that “[a]s for [RS] and [RSK], huge amounts of material means have been sent to these areas” and “we gave [the RSK] complete equipment to form one corps”.<sup>3549</sup> He proceeded to reiterate that “we have been receiving on a daily basis a lot of requests for ammunition and weapons. We send what we can”.<sup>3550</sup> In June 1993, the RSK political leadership also appealed to Slobodan Milošević to continue to secure through the VJ General Staff “help in technical maintenance of weapons and acquisition of ammunition”.<sup>3551</sup>

1242. Perišić assented to the SVK’s requests for assistance once he became VJ Chief of General Staff.<sup>3552</sup> For example, a communication intercepted on 2 November 1993 points to the provision of 1,500 automatic rifles, 3 multiple rocket launchers and a shipment of 1,000 uniforms “with the official permission of General Perišić”.<sup>3553</sup> A few weeks later, a VJ General Staff memorandum stipulated that part of an anti-aircraft self-propelled rocket battery was transferred to the SVK, and that “other *approved* combat equipment [was] prepared for transport”.<sup>3554</sup> Moreover, with reference to a request from the SVK Main Staff regarding the “takeover of assigned 20 airplanes”, the VJ

<sup>3547</sup> Ex. P1133, Request of the RSK President, 21 July 1994, Doc ID 0118-5617, 21 July 1994, p. 1 (emphasis added). *See also* Ex. P1125, Request by the RSK President to the VJ for Assistance in Recruitment and Materiel, 21 July 1994, p. 1.

<sup>3548</sup> Ex. P771, Stenographic Notes of the 7<sup>th</sup> Session of the SDC, 10 February 1993, p. 28.

<sup>3549</sup> Ex. P771, Stenographic Notes of the 7<sup>th</sup> Session of the SDC, 10 February 1993, pp 27-28.

<sup>3550</sup> Ex. P771, Stenographic Notes of the 7<sup>th</sup> Session of the SDC, 10 February 1993, p. 28. *See also* Ex. P1009, Order of FRY President, 18 February 1994.

<sup>3551</sup> Ex. P320, Letter from the President of the RSK to the President of the Republic of Serbia, 4 June 1993, p. 1.

<sup>3552</sup> *See e.g.* Ex. P1433, Intelligence Note, 2 November 1993; Ex. P2156, Memorandum on Co-ordination Between the VJ, VRS and SVK, 19 November 1993, pp 2, 13 (emphasis added); MP-80, T. 8349-8352 (closed session). *See also supra* section VI.B.

<sup>3553</sup> Ex. P1433, Intelligence Note, 2 November 1993.

<sup>3554</sup> Ex. P2156, Memorandum on Co-ordination Between the VJ, VRS and SVK, 19 November 1993, p. 13 (emphasis added).

General Staff in November 1993 ordered its relevant administration to prepare a decision to be signed by the Chief of VJ General Staff.<sup>3555</sup>

1243. This assistance continued into 1994<sup>3556</sup> and 1995.<sup>3557</sup> A VJ Report on Coordination with the SVK notably stated that “valuable assistance” was provided to the SVK in the maintenance of their equipment from the Čačak technical and maintenance facility.<sup>3558</sup> The same report also stressed that the assistance provided by the VJ in “ammo, spare parts, food articles and other critical types of [materiel] has been invaluable, but unfortunately insufficient” and proposed, *inter alia*, closer coordination between the logistic sectors of the VJ and the SVK from that point forward.<sup>3559</sup> In relation to a request from the RSK MOD for ammunition and mortar rounds, Perišić took the position in December 1994 that “the final decision on this [request] should be made by the [SDC]”, and accordingly requested that the issue be placed on the agenda of its next session.<sup>3560</sup>

1244. On 6 January 1995, the VJ General Staff, in response to a request from the SVK, directed the SVK to “collect all approved equipment on the Batajnica air field”.<sup>3561</sup> On 23 February 1995, Perišić issued an order stating that he would give assistance in equipment and weapons to SVK volunteers.<sup>3562</sup> On 29 March 1995, the SVK communicated to the VJ General Staff that it was “ready to take-over” three J-20 aircraft, whereas a decision on three “out of order aircraft” would be made at “a later stage”.<sup>3563</sup>

1245. On 10 April 1995, the SVK Main Staff informed Perišić and Milošević that “[the] 44<sup>th</sup> Air-Force Brigade has continued with the reinforcement of [...] the units in depth, so that all the

<sup>3555</sup> Ex. P1145, Set of Requests by the SRK to the VJ General Staff. *See also* Ex. P1146, Request by the Baranja Brigade Command to the VJ for Armament, 9 November 1993, pp 1-2.

<sup>3556</sup> *See e.g.* Ex. P2625, SVK Summary for the Coordination of Tasks in the VJ General Staff, 17 February 1994, p. 15; Ex. P1798, VJ Report on Coordination with SVK, May 1994, pp 7-8; Ex. P2176, Documents Regarding the Cooperation Between VRS, SVK and VJ in April and May 1994.

<sup>3557</sup> *See e.g.* Ex. P1136, Correspondence Between SVK and VJ, 6 January 1995; Ex. P1140, Correspondence Between VJ and the SVK, 12 November 1994, p. 1; Ex. P1150, Response by the Chief of VJ General Staff to the SVK Request for Recruitment of Volunteers, 23 February 1995, p. 1; Ex. P1123, Decision of VJ Regarding Request for Planning, Organising and Deploying of Volunteers to the SVK, 23 March 1995, p. 1; Ex. P2714, Order of the Chief of the VJ General Staff to 1<sup>st</sup> Army Command, 5 May 1995, pp 1-2; Ex. P1020, SVK Main Staff Regular Combat Report, 10 April 1995, pp 3, 5; Ex. P2786, Requests from SVK to the Chief of the VJ General Staff to Provide Logistical Assistance, 14-15, 19 June 1995; Ex. P950, Document from VJ General Staff Approving the Hand-over of Air Bombs from VJ to SVK 11<sup>th</sup> Corps, 4 August 1995.

<sup>3558</sup> Ex. P1798, VJ Report on Coordination with SVK, May 1994, p. 8.

<sup>3559</sup> Ex. P1798, VJ Report on Coordination with SVK, May 1994, p. 8, stating “we propose that, together with the VJ, we implement the [...] organised inclusion of the logistics organs of the General Staff of the SVK in the process of the production of armament and military equipment which the VJ are carrying out for their own needs”. *See also* Ex. P2621, Aide-Memoire for Coordination in the VJ General Staff, July 1994, p. 10.

<sup>3560</sup> Ex. P1143, Communication of the Cabinet of the Chief of the VJ General Staff to the Cabinet of the Federal Defence Minister, 7 December 1994.

<sup>3561</sup> Ex. P1136, Correspondence Between SVK and VJ, 6 January 1995.

<sup>3562</sup> Ex. P1150, Response by the Chief of VJ General Staff to the SVK Request for Recruitment of Volunteers, 23 February 1995, p. 1. *See also* Ex. P1123, Decision of VJ Regarding Request for Planning, Organising and Deploying of Volunteers to the SVK, 23 March 1995, p. 1.

equipment we received from the VJ [...] is being used”, and added: “Having received the materiel sources [sic] from the Republic of Serbia and from the VJ in February and March of 1995, the necessary materiel reserves (of ammunition and food stuff) for the military needs have been created”.<sup>3564</sup>

1246. On 5 May 1995, Perišić ordered the VJ Sector for Logistics to “immediately issue the approved quantities of materiel and technical equipment to the 11<sup>th</sup> Corps of the SVK”.<sup>3565</sup> In June 1995, the VJ General Staff agreed to provide the SVK with 100kg of “CS” chemical agent.<sup>3566</sup> On 4 August 1995, the VJ General Staff also consented to provide the SVK 11<sup>th</sup> Corps with “24 aerial bombs”.<sup>3567</sup> On 2 November 1995, in response to a request by the 11<sup>th</sup> Corps Command of the SVK that the VJ General Staff “urgently approve another 10,000 anti-tank and 8,000 pressure-activated anti-personnel mines”, Perišić ordered that “if the combat readiness is not being reduced – prepare and give”.<sup>3568</sup>

1247. It is noted, however, that there were instances when SVK requests were either not met or met only in part by the VJ General Staff.<sup>3569</sup>

(b) Provision of the Orkan Rocket System

1248. Among the weapons left behind by the JNA in the territory of the RSK in 1991 was a sole Orkan rocket system later used in the shelling of Zagreb in May 1995.<sup>3570</sup> On 8 April 1993, the RSK MOD wrote to Chief of the VJ General Staff requesting 200 Orkan rockets.<sup>3571</sup> In October 1993, the SVK Main Staff sought approval from the VJ General Staff to have an Orkan rocket system “tested in RSK Army on real targets and in real conditions”.<sup>3572</sup>

<sup>3563</sup> Ex. P1135, Correspondence Between SVK and VJ, 29 March 1995.

<sup>3564</sup> Ex. P1020, SVK Main Staff Regular Combat Report, 10 April 1995, pp 3, 5.

<sup>3565</sup> Ex. P2714, Order of the Chief of the VJ General Staff to 1<sup>st</sup> Army Command, 5 May 1995, pp 1-2.

<sup>3566</sup> Ex. P2786, Requests from SVK to the Chief of the VJ General Staff to Provide Logistical Assistance, 14-15, 19 June 1995.

<sup>3567</sup> Ex. P950, Document from VJ General Staff Approving the Hand-over of Air Bombs from VJ to SVK 11<sup>th</sup> Corps, 4 August 1995.

<sup>3568</sup> Ex. P2750, Request from 11<sup>th</sup> Corps Commander, 2 November 1995. *See also* Siniša Borović, T. 14027.

<sup>3569</sup> Ex. P1797, Report by SVK on Cooperation with VJ General Staff, October 1993, p. 4; Ex. P1132, Request by the SRK to the Chief of the VJ General Staff for Military Personnel, 20 June 1993; Mile Novaković, T. 13254-13256; Ex. P1125, Request by the RSK to the VJ for Assistance in Recruitment and Equipment of the SVK, 21 July 1994, p. 6; MP-80, T. 8383-8388 (closed session); Siniša Borović, T. 13982; Ex. D484, VJ General Staff Response to the SVK Main Staff, 19 May 1995.

<sup>3570</sup> MP-80, T. 8704 (closed session). *See also* Ex. P1818, Request by VRS to VJ, 15 January 1994, p. 1; Ex. P55 (under seal), T. 13377.

<sup>3571</sup> Ex. P1128, Request by the RSK to the VJ for Arms, 8 April 1993, p. 1.

<sup>3572</sup> Ex. P1797, Report by SVK on Cooperation with VJ General Staff, October 1993, pp 3, 6.

1249. The complexity of this rocket system required VJ assistance in repairs and maintenance.<sup>3573</sup>

(c) Provision of Fuel and Miscellaneous Equipment

1250. The Trial Chamber notes that the assistance proffered by the VJ to the SVK included fuel, medical supplies and spare parts.<sup>3574</sup>

1251. The SVK was facing serious fuel shortages as early as June 1993.<sup>3575</sup> In January 1994, the SVK Main Staff reported that inadequate quantities of fuel had a crippling impact on the capacity of the army to conduct some of its “basic functions”.<sup>3576</sup> The SVK had to rely on the VJ and the FRY for assistance with fuel because internal or other sources of supply were limited.<sup>3577</sup> There were no refineries in the RSK.<sup>3578</sup> MP-080 testified that while there were oil wells in Dzeletovci in Eastern Slavonia they were significant only in light of the poor state of the economy of the RSK at the time, and not because they were themselves sizeable.<sup>3579</sup>

1252. In July 1994, the RSK MOD advised the SVK Main Staff that the “securing of fuel [was] of vital interest for the defence of the RSK” and that at “least 1,000 tonnes of fuel” had to be procured immediately.<sup>3580</sup> Witness Siniša Borović denied that there was an organised supply of fuel to the VRS and SVK.<sup>3581</sup> The Trial Chamber notes that his testimony on this point is contradicted by other evidence.<sup>3582</sup> Rade Rašeta testified that the SVK was dependent on the VJ for adequate fuel supplies and that the “priority was to seek [this] from the General Staff of VJ”.<sup>3583</sup> The Trial Chamber also

<sup>3573</sup> MP-80, T. 8394-8395 (closed session). Additional evidence suggests that only the VJ possessed required resources in this regard. On 15 January 1994, the VRS requested from the VJ General Staff that, “pursuant to a prior arrangement”, it “facilitate the establishment of a team of experts [...] composed of persons who had worked on designing” the ORKAN system; and that they be dispatched to Knin for “the purpose of dismantling 4 tubes” from the ORKAN to be used by the VRS, Ex. P1818, Request by VRS to VJ, 15 January 1994, p. 1. On 19 January 1994, Perišić wrote a letter to the SVK Main Staff stating that a team had been “dispatched, led by Col Radomir Ećimović, in order to implement the agreement [the SVK Main Staff] made with Lt Col Gen Mladić, which relates to dismantling 4 barrels” of the ORKAN system, Ex. P1138, Correspondence Between Chief of the VJ General Staff and the SVK Main Staff, 19 January 1994.

<sup>3574</sup> Rade Rašeta, T. 5930.

<sup>3575</sup> Ex. P320, Letter from the President of the RSK to the President of the Republic of Serbia, 24 June 1993 (“fuel and grease are sufficient only for fire engagement for a short period of time”); Ex. P317, Aide Mémoire of the Chief of the Office of the SVK Commander to the VJ General Staff, 17 December 1993, p. 14 (“fuel reserves completely spent”); Ex. P2156, Memorandum on Co-ordination Between the VJ, VRS and SVK, 19 November 1993, p. 6; Ex. P1019, SVK Main Staff Operations Report, 7 January 1994, p. 2; Ex. P2621, Aide-Memoire for Coordination in the VJ General Staff, July 1994, p. 11 (“The SVK is not being supplied fuel for combat operations, and the quantities we receive are insufficient to meet even the regular needs”); MP-80, T. 8356-8357 (closed session).

<sup>3576</sup> Ex. P1019, SVK Main Staff Operations Report, 7 January 1994, p. 2. *See also* Ex. P2621, Aide-Memoire for Coordination in the VJ General Staff, July 1994, p. 11.

<sup>3577</sup> MP-80, T. 8357-8358 (closed session).

<sup>3578</sup> MP-80, T. 8357 (closed session).

<sup>3579</sup> MP-80, T. 8627 (closed session).

<sup>3580</sup> Ex. D171 (under seal), p. 2.

<sup>3581</sup> Siniša Borović, T. 14000-14001.

<sup>3582</sup> *See supra* paras 1069, 1109-1114.

<sup>3583</sup> Rade Rašeta, T. 6031.

heard testimony about the process of transporting fuel from the FRY to the SVK: MP-80 noted that the fuel was delivered secretly,<sup>3584</sup> and Milomir Kovačević testified that “convoys would travel once a week, or twice” between the FRY and the RSK.<sup>3585</sup>

1253. The evidence demonstrates that the SVK also relied on the VJ General Staff for the provision of other basic military and technical equipment. By the end of 1993, the SVK Main Staff began to report critical shortages in existing stock and reserves of military apparel, footwear, quartermaster supplies, optical instruments, engines for combat and non-combat vehicles, tires, spare parts, overhaul materials and medical supplies.<sup>3586</sup> Evidence indicates that the VJ became a significant source of assistance in this regard.<sup>3587</sup> In June 1994, Perišić was convinced that if the VJ “stop[ed] helping [the SVK] in the area of education, financing of educated personnel and material assistance for certain combat operations, they’ll start losing territories”.<sup>3588</sup> With regard to technical assistance, he posed the question: “Do you think that the technical equipment which is in [...] the [RSK] would be functional if we did not engage the men from these [VJ repair] depots?”<sup>3589</sup> In December 1994, Perišić ordered a team of experts from the Moma Stanojlović Complex of the VJ air-force to the Golubić airfield in the RSK to “determine the technical operability” of a helicopter, noting their transportation would be facilitated by the RSK and that they should travel in civilian clothing.<sup>3590</sup>

(d) Training of SVK Soldiers

1254. The Trial Chamber was presented with evidence concerning the VJ’s involvement in training SVK soldiers from August 1993 until the fall of RSK in August 1995.

1255. On 25 August 1993, the VJ General Staff received through the FRY MOD a request from the RSK Prime Minister to the effect that the VJ General Staff should “provide training for recruits

<sup>3584</sup> MP-80, T. 8357 (closed session).

<sup>3585</sup> Milomir Kovačević, T. 6056-6057.

<sup>3586</sup> Ex. P1051, SVK Main Staff Regular Combat Report, 11 November 1993, p. 3; Ex. P1030, SVK Report Regarding Personnel Assistance, 13 March 1994, p. 6; Ex. P317, Aide Mémoire of the Chief of the Office of the SVK Commander to the VJ General Staff, 17 December 1993, p. 13; Ex. P2621, Aide-Memoire for Coordination in the VJ General Staff, July 1994, pp 11-12; Ex. P1040, SVK Main Staff Regular Operations Report, 24 July 1994, p. 5.

<sup>3587</sup> Ex. P1020, SVK Main Staff Regular Combat Report, 10 April 1995, p. 5; Ex. P1030, SVK Report Regarding Personnel Assistance, 13 March 1994, p. 6; Ex. P317, Aide Mémoire of the Chief of the Office of the SVK Commander to the General Staff of the VJ, December 1993, p. 13; Ex. P1130, Correspondence Between the SVK Commander Čeleketić and Chief of the VJ General Staff, 17 March 1995, p. 1.

<sup>3588</sup> Ex. P776, Stenographic Record of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 38.

<sup>3589</sup> Ex. P796, Stenographic Record of the 38<sup>th</sup> Session of the SDC, 27 June 1995, p. 12.

<sup>3590</sup> Ex. P1137, Correspondence Between Chief of the VJ General Staff and the Office of the President of RSK, 5 December 1994, p. 1. *See also* MP-80, T. 8396-8397 (closed session).

from this Republic for the duration of the state of the war and until the conditions are met for training to be conducted in the [SVK]”.<sup>3591</sup>

1256. The evidence demonstrates that there were instances of training sessions organised by the VJ for the benefit of SVK soldiers.<sup>3592</sup> On 30 August 1993, the VJ General Staff informed the FRY MOD that by “[o]rder of the [VJ] Chief of General Staff” a training session on target-shooting had been scheduled to be held at the “Pasuljanske Livade polygon”, and necessitated “four buses carrying 20 officers, 16 non-commissioned officers, and 128 soldiers from the [SVK]”, who shall cross the FRY border “wearing plain clothes”.<sup>3593</sup> An intercepted communication of 4 November 1993 from the Banija Corps to the SVK Main Staff refers to an agreement to “send 240 soldiers of various specialities to training in Serbia”.<sup>3594</sup>

1257. Perišić received a letter from the RSK Prime Minister, asking that a contingent of “around 1,000 recruits” be sent for “basic (specialised) training in the VJ” in “September and December 1993”.<sup>3595</sup> In December 1993, Perišić had the VJ General Staff submit a proposal to the SDC concerning the “[t]raining of recruits from the RSK in VJ units”.<sup>3596</sup> The proposal was adopted and acted upon throughout 1994 and until August 1995.<sup>3597</sup>

1258. On 7 January 1994, the SVK Main Staff informed Perišić and Milošević that “the decision on dispatching the recruits to the VJ for training was well-received”.<sup>3598</sup> That month, the SVK reported that 976 of its recruits had been sent for training with the VJ.<sup>3599</sup>

1259. On 18 April 1994 the SDC adopted a resolution directing that “[a] total of 240 students shall be enrolled at the Military Academy [...] for the needs of the [...] [SVK and VRS]” and that “[t]he funds necessary for their education shall be provided by the Federal Government” of the FRY.<sup>3600</sup> In an internal memorandum dated 28 April 1994, the VJ General Staff discussed particular requests

<sup>3591</sup> Ex. D625, Reference by FRY MOD to Request from RSK for Training and Conscripts, 25 August 1993.

<sup>3592</sup> See Ex. P1434, Intelligence Note, 4 November 1993; Ex. P2156, Memorandum on Co-ordination between the VJ, VRS and SVK, 19 November 1993, p. 13.

<sup>3593</sup> Ex. P941, VJ General Staff Information Addressed to the MOD, 30 August 1993, p. 1. See also Ex. P2845, VJ Dispatches on Temporary Assignment, 8 October 1993, p. 3.

<sup>3594</sup> Ex. P1434, Intelligence Note, 4 November 1993.

<sup>3595</sup> Ex. D846, RSK Request to VJ General Staff for Transfer of Recruits, 1993. See also Ex. P317, Aide Mémoire of the Chief of the Office of the SVK Commander to the VJ General Staff, 17 December 1993, p. 4.

<sup>3596</sup> Ex. D519, Letter to the SVK to the VJ Main Staff, 21 December 1993.

<sup>3597</sup> See e.g. Ex. P1019, SVK Main Staff Operations Report, 7 January 1994, p. 2; Ex. P919, SVK Main Staff Memo on the Coordination of Tasks in the VJ General Staff, 19 January 1994, p. 3; Ex. P940, VJ General Staff Document Regarding Communications with SVK on Transport of Recruits, 22 February 1994, p. 1; Ex. P1045, SVK Main Staff Regular Operations Report, 31 July 1994, p. 5; MP-80, T. 8393-8394 (closed session).

<sup>3598</sup> Ex. P1019, SVK Main Staff Operations Report, 7 January 1994, p. 2.

<sup>3599</sup> Ex. P919, SVK Main Staff Memo on the Coordination of Tasks in the VJ General Staff, 19 January 1994, p. 3. See also Ex. P940, VJ General Staff Document Regarding Communications with SVK on Transport of Recruits, 22 February 1994, p. 1; MP-80, T. 8393-8394 (closed session).

for training SVK personnel and concluded that “[b]earing in [Perišić’s] opinion [...] organise training as requested”.<sup>3601</sup> On 10 May 1994, Perišić directed the Administration Sector of the VJ to “execute admission of the recruits of the 40<sup>th</sup> Personnel Centre [*i.e.* SVK] and perform the training with them in the [VJ] units”.<sup>3602</sup> This was repeated in December 1994 when Perišić ordered the Administration Sector to similarly accommodate a certain number of SVK recruits for training.<sup>3603</sup>

1260. SVK personnel subsequently continued to be sent to VJ units, participating in programmes financed by the VJ.<sup>3604</sup> Notably, an order from the SVK Chief of Staff on 5 August 1994 seeking the referral of candidates for a cryptographic data protection training programme to be conducted by the VJ states that this was “[p]ursuant to the Coordination Plan of the GŠ SVK and GŠ VJ” and that for the “duration of the program the candidates will be provided with free accommodation and food in the [...] VJ”.<sup>3605</sup> In a September 1994 report by the SVK, 17 SVK soldiers were identified as having been trained as gunners for triple-barrelled 20mm anti-aircraft guns” by the VJ in Pančevo.<sup>3606</sup> On 10 March 1995, an intercepted communication states that the VJ “approved” a request submitted by the SVK for “specialised training [...] of soldiers from the 11<sup>th</sup> Corps”.<sup>3607</sup> In addition, on 26 March 1995, the VJ General Staff received the following request from the SVK:

Due to insufficient number of pilots and decreasing options to fill in these positions from the VJ, we ask you to enable redirecting and continuing further schooling of students [...] to the group trained for pilots.<sup>3608</sup>

1261. The evidence indicates that the training provided by the VJ stretched across a multiplicity of specialisations and purposes.<sup>3609</sup> Notably, Perišić agreed to the attachment of SVK personnel for training purposes in VJ units from June 1994 as follows: 50 in aviation, 15 in engineering, 10 in atomic-biological-chemical defence and 30 in counter-electronics.<sup>3610</sup>

<sup>3600</sup> Ex. P710, Minutes of the 19<sup>th</sup> Session of the SDC, 16 March 1994, p. 2.

<sup>3601</sup> Ex. P1817, Request by SVK to VJ, 28 April 1994, p. 1.

<sup>3602</sup> Ex. P2863, VJ General Staff Order Sending 40<sup>th</sup> PC Recruits for Training with VJ, 10 May 1994, p. 1.

<sup>3603</sup> Ex. P2862, VJ General Staff Order Sending Recruits from SVK for VJ Training, 30 December 1994, p. 1 (referring to the following number of recruits: 522 in the Army, 38 in the Air-force and Anti-Aircraft Defence, and 232 in “units directly subordinated to the General Staff of the VJ”).

<sup>3604</sup> Ex. P1022, SVK Report Addressed to S. Milošević, M. Martić and M. Perišić, 10 July 1994, p. 6.

<sup>3605</sup> Ex. P2858, SVK Main Staff Order for SVK Training in the VJ, 5 August 1994, pp 1, 3.

<sup>3606</sup> Ex. P937, Report of Combat Training in the FRY of the 18<sup>th</sup> SVK Mixed Artillery Regiment, 10 September 1994, p. 4.

<sup>3607</sup> Ex. P2252, Intercepted Communication, 10 March 1995.

<sup>3608</sup> Ex. P938, SVK Main Staff Request to VJ General Staff Regarding Training, 26 March 1995.

<sup>3609</sup> See e.g. Ex. P2176, Documents Regarding Cooperation Between VRS, SVK and VJ in April and May 1994, p. 12 (month-long reconnaissance and sabotage course in Banja Luka in April 1994); Ex. P936, Letter Signed by Colonel Smiljanić to the Command of the 7<sup>th</sup>, 11<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup>, 21<sup>st</sup> and 39<sup>th</sup> SVK Corps, 2 August 1994 (scheduled intelligence course in September 1994).

<sup>3610</sup> Ex. P1817, Approval by Chief of the VJ General Staff of Training Request by SVK, 29 April 1994, p. 1.



### 3. Conclusions

1262. The Trial Chamber finds that the VJ General Staff supplied considerable logistical and technical assistance to the SVK in the period relevant to the Indictment. Provision of such assistance was effected through the VJ General Staff with Perišić's approval.<sup>3611</sup> The assistance took varied forms; from the provision of weapons, ammunition, fuel, technical expertise and personnel, to the training of SVK personnel either at FRY-VJ training facilities or outside FRY territory by VJ personnel.

1263. The SVK came to depend on the supply and continuity of logistical and technical support (including the maintenance of the Orkan rocket system), from the VJ during Perišić's tenure. This assistance had an effect on the everyday work of the 40<sup>th</sup> PC members serving in the SVK, as the success of their operations largely depended on the logistical and technical support supervised by Perišić.

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<sup>3611</sup> See *supra* section VI.B.

## **E. The Defence's Expert Witness on Logistical Assistance**

1264. The Defence called Ivan Đokić as an expert witness on the VJ's logistical assistance to the VRS and SVK. The Defence specifies that it "adopts" the "conclusions" made by Đokić in his report on the VJ's logistical assistance.<sup>3612</sup>

### **1. Đokić's Background**

1265. At the time of his testimony, Đokić was a lecturer at the state university of Novi Pazar, where he taught basic courses in computers and information technology.<sup>3613</sup> He is a retired Lieutenant-General of the VJ, and formerly served as the head of the VJ General Staff's Aeronautical Administration between 1994 and 2000.<sup>3614</sup> Đokić was a subordinate of the Accused and admittedly took part "in the overall process of co-operation with the [VRS]" during the war in BiH.<sup>3615</sup>

1266. The Trial Chamber recalls that Ivan Đokić played a key role in devising the functional modified air-bomb model, thereby earning Perišić's praise.<sup>3616</sup> In May 1995, Mladić requested that Đokić specifically be dispatched to assist the VRS with technical problems with its rockets and "modified anti-aircraft defence equipment", which Perišić approved.<sup>3617</sup> The Trial Chamber further recalls its finding that modified air-bombs were used in committing crimes against Sarajevo civilians under Scheduled Incidents A5, A6 and A8, which were part of a broader campaign of attacks against civilians with modified air-bombs.<sup>3618</sup>

### **2. Questionable Methodology of Expert Report**

1267. Đokić states in his report that he employed the following methodology: "[c]ollection of all available data from the greatest possible number of sources (conversations with participants of events, military and state documentation, reports by international institutions, books, newspaper

<sup>3612</sup> Defence Final Brief, para. 805 (citing Ex. D507, Đokić Report on Logistical Assistance, paras 334-344).

<sup>3613</sup> Ivan Đokić, T. 14335-14336.

<sup>3614</sup> Ivan Đokić, T. 14336-14337. Đokić subsequently served as head of the VJ General Staff Operational and Logistics Administration between 2000 and 2001. After assuming other senior VJ positions in logistics, he served as assistant minister for materiel resources for the MOD of Serbia and Montenegro between 2004 and 2005, Ivan Đokić, T. 14337-14340, 14480. *See also* Ex. D505, Curriculum Vitae of Ivan Đokić, p. 2.

<sup>3615</sup> Ivan Đokić, T. 14480-14481.

<sup>3616</sup> Ivan Đokić, T. 14489-14492; Ex. P2197, Transcript of the Collegium of the Chief of the VJ General Staff, 28 October 1995, p. 57. *See also supra* section VI.B.5.

<sup>3617</sup> Ex. P2722, Urgent Request from Mladić to Perišić for Expert Assistance, 31 May 1995; Ivan Đokić, T. 14481-14483. *See also* Ex. P2723, Urgent Request from Mladić to Perišić for 6 Cylinders of Nitrogen, 31 May 1995 (Mladić informed Perišić that the Eastern Bosnia Corps had been "using a modified apu-13mt rocket launcher [...] constructed with the help of the [VJ] team's expert assistance", and Perišić referred Mladić's request for additional assistance to Đokić); Ivan Đokić, T. 14484.

<sup>3618</sup> *See supra* section V.A.4, paras 376, 384, 435.

articles and special reports, legal regulations, etc.)”.<sup>3619</sup> On cross-examination, Đokić admitted that he only used documents given to him by the Defence.<sup>3620</sup>

1268. The report’s statement of methodology further reads that Đokić conducted a “[s]election of data with the highest degree of credibility”.<sup>3621</sup> However, Đokić hardly specifies in his report how he assessed the credibility of information and conflicting estimates. Questioned about this matter, Đokić stated that it was “too broad of an issue to be explained here, and it is well known how such things are done”, and that he “didn’t think it necessary to include” such information.<sup>3622</sup> Đokić gave an example, however, stating that one “can reject the highest and the lowest data and only use the data from the middle section”.<sup>3623</sup>

1269. The Trial Chamber considers that Đokić should have concretely explained in his report his standards for assessing data and why certain data were omitted. The Trial Chamber also finds it questionable to automatically reject the highest or lowest figures for ammunition reserves and deliveries without offering substantive reasons.

### 3. Use of Anonymous Sources

1270. The first source of information mentioned in the report’s methodology is “conversations with participants of events”,<sup>3624</sup> although Đokić nowhere provided the identity of these individuals in his report, thereby using them as anonymous sources. Đokić testified that he did not keep a list of the names of the individuals he spoke to.<sup>3625</sup> He neither recorded any of these conversations nor kept “official notes” about what was said.<sup>3626</sup>

1271. Đokić stated that these individuals were former JNA officers who served in the VRS, were “familiar with the events” and sometimes “participated in logistics”.<sup>3627</sup> Đokić explained: “I believed it wise to *make use of those people* who were within the logistical system of the VRS in order to consult with them about what perspired [sic]”.<sup>3628</sup> When asked why he had not made any references or citations to these conversations in his report, Đokić said that he “did not use a single piece of information” from these conversations because “we should base our research only on

<sup>3619</sup> Ex. D507, Đokić Report on Logistical Assistance, para. 4(a) (emphasis added).

<sup>3620</sup> Ivan Đokić, T. 14464-14465 (private session), 14479-14480.

<sup>3621</sup> Ex. D507, Đokić Report on Logistical Assistance, para. 4(b).

<sup>3622</sup> Ivan Đokić, T. 14398.

<sup>3623</sup> Ivan Đokić, T. 14398. *See also* Ivan Đokić, T. 14401-14402.

<sup>3624</sup> Ex. D507, Đokić Report on Logistical Assistance, para. 4(a).

<sup>3625</sup> Ivan Đokić, T. 14384-14385.

<sup>3626</sup> Ivan Đokić, T. 14385.

<sup>3627</sup> Ivan Đokić, T. 14384.

<sup>3628</sup> Ivan Đokić, T. 14384 (emphasis added).

documents that are credible and available to all”.<sup>3629</sup> This statement contradicted his earlier explanation that he felt it was “wise to make use of those people”.<sup>3630</sup> Đokić stated that he only used these conversations to corroborate his findings: “I used that for my internal work as a control parameter to make sure that I have not made a mistake or omitted something in the course of drafting of the report”.<sup>3631</sup> The report does not state where such corroboration was used.<sup>3632</sup> Đokić averred that he discarded all the information from these conversations when he drafted his final report.<sup>3633</sup>

1272. The Trial Chamber does not find Đokić’s report reliable in employing anonymous sources as a means of either primary information or corroboration.

#### 4. Claim that Perišić Had Limited Authority Over Logistical Assistance

1273. Đokić acknowledged that the FRY provided logistical assistance to the VRS and SVK<sup>3634</sup> but argued that the FRY MOD was chiefly responsible for it and that Perišić and the VJ General Staff had limited authority in this regard.<sup>3635</sup> Đokić’s report devotes several pages to the FRY’s domestic laws and procedures<sup>3636</sup> and concludes that logistical assistance was overseen by the FRY MOD, “the Central Financial Organ, as foreseen by law and defined by the decisions of the SDC”.<sup>3637</sup> Đokić deemed that, under the FRY Law on Property, the Minister of Defence and his ministry were “the only person or organ directly responsible for lawful, purposeful, and rational use of military equipment in the VJ”.<sup>3638</sup> Đokić insisted that it would have been illegal under the FRY Law on Property for Perišić to send weaponry to the VRS and SVK without the Minister of Defence’s approval.<sup>3639</sup>

1274. According to Đokić, it was the SDC and MOD, not Perišić and the VJ General Staff, who decided whether logistical assistance should be given to the VRS and SVK.<sup>3640</sup> He claimed that Perišić’s role was essentially limited to proposing certain quantities of aid based on surpluses from VJ reserves following requests from RS and RSK, although Perišić did not make the decision.<sup>3641</sup>

<sup>3629</sup> Ivan Đokić, T. 14385.

<sup>3630</sup> Ivan Đokić, T. 14384.

<sup>3631</sup> Ivan Đokić, T. 14385-14386.

<sup>3632</sup> See Ivan Đokić, T. 14385-14388. See also Ex. D507, Đokić Report on Logistical Assistance.

<sup>3633</sup> Ivan Đokić, T. 14390.

<sup>3634</sup> Ex. D507, Đokić Report on Logistical Assistance, paras 135(c), (d), 160(c), (d), 234, 236-237, 241, 248, 288-290, 339.

<sup>3635</sup> Ivan Đokić, T. 14412-14413; Ex. D507, Đokić Report on Logistical Assistance, paras 173-176, 191(e), 196, 331(a), 335, 339(3), 340, 342(1)(a).

<sup>3636</sup> Ex. D507, Đokić Report on Logistical Assistance, paras 168-182.

<sup>3637</sup> Ex. D507, Đokić Report on Logistical Assistance, paras 196, 339(3).

<sup>3638</sup> Ivan Đokić, T. 14412. See also Ex. D507, Đokić Report on Logistical Assistance, para. 174.

<sup>3639</sup> Ivan Đokić, T. 14412-14413. See also Ex. D507, Đokić Report on Logistical Assistance, paras 173-176.

<sup>3640</sup> Ex. D507, Đokić Report on Logistical Assistance, para. 340.

<sup>3641</sup> Ex. D507, Đokić Report on Logistical Assistance, paras 197, 288, 339(4).

Đokić advanced that, once the SDC decided on logistical assistance, the MOD “was chiefly responsible for its coordination”, whereas “[t]he VJ was only responsible for the executive part of logistical assistance, which fell within its authority”.<sup>3642</sup> The MOD oversaw “international military cooperation” with the VRS and SVK, but Perišić and the VJ General Staff merely handled “product reception, storage, transport, maintenance (including repairs and regular servicing), operational use, and the disposition of materiel”.<sup>3643</sup>

1275. Đokić affirmed that the SDC had no plenary power to give Perišić authority over logistical assistance, and that the SDC’s actions violated the FRY’s domestic laws and procedures:

The [SDC] cannot circumvent any laws or the [MOD][...] because the SDC is not superior to the government. They can’t say the [MOD] is – has no say in this. Everything stays in power respective [sic] of any SDC decisions. As far as I understand, the SDC may order something to the Chief of Staff but it cannot order anything to the government or the minister of defence. They cannot rule out the legal procedure that is in place.<sup>3644</sup>

[I]t is my belief that the decisions of the SDC were not based on sound procedures for making strategic decisions [...] I believe that the SDC ordered one of its subordinates to issue certain documents and regulate methods without changing the legal position of the MOD. And the SDC is not empowered to do so because it is clearly prescribed in the law.<sup>3645</sup>

1276. Đokić was confronted on cross-examination with the order by President Zoran Lilić, made pursuant to an SDC decision, giving Perišić the authority to supply the VRS and SVK with weaponry and equipment.<sup>3646</sup> While Đokić conceded the validity of the order, he resolutely maintained that it was the MOD, not Perišić, which was responsible for supplying the VRS and the SVK with weaponry.<sup>3647</sup>

1277. Đokić did not mention Lilić’s order in his report and explained this omission as follows: “I did not make use of this document because it wasn’t provided to me when I drafted the report”.<sup>3648</sup> Again, Đokić acknowledged that he only relied on documents provided to him by the Defence.<sup>3649</sup> Lilić’s order was preceded by the 18<sup>th</sup> SDC Session, where Perišić urged the SDC to give him the authority to give logistical assistance to the VRS and the SVK or let the Law on Property regulate the matter.<sup>3650</sup> Đokić failed to mention this passage of the 18<sup>th</sup> SDC Session in his report.<sup>3651</sup>

<sup>3642</sup> Ex. D507, Đokić Report on Logistical Assistance, para. 166.

<sup>3643</sup> Ex. D507, Đokić Report on Logistical Assistance, para. 335.

<sup>3644</sup> Ivan Đokić, T. 14414-14415.

<sup>3645</sup> Ivan Đokić, T. 14418-14419 (private session).

<sup>3646</sup> Ivan Đokić, T. 14419. *See* Ex. P1009, Order of FRY President Zoran Lilić, 18 February 1994.

<sup>3647</sup> Ivan Đokić, T. 14419 (private session).

<sup>3648</sup> Ivan Đokić, T. 14420.

<sup>3649</sup> Ivan Đokić, T. 14464-14465 (private session).

<sup>3650</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of SDC, 7 February 1994, p. 53.

<sup>3651</sup> *See* Ivan Đokić, T. 14420-14422.

1278. Đokić nonetheless claimed that he analysed “all of the available Stenographic Notes and Minutes” of SDC meetings, including “proposals by General Perišić”.<sup>3652</sup> His report quotes from several SDC meetings and recognises that on two occasions Perišić encouraged the SDC to give logistical assistance to the VRS and SVK.<sup>3653</sup> However, in addition to the 18<sup>th</sup> SDC Session, his report omits the 21<sup>st</sup> Session, where Perišić strongly encouraged the SDC to maintain assistance to the VRS and SVK because they would otherwise lose territories.<sup>3654</sup> Perišić then advised the SDC to approve the grant of ammunition and spare parts to the VRS and SVK.<sup>3655</sup> Đokić similarly left out the 37<sup>th</sup> SDC Session, where Perišić again urged the SDC to keep on authorising VJ assistance to the VRS and SVK.<sup>3656</sup>

1279. Đokić’s report quotes from the 23<sup>rd</sup> SDC Session, which concluded that:

the Federal Government should redistribute funds in the federal and republic budgets in order to secure an additional 35.3 million to finance the adopted measures and the acquisition of materiel and technical equipment needed to boost combat readiness of the [VJ]. The [FRY MOD] shall use these funds, and those secured by RS and RSK for their needs, to organise the production and acquisition of materiel and technical equipment.<sup>3657</sup>

Đokić failed to mention what transpired beforehand, namely that Perišić’s Deputy Chief had given a presentation to the SDC stressing that the VJ’s reserves were partially depleted as a consequence of logistical assistance to the VRS and SVK; and that Perišić convinced the SDC to increase the VJ’s budget so that logistical assistance would continue.<sup>3658</sup>

1280. The Trial Chamber reiterates its finding that the SDC delegated to Perišić the authority to manage the logistical assistance process, and finds that Đokić’s claims are incredible.<sup>3659</sup> Moreover, Đokić’s focus on legalistic questions diverts attention from the heart of the matter: the *actual* role that Perišić played in the logistical assistance process—not what the FRY’s domestic legislation technically stipulated about the respective powers of the SDC, MOD, and Chief of the VJ General Staff.

<sup>3652</sup> Ex. D507, Đokić Report on Logistical Assistance, para. 169.

<sup>3653</sup> Ex. D507, Đokić Report on Logistical Assistance, pp 79-80 (citing 36<sup>th</sup> SDC Session of 12 May 1995, and 39<sup>th</sup> SDC Session of 29 July 1995).

<sup>3654</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, pp 38-39.

<sup>3655</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 39.

<sup>3656</sup> Ex. P786, Stenographic Transcript of the 37<sup>th</sup> Session of the SDC, 13 June 1995, p. 42.

<sup>3657</sup> Ex. D507, Đokić Report on Logistical Assistance, p. 78 (citing Ex. P785, Stenographic Record of the 23<sup>rd</sup> SDC Session, 21 July 1994).

<sup>3658</sup> Ex. P785 Stenographic Transcript of the 23<sup>rd</sup> Session of the of the SDC, 21 July 1994, pp 9, 15-16, 20. *See also* Ex. P754 Minutes from the 23<sup>rd</sup> Session of the SDC held on 21 July 1994, p. 3. This evidence is analysed in detail in section VI.B.

<sup>3659</sup> *See supra* section VI.B.

## 5. Gross Underestimation of Logistical Assistance from VJ

1281. At the outset, the Trial Chamber notes that Đokić provided detailed numerical estimates of the weapon reserves in the SFRY in late 1990 prior to its dissolution, as well as in RS and the other new states in 1992 after the JNA withdrew.<sup>3660</sup> Đokić concluded that the VRS's ammunition and fuel reserves "had already been exhausted by the beginning of 1993".<sup>3661</sup>

1282. With regard to the quantity of logistical assistance from the FRY to the VRS and SVK, Đokić affirms that "the assistance given from the surplus of the [VJ] was small in scope during the period 1993-1995, since supplies of the [VJ] had almost completely stopped due to insufficient budgetary funds, while strategic war reserves did not decrease significantly (part of the reserves were spent on the VJ's current activities)".<sup>3662</sup> To the contrary, the Trial Chamber recalls the overwhelming evidence that the VJ gave considerable supplies from its reserves to the VRS and SVK, and that Perišić persuaded the SDC to increase the VJ's budget for this purpose.<sup>3663</sup>

1283. In particular, Đokić provided figures positing that VJ assistance only constituted a tiny fraction of the VRS's "needs" in ammunition,<sup>3664</sup> which he described as the quantity of used ammunition.<sup>3665</sup> He posited that the maximum level of assistance provided by the VJ comprised 8.11% of the VRS's small arms ammunition and 12% of artillery ammunition.<sup>3666</sup> Đokić explained how he reached this figure: "It was not an assessment of mine. I added up the figures from all documents indicating any assistance lent. I was not making an assessment; I was doing my math".<sup>3667</sup> Đokić later conceded that he only added the quantities of ammunition on material lists given to him by the Defence.<sup>3668</sup> As for his figure on the VRS's needs, Đokić stated that he drew it from a document he cites as "Annual Financial Report of the VRS for 1994".<sup>3669</sup> This document does not appear to be in evidence, unless it is the same document as Ex. P1214, entitled "Annual Account of the Plan of Tasks and Financing of the VRS for 1994".<sup>3670</sup>

1284. In any event, Ex. P1214 clearly refutes Đokić's position, as its tabulation of ammunition procured in 1994 indicates that the VJ was the VRS's principal source of infantry ammunition that

<sup>3660</sup> Ex. D507, Đokić Report on Logistical Assistance, pp 50-51, 56-58, 108-112.

<sup>3661</sup> Ex. D507, Đokić Report on Logistical Assistance, para. 280.

<sup>3662</sup> Ex. D507, Đokić Report on Logistical Assistance, para. 293.

<sup>3663</sup> See *supra* section VI.B-D.

<sup>3664</sup> Ex. D507, Đokić Report on Logistical Assistance, p. 114.

<sup>3665</sup> Ivan Đokić, T. 14461.

<sup>3666</sup> Ivan Đokić, T. 14379-14380; Ex. D507, Đokić Report on Logistical Assistance, paras 289-290.

<sup>3667</sup> Ivan Đokić, T. 14461.

<sup>3668</sup> Ivan Đokić, T. 14464-14465 (private session).

<sup>3669</sup> Ex. D507, Đokić Report on Logistical Assistance, para. 289, fn. 104.

<sup>3670</sup> Ex. P1214, Annual Financial Statement of the Plan of Tasks and Financing of the VRS for 1994, 17 February 1995.

year, and that it provided approximately a fourth of the VRS's shells too.<sup>3671</sup> Conversely, Đokić claimed that VJ aid comprised only 6.7% of the VRS's needs in small arms ammunition in 1994 (193.8 of 2,864 tonnes) and *zero percent* of its artillery ammunition needs.<sup>3672</sup>

1285. Đokić had Ex. P1214 in his possession but did not use it for his numerical estimates. He proffered the following unconvincing excuse for this omission: "this document does not fall within materiel documents. According to the rules of materiel operations in the [VJ], materiel documents, receipts, bills of ladings, delivery sheets are all materiel documents which attend materiel transactions".<sup>3673</sup> When Đokić was again asked why he omitted Ex. P1214, his answer shed more light on his methodology:

Q: Your paragraph 289 is not an accurate determination of the extent of military assistance. What it is, is the results of you adding up materiel lists and delivery slips which you were supplied by the Defence. Is that a fairer characterisation of your findings in paragraph 289? A: That is true.<sup>3674</sup>

1286. The Trial Chamber further recalls the vast body of evidence showing the VRS's clear dependency on VJ logistical assistance, which likewise demonstrates that Đokić's conclusions are not credible.<sup>3675</sup> For instance, amid extensive additional evidence, Mladić's report to the RS National Assembly provides credible data on the proportion of VRS used ammunition stemming from VJ aid, which was far more important than what Đokić advanced.<sup>3676</sup> Đokić did not mention Mladić's figures in his report.

1287. Finally, Đokić deemed that "[t]he predominant means of supplying the VRS and SVK with ammunition and fuel during the period 1993-1995 was obviously by purchasing it on the market, from the producers, based on commercial agreements. The [FRY] had no surpluses from which to provide assistance".<sup>3677</sup> The Trial Chamber finds that Đokić's conclusion is again belied by the overwhelming evidence to the contrary. Not only could RS scarcely afford to pay for weaponry, but VJ aid by far exceeded the weaponry it purchased from the market.<sup>3678</sup>

## 6. Conclusion

1288. For all of these reasons, the Trial Chamber finds that Ivan Đokić greatly lacks credibility, reliability and impartiality as an expert witness. In particular, Đokić's conclusions on the

<sup>3671</sup> Ex. P1214, Annual Financial Statement of the Plan of Tasks and Financing of the VRS for 1994, 17 February 1995, pp 19-21.

<sup>3672</sup> Ex. D507, Đokić Report on Logistical Assistance, p. 114, figures 39-40.

<sup>3673</sup> Ivan Đokić, T. 14478-14479.

<sup>3674</sup> Ivan Đokić, T. 14479-14480.

<sup>3675</sup> *See supra* section VI.C.

<sup>3676</sup> *See supra* paras 1117, 1166, 1173.

<sup>3677</sup> Ex. D507, Đokić Report on Logistical Assistance, para. 297. *See also* Ex. D507, Đokić Report on Logistical Assistance, para. 331(d).



organisation of the logistical assistance process and the quantities of aid delivered carry no evidentiary weight in the Trial Chamber's opinion.

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<sup>3678</sup> See *supra* sections VI.B.5, VI.C.

## F. Evidence Recovered from the Alleged Crime Scenes

### 1. Submissions of the Parties

1289. The Prosecution contends that weaponry recovered from crime scenes in Sarajevo and Srebrenica stemmed from the logistical assistance overseen by Perišić.<sup>3679</sup> It affirms that “crater analyses at the sites of artillery attacks on Sarajevo revealed that the mortar shells involved had been manufactured using components made in Serbia during the Indictment period”.<sup>3680</sup> It adds that “exemplars of shell casings recovered from Srebrenica execution sites were found to have been manufactured in Serbia during the Indictment period”.<sup>3681</sup>

1290. The Defence generally challenges the probative value of this evidence and notably submits that the Prosecution failed to establish a link between Perišić and ammunition retrieved from Srebrenica execution and burial sites.<sup>3682</sup>

### 2. Shells Recovered from Sarajevo Crime Scenes

1291. Remnants of shells manufactured by the *Krušik* factory in Valjevo, Serbia, were recovered in Sarajevo at the crime scenes of Scheduled Incidents A7 and A9.<sup>3683</sup> The Trial Chamber recalls its finding that these shells were fired by the VRS.<sup>3684</sup>

1292. The Trial Chamber recalls its finding that the VJ General Staff provided shells from its reserves to the VRS as part of the logistical assistance system managed by Perišić.<sup>3685</sup> The VJ’s own weaponry was originally manufactured by the FRY special purpose industries,<sup>3686</sup> one of which was *Krušik*.<sup>3687</sup> In this regard, it is possible that the aforesaid *Krušik* shells fired on Sarajevo civilians were obtained by VRS units from VJ reserves with Perišić’s approval.

1293. On the other hand, the VRS purchased shells directly from the special purpose industries as well, albeit in smaller quantities.<sup>3688</sup> It therefore would also be possible to conclude that the VRS

<sup>3679</sup> Prosecution Final Brief, para. 79.

<sup>3680</sup> *Ibid.*

<sup>3681</sup> *Ibid.*

<sup>3682</sup> Defence Final Brief, para. 1081. *See also* Defence Final Brief, paras 1049-1080.

<sup>3683</sup> Ex. P468, Report on Simon Bolivar Elementary School Incident, 29 June 1995, p. 2 (Scheduled Incident A7). *See also* Ex. P465, Criminal Investigation File, 29 August 1995, p. 2 (Scheduled Incident A9); Ex. P690, Expert Analysis Regarding Shelling in Sarajevo on 28 August 1995, 29 August 1995, p. 2 (Scheduled Incident A9); MP-14, T. 3633-3634 (partly private session).

<sup>3684</sup> *See supra* section V.A.4.(g), (i).

<sup>3685</sup> *See supra* section VI.C.

<sup>3686</sup> *See* Borivoje Jovanić, T. 11396-11397; Mladen Mihajlović, T. 3966-3967; MP-80, T. 8354 (closed session); Jugoslav Kodžopeljić, T. 12311, 12320, 12324-12325; Ivan Đokić, T. 14346-14347, 14353-14354.

<sup>3687</sup> Radojica Kadrijević, T. 13688-13689. *See also* Dušan Kovačević, T. 12669 (mentioning that *Krušik* manufactured ammunition for the VJ).

<sup>3688</sup> *See supra* sections VI.B, VI.C.7.

purchased these particular shells directly from *Krušik*. That transaction would not necessarily have implicated Perišić. While Perišić had a measure of influence over the special purpose industries, the latter were primarily managed by the FRY MOD.<sup>3689</sup> In addition, one cannot reasonably discount the possibility that the VRS obtained these particular shells through smuggling or donations of VJ personnel outside the official logistical assistance process.<sup>3690</sup>

1294. Hence, the trial record does not establish that the particular shells used in Scheduled Incidents A7 and A9 were provided to the VRS pursuant to the logistical assistance process managed by Perišić.

### 3. Bullets Recovered from Srebrenica Crime Scenes

1295. Witness MP-14 examined two photographs of rifle bullet cartridges recovered from the Srebrenica area, in which he identified two cartridges of 7.62mm bullets manufactured in 1993 and 1994 by the *Prvi Partizan* factory in Užice, Serbia, as indicated by engravings on the bullets.<sup>3691</sup> MP-14 further examined the photograph of a crate containing ammunition, which was recovered from Orahovac, a killing site in the Srebrenica area.<sup>3692</sup> Based on various markings, MP-14 identified the pictured material as 7.62mm bullets manufactured in 1994 by *Prvi Partizan*.<sup>3693</sup> MP-14 testified that the gunpowder for these bullets was manufactured by “Milan Blagojević Lučani” and kept in the “Nikinci depot” in Serbia.<sup>3694</sup>

1296. The Trial Chamber finds that it is impossible to conclude beyond a reasonable doubt that these specific bullets were provided to the VRS pursuant to the logistical assistance process that Perišić oversaw. Overall, this evidence presents the same problems as the aforementioned shells recovered from Sarajevo. The trial record does not establish whether these specific bullets were delivered to the VRS pursuant to Perišić’s orders, purchased directly from *Prvi Partizan* or otherwise procured through unauthorised channels.

1297. The evidence does not establish that Perišić had a hand in the material delivered by the Milan Blagojević facility. With regard to the Nikinci depot, the record does not conclusively indicate whether this was a VJ General Staff or FRY MOD facility. While Radojica Kadijević testified about a facility at Nikinci that was a technical testing centre under VJ General Staff

<sup>3689</sup> See *supra* section VI.B.5.

<sup>3690</sup> See *supra* section VI.C.9.(g)-(h).

<sup>3691</sup> MP-14, T. 3621-3623; Ex. P599, Photographs of Rifle Shell Cartridges. MP-14 also examined two other bullets, although he could not determine the identity of the manufacturer, MP-14, T. 3623; Ex. P701, Photographs of Ammunition.

<sup>3692</sup> MP-14, T. 3630-3632; Ex. P600, Photograph of Ammunition Crate.

<sup>3693</sup> MP-14, T. 3630-3631; Ex. P600, Photograph of Ammunition Crate.

<sup>3694</sup> MP-14, T. 3631-3632.

oversight,<sup>3695</sup> the record does not demonstrate that it was the same gunpowder storage facility mentioned by MP-14.

1298. Moreover, the Defence challenges the reliability of findings made by Garry Selsky, a Prosecution investigator who oversaw the examination of 3,644 bullet casings collected at Srebrenica killing sites identified in Schedule D of the Indictment.<sup>3696</sup> Upon scrutinising engravings on the bullets, Selsky determined that most of them had been manufactured by *Prvi Partizan*, including 378 that were manufactured at that factory from 1993 henceforth.<sup>3697</sup>

1299. Selsky admitted on cross-examination that his language assistant told him where *Prvi Partizan* was situated—Selsky did not make an independent determination of that fact.<sup>3698</sup> Selsky mentioned that his language assistant participated in the counting of bullets as well.<sup>3699</sup> Selsky did not concretely explain whether his language assistant helped him make other substantive findings. It is noteworthy, however, that Selsky claimed that the basis for the language assistant’s knowledge was his experience as a soldier in the VJ and his “hobby” of buying and selling firearms for shooting at a firing range.<sup>3700</sup> Selsky believed that the assistant had “expertise” on firearms despite the fact that he never vetted him to ascertain the extent of his knowledge.<sup>3701</sup>

1300. The Defence argues that Selsky’s findings are not reliable due to various problems with his methodology, his alleged lack of knowledge, and his reliance on his language assistant’s “hobby”.<sup>3702</sup> The Trial Chamber agrees with the Defence that the language assistant’s “hobby” is not a reliable source of knowledge.<sup>3703</sup> However, the Trial Chamber finds that there is no doubt that *Prvi Partizan* was based in Užice, Serbia;<sup>3704</sup> and further notes that MP-14’s testimony confirms that the engraving “PPU” on bullets stands for *Prvi Partizan* being the manufacturer.<sup>3705</sup> Finally, even though Selsky’s testimony was ambiguous at times, the Trial Chamber accepts his basic

<sup>3695</sup> Radojica Kadijević, T. 13682.

<sup>3696</sup> Ex. P1833, Declaration by OTP Investigator, 25 October 2007, p. 4; Ex. P2892, Rule 92 *bis* Declaration and Statement of Garry Selsky, 24 January 2010 (correcting total number of shell casings to 3,644 instead of 3,638); Garry Selsky, T. 9771.

<sup>3697</sup> Garry Selsky, T. 9786-9787, 9789-9790, 9794-9798.

<sup>3698</sup> Garry Selsky, T. 9763-9764, 9774-9775.

<sup>3699</sup> Garry Selsky, T. 9765.

<sup>3700</sup> Garry Selsky, T. 9763-9764.

<sup>3701</sup> Garry Selsky, T. 9763-9765.

<sup>3702</sup> Defence Final Brief, paras 1049-1080.

<sup>3703</sup> Defence Final Brief, paras 1058-1059.

<sup>3704</sup> *See e.g.* MP-14, T. 3617 (closed session); Milomar Kovačević, T. 6076; Dušan Kovačević, T. 12675; Ex. D50, Letter from Commander of the 1<sup>st</sup> Krajina Corps to the VRS Main Staff, 22 February 1993 (mentioning *Prvi Partizan* in Užice).

<sup>3705</sup> MP-14, T. 3621, 3630-3631.

conclusion that 378 bullet casings out of 3,644 recovered from Srebrenica killing sites were manufactured by *Prvi Partizan* in 1993 henceforth.<sup>3706</sup>

1301. In any event, Selsky's findings concerning *Prvi Partizan* bullets recovered from the Srebrenica area raise the same problems as discussed above. Again, it is not possible to reasonably conclude that Perišić was involved in the provision of these specific bullets.

#### 4. Conclusion

1302. For all of these reasons, the Trial Chamber concludes that the evidence does not establish beyond a reasonable doubt that Perišić was involved in providing the specific shells and bullets recovered from the aforesaid crime scenes.

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<sup>3706</sup> Garry Selsky, T. 9776-9787, 9789-9790, 9794-9798.

## **G. Other Forms of Assistance**

### 1. Drina Plan

1303. On 8 November 1993, the political and military leadership of the FRY, RS and RSK, including Perišić, Mladić, Novaković, and Slobodan Milošević met in Belgrade.<sup>3707</sup> One of the meeting's conclusions was to start preparing a single war plan involving all three armies (VJ, VRS and SVK).<sup>3708</sup>

1304. The Main Staffs of the VRS and SVK set up teams to work on the plan.<sup>3709</sup> Novaković testified that the part of the plan related to the role of the SVK was drafted in Knin, while the harmonisation of the final version, which also included the assessments of the role of the VRS and the VJ, was done at the premises of the General Staff of the VJ.<sup>3710</sup>

1305. The final version of the war plan took the form of a directive, which was "the highest-level commanding document at the highest strategic level".<sup>3711</sup> The "top people" of the VJ General Staff were therefore involved, as well as Novaković (SVK), Milovanović (VRS) and their own selected teams.<sup>3712</sup> A directive generally stressed the purpose of an operation, the general tasks and provided an indication of how the task should be executed.<sup>3713</sup> Its implementation therefore required the subsequent adoption of detailed plans by the lower levels of the army, in accordance with the directive.<sup>3714</sup>

1306. The war plan was finalised on 14 November 1993 and was signed by the President of the SDC, Zoran Lilić.<sup>3715</sup> It was formally known as the "Directive for Use of the Yugoslav Army, the Republika Srpska Army, and the Serb Army of Krajina", and was commonly referred to as the "Drina Plan".<sup>3716</sup> It provided for the creation of a single Serbian State,<sup>3717</sup> and described the main

<sup>3707</sup> Ex. D442, Excerpt from the Mladić Diary, dated 8 November 1993, p. 1.

<sup>3708</sup> Mile Novaković, T. 13232-13233, 13237, 13377. Ex. D442, Excerpt from the Mladić Diary, dated 8 November 1993, pp 8-9. According to Novaković, the Drina Plan appeared to be a good political compromise for Milošević as he could support the war without anyone knowing this since the plan was top secret, Mile Novaković, T. 13242-13243.

<sup>3709</sup> Mile Novaković, T. 13238-13239; Ex. D442, Excerpt from the Mladić Diary, dated 8 November 1993, p. 11.

<sup>3710</sup> Mile Novaković, T. 13238-13239. *See also* Miodrag Simić, T. 10048-10049.

<sup>3711</sup> Miodrag Simić, T. 10042; Mile Novaković, T. 13238.

<sup>3712</sup> Mile Novaković, T. 13238-13239; Miodrag Simić, T. 10049; Ex. P215, Directive of the President of the SDC, for the Use of VJ, VRS and SVK, 14 November 1993

<sup>3713</sup> MP-80, T. 8831; Ex. P1184, VJ Course Manual on Command and Control, 1 January 1997, p. 77.

<sup>3714</sup> MP-80, T. 8830-8832 (closed session).

<sup>3715</sup> Mile Novaković, T. 13233, 13395, 13402; Miodrag Simić, T. 10049; Ex. P215, The Directive of the President of the SDC, for the Use of VJ, VRS and SVK, 14 November 1993.

<sup>3716</sup> Mile Novaković, T. 13397, 13402; Ex. P215, The Directive of the President of the SDC, for the Use of VJ, VRS and SVK, 14 November 1993.

<sup>3717</sup> Miodrag Simić, T. 10162-10163; Ex. P215, The Directive of the President of the SDC, for the Use of VJ, VRS and SVK, 14 November 1993.

tasks of the VJ, VRS and SVK in the event of foreign aggression.<sup>3718</sup> It envisaged all three armies having a common war objective, military doctrine and military strategy.<sup>3719</sup> Its general objective was to:

Defend the territorial integrity of the Serbian states west of the Drina and Danube rivers and the FRY, protect Serbian people from genocide, liberate parts of Serbian territories with Serbian majorities, create conditions for the establishment of a single state of the Serbian people, prevent creation of Greater Croatia and a compact Islamic state on the territory of the former Yugoslavia.<sup>3720</sup>

1307. According to Novaković, the Drina Plan was very important for the survival of the SVK, as it established that the VRS and the VJ would assist the SVK in protecting the territory of the RSK in case of an attack by the HVO.<sup>3721</sup>

1308. Each of the three armies needed to implement the Drina Plan at their level and this required integrating the forces of the other armies into their respective war plans.<sup>3722</sup> The implementation procedure required the Main Staffs of the VRS and SVK, as well as the General Staff of the VJ, to elaborate their own war plan in accordance with the instructions contained in the Drina Plan.<sup>3723</sup> These plans contained specific tasks for lower units.<sup>3724</sup>

1309. The Prosecution argues that although there is no evidence that the Drina Plan was acted upon, its existence shows that the VJ, VRS and SVK intended to act together in defence of unified Serb interests.<sup>3725</sup> The Defence argues that the Prosecution failed to prove that one of the objectives of the Drina Plan was the creation of a single state of the Serbian people.<sup>3726</sup> On the contrary, the evidence shows that Milošević distanced himself from the idea of a single Serbian state.<sup>3727</sup> Furthermore, the Defence also points to the testimony of Simić, according to whom the plan “had an objective to represent a strategic masking, primarily directed to potential enemies in order to make a diversion”.<sup>3728</sup>

<sup>3718</sup> Mile Novaković, T. 13233, 13397, 13402; Ex. P215, The Directive of the President of the SDC, for the Use of VJ, VRS and SVK, 14 November 1993; Ex. P1563, Photos of the Operative Maps in Relation to Operation “Drina”.

<sup>3719</sup> Mile Novaković, T. 13234.

<sup>3720</sup> Miodrag Simić, T. 10162-10163; Ex. P215, The Directive of the President of the SDC, for the Use of VJ, VRS and SVK, 14 November 1993, p. 7.

<sup>3721</sup> Mile Novaković, T. 13240-13241, 13397; Ex. P215, The Directive of the President of the SDC, for the Use of VJ, VRS and SVK, 14 November 1993.

<sup>3722</sup> Mile Novaković, T. 13400.

<sup>3723</sup> Miodrag Simić, T. 10148. *See e.g.* Ex. P2158, Document Issued by Ratko Mladić Regarding Logistical Support.

<sup>3724</sup> Miodrag Simić, T. 10148-10149.

<sup>3725</sup> Prosecution Final Brief, para. 244.

<sup>3726</sup> Opening Statement, T. 360; Defence Final Brief, paras 164-165.

<sup>3727</sup> Defence Final Brief, paras 169-171.

<sup>3728</sup> Defence Final Brief, para. 172.

1310. The Trial Chamber notes that Simić, head of the First Administration of the VJ, who directly participated in the drafting of the Drina Plan,<sup>3729</sup> came to the conclusion that the plan was a “strategic camouflage” and that subsequent work on the plan was “interrupted suddenly”.<sup>3730</sup> He also stated that “only the [SDC] and possibly the Chief of [VJ] General Staff” were privy to the real intentions of this plan.<sup>3731</sup> According to Simić, the Drina Plan never became operative within the VJ.<sup>3732</sup>

1311. The Trial Chamber notes that several documents show that the Drina Plan was implemented at the VRS Main Staff and VRS Corps level.<sup>3733</sup> The Trial Chamber also heard the testimony of Mile Novaković, who testified that the Drina Plan was incorporated into the war plan of the SVK Main Staff, though it was never carried out in its *entirety* either by the VJ or the SVK.<sup>3734</sup> In particular, he testified that the plan was never implemented at the level of the Corps and below.<sup>3735</sup>

1312. The Trial Chamber finds that regardless of the true nature of the Drina Plan, the evidence shows that Perišić participated in the preparation and approval of this plan together with other military and political leaders of the FRY, RS and SVK. The Trial Chamber is also satisfied that

<sup>3729</sup> Miodrag Simić, T. 10048-10049. Simić was Chief of Department for Planning and Combat Readiness and Assistant Chief of General Staff for Operations and Staff Affairs, Miodrag Simić, T. 9919.

<sup>3730</sup> Miodrag Simić, T. 10066; Ex. P215, The Directive of the President of the SDC, for the Use of VJ, VRS and SVK, 14 November 1993; Ex. P1563, Photos of the Operative Maps in Relation to Operation “Drina”.

<sup>3731</sup> Miodrag Simić, T. 10067.

<sup>3732</sup> *Ibid.*

<sup>3733</sup> Ex. P1555, Extract from the Directive for Use of the VRS, December 1993; Ex. P2894, Operational Documents of the Drina Corps Command From a Folder Marked From the VRS Main Staff, Drina Corps; Ex. P2895, List of Documents of the Sarajevo Romanija Corps submitted to the VRS Main Staff, 2 February 1994; Ex. P2896, Order for the Use of the SRK, 26 January 1994; Ex. P2897, Document relating to the Use of the Anti-Aircraft Forces and the Air Force; Ex. P2898, Plan for Morale, Psychological Activities and Information for the SRK; Ex. P2899, Plan for Morale, Psychological Activities and Information for the SRK; Ex. P2900, Plan for Security Measures for the SRK; Ex. P2901, People’s Defence State Secret Intelligence Plan; Ex. P2902, Plan for the use of the 1<sup>st</sup> Krajina Corps to be Executed Under Code Name “Drina”; Ex. P2903, Command for Intelligence Security; Ex. P2904, Plan of Intelligence Security of the Defence and Attack Operation of the 1<sup>st</sup> Krajina Corps; Ex. P2905, Plan of Operations Tactical Camouflage; Ex. P2906, Plan of Security Measures of the 1<sup>st</sup> Krajina Corps for the Defence and Attack Operation; Ex. P2907, Plan for Anti-Electronic Combat of the 1<sup>st</sup> Krajina Corps; Ex. P2908, 1<sup>st</sup> Krajina Corps Order for Electronic Surveillance and Jamming; Ex. P2909, 1<sup>st</sup> Krajina Corps Order for Electronic Surveillance and Jamming; Ex. P2910, 1<sup>st</sup> Krajina Corps Order for Engineering Support; Ex. P2911, 1<sup>st</sup> Krajina Corps Plan for Morale and Psychological Activities and Information; Ex. P2912, 1<sup>st</sup> Krajina Corps Order for Anti-Aircraft Defence, Operational No. 1; Ex. P2921, Order on Destroy Invalidated Engagement Plan, 17 March 1995; Ex. P1554, VRS Plan for Logistic Support; Ex. P1556, Order of the Command of the Sarajevo-Romanija Corps on Logistics; Ex. P1557, Order of the Command of the VRS Drina Corps on Communications; Ex. P1558, Chart of the VRS Daily Communication System; Ex. P1559, VRS Plan for Intelligence; Ex. P1560, VRS Plan for Psychological Activities and Information Work; Ex. P1561, VRS Plan for the Use of the Anti-Aircraft Defence and Air Support Forces; Ex. P1562, List of the Documents Submitted by the 1<sup>st</sup> Krajina Corps to the General Staff of the VRS, 25 January 1995; Ex. P1564, Communications Plan for the Operation “Drina”, November 1993; Ex. P2158, Document Issued by Ratko Mladić in re Organisation of the Security Sector and Plan of the Operative Groups and VRS Units; Miodrag Simić, T. 10152-10153, 10220-10225, 10243-10255, 10258-10322.

<sup>3734</sup> Mile Novaković, T. 13401-13403.

<sup>3735</sup> Mile Novaković, T. 13401-13403.



while the plan was not implemented in the VJ, some actions were taken at the Main Staff level in the VRS and SVK, and to some degree at the VRS Corps level, to implement it.<sup>3736</sup>

## 2. Gvozd Plan

1313. During a meeting in January 1995, attended by Karadžić, Mladić, Perišić, Martić, Čeleketić and Bjelanović,<sup>3737</sup> it was agreed that Čeleketić should prepare a new plan for the defence of the RSK. According to this plan, code named “Gvozd”, the VJ and VRS were instructed to provide military assistance to the SVK “to respond to an aggression of the Croatian army should it occur”.<sup>3738</sup> The Gvozd Plan was prepared by the SVK in a period of ten days with the assistance of three VJ General Staff colonels, who were provided by Perišić at Čeleketić’s request.<sup>3739</sup> It took the form of a directive, formally known as the “Directive for Use of the Serbian Army of Krajina”.<sup>3740</sup> Each army was required to implement the Gvozd Plan at its level.<sup>3741</sup>

1314. Miodrag Simić testified that he had never heard of the Gvozd Plan. However, MP-80 testified that the Gvozd Plan replaced the Drina Plan, insofar as it concerned the SVK. According to MP-80, Slobodan Milošević “approved” the Gvozd Plan and promised to fully support the SVK by providing personnel and logistical assistance.<sup>3742</sup> To this end, Milošević instructed Perišić to transport ammunition to the SVK.<sup>3743</sup> Although Perišić was reluctant to execute this order because of his concern that the quantities requested would reduce the combat readiness of the VJ,<sup>3744</sup> approximately 60 trailer trucks of goods and ammunition from the FRY were delivered to SVK warehouses.<sup>3745</sup>

1315. According to MP-80, the Gvozd Plan provided the SVK with the assurance that the VJ, as well as Milošević, would not allow an attack against the RSK.<sup>3746</sup> The Trial Chamber notes that the VJ and/or VRS did not engage in two military operations of the Croatian Army against the RSK in 1995 – Operation Flash in May and Operation Storm in August.<sup>3747</sup>

1316. The Prosecution argues that developing the Gvozd Plan was an important task for Perišić and that he provided VJ General Staff officers who were specialists in drafting war plans to assist

<sup>3736</sup> See *supra* para. 1311.

<sup>3737</sup> MP-80, T. 8426, 8682-8683 (closed session).

<sup>3738</sup> MP-80, T. 8426-8428, 8679-8680 (closed session); Ex. P494, Directive of the Supreme Commander of the SVK on the Use of SVK, February 1995, p. 7.

<sup>3739</sup> MP-80, T. 8426-8428, 8679-8680 (closed session).

<sup>3740</sup> Ex. P494, Directive of the Supreme Commander of the SVK on the Use of the SVK, February 1995.

<sup>3741</sup> MP-80, T. 8830-8832, 8834-8835 (closed session).

<sup>3742</sup> MP-80, T. 8428-8429, 8684, 8692-8693 (closed session).

<sup>3743</sup> MP-80, T. 8428-8431 (closed session).

<sup>3744</sup> MP-80, T. 8428-8431 (closed session).

<sup>3745</sup> MP-80, T. 8428-8429 (closed session).

<sup>3746</sup> MP-80, T. 8436-8437 (closed session).

the SVK in preparing the Gvozd Plan.<sup>3748</sup> The Defence argues that Miodrag Simić's testimony directly contradicts MP-80's position that members of the VJ General Staff participated in the development of the Gvozd Plan.<sup>3749</sup> The Defence further submits that the Gvozd Plan was not formed in accordance with valid military procedures, nor was it accepted and implemented by all of the parties involved.<sup>3750</sup>

1317. The Trial Chamber finds that although Simić may not have been aware of the existence of the Gvozd Plan, the directive prepared by the SVK shows that the plan indeed existed.<sup>3751</sup> The Trial Chamber is satisfied that MP-80 is therefore credible when he testified that the plan existed. The Trial Chamber also notes that there is no evidence that the VJ First Administration was ever involved in the preparation of the plan, which explains why Simić may not have been aware of it.

1318. The Trial Chamber is also satisfied, based on the testimony of MP-80, that Perišić provided VJ General Staff officers to assist in creating the plan. The Trial Chamber further finds that following Milošević's orders, Perišić provided additional logistical assistance to support the SVK in accordance with the Gvozd Plan.<sup>3752</sup>

### 3. VJ Members Deployed to the RS

1319. The Indictment alleges that the Accused aided and abetted the crimes described in Counts 1 to 4, *inter alia*, by "sending regular VJ troops stationed in the FRY into BiH". In particular, it alleges that VJ units participated in a military operation known as *Pancir-2* that occurred in Vogošća in late 1993 and early 1994.<sup>3753</sup>

#### (a) Operation *Pancir-2*

1320. On 11 November 1993, the VRS Supreme Command issued Operational Directive No. 6 ("Directive 6") delineating, *inter alia*, the tasks of the VRS, including orders for the SRK "to prevent the deblockade of Sarajevo and the occupation of the Vogošća, Rajlovac and Hadžići industrial complexes" by the ABiH.<sup>3754</sup>

1321. Two excerpts from Mladić's diary show that the capture of Mount Žuč, in the Vogošća area, was discussed in Belgrade at meetings held on 13 and 14 December 1993 between the FRY and RS

<sup>3747</sup> See *supra* paras 170-171, 564.

<sup>3748</sup> Prosecution Final Brief, para. 245.

<sup>3749</sup> Defence Final Brief, paras 174-176; Miodrag Simić, T. 10070-10074.

<sup>3750</sup> Defence Final Brief, paras 177-179.

<sup>3751</sup> See Ex. P494, Directive of the Supreme Commander of the SVK on the Use of SVK, February 1995.

<sup>3752</sup> See *supra* para. 1314.

<sup>3753</sup> Indictment, para. 9. See also Prosecution Final Brief, para. 483; Prosecution Final Arguments, T. 14720.

<sup>3754</sup> Ex. P901, VRS Supreme Command Operational Directive 6, 11 November 1993, p. 5.

military and civilian leadership.<sup>3755</sup> Amongst the participants were Milošević, Perišić, Karadžić and Mladić.<sup>3756</sup>

1322. At the meeting of 13 December 1993, Karadžić recalled to the participants the VRS six strategic objectives, including the partition of Sarajevo.<sup>3757</sup> In this context he stated that the VRS needed to capture some elevation points and that Mount Žuč was particularly important to protect military factories in the area from the ABiH so that they continue their work uninterrupted.<sup>3758</sup> The next day Perišić was recorded as stating that reinforcements of about “a hundred professionals” “equipped for combat” would be at the disposal of the VRS by 20 December 1993.<sup>3759</sup> The discussion recorded in the diary shows that Mladić expected to receive those reinforcements from the VJ, as well as additional support from the Serbian MUP, by 18 December 1993, and intended to be ready for the operation by 19 December 1993.<sup>3760</sup>

1323. On 14 December 1993, as a result of talks on that day and based on the decision reached “by the highest officials of the Serbian people”, Mladić issued a “Supplement” to Directive 6 addressed specifically to the SRK Commander, Stanislav Galić.<sup>3761</sup> The Supplement sets out the aim and plan of operation *Pancir-2*, according to which the SRK and its reinforcements were to prevent

an enemy breakthrough towards Sarajevo from the direction of central Bosnia and Goražde. One part of the forces are [sic] to carry out [active combat] on a smaller scale in the areas of Mt. Trebević, Mojmiilo, Vojkovići, and Ilidža in order to engage the enemy forces, while /another/ part of the forces [...] are [sic] to carry out an attack along the Vogošća-Žuč-Pofalići and Lukavica-Hrasnica axes with the following tasks: to break up Muslim forces along axes of the attack [...] and inflict on them as many losses as possible, and to take over control of the Žuč, Orlić, and Hum facilities, and Mojmiilo, if possible, and so create conditions for the uninterrupted work of the ‘Famos’, ‘Orao’, and ‘Pretis’ factories; to cut off Muslim communication from Sarajevo towards Mt. Igman and central Bosnia, and to provide conditions for the division of Sarajevo in two [...] parts.<sup>3762</sup>

The Supplement also stipulates that 120 men of the VJ “Special Forces”<sup>3763</sup> should be re-subordinated to the SRK Command in Vogošća on 18 December 1993<sup>3764</sup> and be ready to attack on 19 December 1993.<sup>3765</sup>

<sup>3755</sup> Ex. P2933, Extract from Ratko Mladić’s Notebook, 13 December 1993; Ex. P2934, Extract from Ratko Mladić’s Notebook, 14 December 1993.

<sup>3756</sup> Ex. P2933, Excerpt from Ratko Mladić’s Notebook, 13 December 1993, p. 1.

<sup>3757</sup> *Ibid.*

<sup>3758</sup> Ex. P2933, Excerpt from Ratko Mladić’s Notebook, 13 December 1993, p. 2.

<sup>3759</sup> Ex. P2934, Excerpt from Ratko Mladić’s Notebook, 14 December 1993, p. 3. *See also* Ex. D521, Report of Galić to the VRS Main Staff, 22 December 1993, p. 2. Initially Perišić intended to assist the VRS only with the provision of weapons and not with the deployment of VJ units, Ex. P2934, Extract from Ratko Mladić’s Notebook, 14 December 1993, p. 1.

<sup>3760</sup> Ex. P2934, Excerpt from Ratko Mladić’s Notebook, 14 December 1993, pp 2-3.

<sup>3761</sup> Ex. P905, VRS Main Staff Telex from Mladić, Amendment to Directive No. 6, 14 December 1993.

<sup>3762</sup> Ex. P905, VRS Main Staff Telex from Mladić, Amendment to Directive No. 6, 14 December 1993, p. 1

<sup>3763</sup> *Ibid.*

<sup>3764</sup> Ex. P905, VRS Main Staff Telex from Mladić, Amendment to Directive No. 6, 14 December 1993, p. 2.

1324. On 15 December 1993, the SRK Command issued an order to the commanders of all the brigades in execution of the Supplement.<sup>3766</sup>

(i) VJ Special Units Corps Deployment

1325. MP-11 testified that a few days before 16 December 1993, Perišić visited the VJ 72<sup>nd</sup> Special Brigade HQ in Mount Avala accompanied by the brigade's commander, Colonel Stupar. During the briefing, Perišić ordered members of the 72<sup>nd</sup> Special Brigade's military police battalion for special operations to go to Sarajevo to participate in an offensive against the ABiH "for" the SRK,<sup>3767</sup> aimed at gaining control of Mount Žuč.<sup>3768</sup> Perišić stated that Mount Žuč "was a strategic location and it needed to be controlled by Serb forces".<sup>3769</sup>

1326. The military police battalion departed from Mount Avala on 16 December 1993.<sup>3770</sup> They were joined along the way by members of other VJ SUC units - the Guards Brigade from Belgrade, who had been ordered to deploy from Belgrade the same day,<sup>3771</sup> the Armoured Brigade<sup>3772</sup> and the 63<sup>rd</sup> Parachute Brigade.<sup>3773</sup> They all arrived in the area of Vogošća on 17 December 1993.<sup>3774</sup> The following day, General Galić briefed them on the forthcoming mission and on the strategic importance of gaining control of Mount Žuč.<sup>3775</sup>

1327. Defence witness Zlatko Danilović, who at the time was a member of the military police battalion in Avala,<sup>3776</sup> testified that he never saw Perišić at Mount Avala in that period, nor did he hear from other colleagues that Perišić had been there.<sup>3777</sup> In addition, the witness stated that he did not know where they were being deployed, and realised that the action would take place in BiH only when the convoy arrived at the barracks in Han Pijesak. The Trial Chamber finds that Danilović's statement alone is not sufficient to raise a reasonable doubt as to the presence of Perišić

<sup>3765</sup> Ex. P905, VRS Main Staff Telex from Mladić, Amendment to Directive No. 6, 14 December 1993, p. 1.

<sup>3766</sup> Ex. P1533, Order of the Sarajevo Romanja Corps Command to all Brigade Commanders, 15 December 1993, para. 1.

<sup>3767</sup> MP-11, T. 8948, 8951-8952, 8996, 9007, 9032-9033 (partly private session).

<sup>3768</sup> MP-11, T. 8951-8952, 8996, 9007, 9033, 9037-9038. *See also* MP-11, T. 8949. *See also supra* paras 313, 367.

<sup>3769</sup> MP-11, T. 9036-9038 (private session). *See also* MP-11, T. 8951-8952, 9006-9007.

<sup>3770</sup> MP-11, T. 8953, 8996, 9007 (private session); Zlatko Danilović, T. 11035-11036.

<sup>3771</sup> MP-418, T. 3430-3431 (private session); Ex. P552 (under seal), p. 1. *See also* Borivoje Tešić, T. 1905-1906.

<sup>3772</sup> Borivoje Tešić, T. 1906; Ex. P351, Organisational Chart of the Special Unit Corps in December 1993, 19 November 2008.

<sup>3773</sup> MP-418, T. 3471, 3481-3482 (closed session); Ex. P351, Organisational Chart of the Special Unit Corps in December 1993, 19 November 2008.

<sup>3774</sup> MP-418, T. 3430-3431 (private session); Ex. P552 (under seal), p. 1. *See also* Borivoje Tešić, T. 2027-2028, 2031-2034 (private session); Ex. P356, Briefing Report Authored by the Commander of the Guards Motorised Brigade Stojimirović, 13 January 1994, p. 1. *See also* Ex. D521, Report of Galić to the VRS Main Staff, 22 December 1993, p. 2.

<sup>3775</sup> MP-11, T. 9005-9006, 9037 (private session). *See also* Ex. D521, Report of Galić to the Main Staff of the VRS, 22 December 1993, p. 2.

<sup>3776</sup> Zlatko Danilović, T. 11027-11028.

<sup>3777</sup> Zlatko Danilović, T. 11031.

at Mount Avala. The Trial Chamber notes that Danilović may not have been present at Mount Avala when Perišić was there. As stated by both MP-11 and Danilović, in December 1995, the military battalion was engaged in a parachute training in Niš.<sup>3778</sup> MP-11, however, returned to Mount Avala before the rest of the battalion.<sup>3779</sup> Danilović, instead, returned with the rest of the battalion just before they were deployed in the field.<sup>3780</sup> In the Trial Chamber's view, this could explain why MP-11 was present when Perišić and Stupar gave the order whereas Danilović did not see Perišić or hear of his presence. Furthermore, the Trial Chamber finds Danilović's testimony to be generally of low credibility and attaches limited weight to it. The Trial Chamber notes for example that Danilović stated that once in Vogošća, it was the civilians who lived in the area that showed the witness's battalion Mount Žuč and told them "what their mission would involve".<sup>3781</sup> Danilović stands alone on this issue and is contradicted not only by the testimony of MP-11 but also by the documentary evidence discussed in this section.<sup>3782</sup>

1328. The Defence argues that the purpose of seizing Mount Žuč was "so that the [ABiH] would not disturb the Serbian people on the other side of the mountain". In support of this argument, it cites the testimony of MP-11 and Danilović.<sup>3783</sup> In reviewing their testimony, the Trial Chamber notes that MP-11 stated that this goal was desired, however, he also added that it was a crucial point to control the area and connect the VRS forces on that side of Sarajevo. As for Danilović's testimony cited by the Defence, the Trial Chamber notes that it refers to his assertion that it was the civilian local population who directed the VJ members in this operation.<sup>3784</sup> The Trial Chamber finds that this testimony does not support the Defence argument and also notes that the Defence misrepresented Danilović's testimony. In any event, the Trial Chamber has already concluded that it does not find this part of his testimony credible.

(ii) Mount Žuč – 27 December 1993

1329. For about ten days after their arrival in Vogošća, the members of the 72<sup>nd</sup> Special Brigade engaged only in a few reconnaissance missions.<sup>3785</sup> The attack on Mount Žuč was eventually carried out during the early hours of 27 December 1993, under the command of Stupar.<sup>3786</sup> The operation

<sup>3778</sup> MP-11, T. 8996 (private session); Zlatko Danilović, T. 11031-11032.

<sup>3779</sup> MP-11, T. 8996-8997 (private session).

<sup>3780</sup> Zlatko Danilović, T. 11032.

<sup>3781</sup> Zlatko Danilović, T. 11037.

<sup>3782</sup> See e.g. Ex. P1533, Order of the Sarajevo Romanija Corps Command to all Brigade Commanders, 15 December 1993, para. 1; Ex. D521, Report of Galić to the Main Staff of the VRS, 22 December 1993, p. 2; Ex. P359, Interim Report of the Sarajevo Romanija Corps Command to VRS Main Staff, 27 December 1993, p. 1.

<sup>3783</sup> Defence Final Brief, para. 809, citing MP-11, 8952-8953 and Zlatko Danilović, T. 11037.

<sup>3784</sup> Zlatko Danilović, T. 11037.

<sup>3785</sup> MP-11, T. 8961, 9007. See also Zlatko Danilović, T. 11037-11039.

<sup>3786</sup> MP-11, T. 9007-9008; Zlatko Danilović, T. 11038; Ex. P359, Interim Report of the Sarajevo Romanija Corps Command to VRS Main Staff, 27 December 1993.

was not successful and the 72<sup>nd</sup> Special Brigade suffered significant losses,<sup>3787</sup> with nine soldiers killed<sup>3788</sup> and several injured.<sup>3789</sup> The injured were immediately transferred either to the Blažuj hospital in Rajlovac and then to the Military Medical Academy Hospital (“VMA”) in Belgrade,<sup>3790</sup> or directly to the VMA by VJ helicopter.<sup>3791</sup>

1330. Part of the 72<sup>nd</sup> Special Brigade departed from Vogošća soon after the operation,<sup>3792</sup> whereas those members that were responsible for the technical equipment remained there for some time longer.<sup>3793</sup>

(iii) Aftermath

1331. On 30 December 1993, upon an oral order of Stojimirović – Commander of the Guards Brigade – additional members of the Guards Brigade (about 120 to 130 men)<sup>3794</sup> were deployed to Vogošća with the task of assisting the pull-out of the 72<sup>nd</sup> Brigade from the area.<sup>3795</sup> By 5 January 1994, the Guards Brigade took over the area of responsibility of the 72<sup>nd</sup> Special Brigade, thereby entering the reserve formation of the SRK.<sup>3796</sup>

<sup>3787</sup> MP-11, T. 8953-8954; Zlatko Danilović, T. 11039. *See also* Ex. D289, Operation Pancir Map Marked by Danilović, 15 March 2010; Zlatko Danilović, T. 11041-11042.

<sup>3788</sup> Ex. P1849, List of Casualties, 22 April 1994; Ex. P1850, Certificate by VJ Military Post 8486, undated; Ex. P1851, Death Certificate, 17 January 1994; Ex. P1852, Request for Death Certificate, 6 April 1994; MP-11, T. 8953-8954; Ex. P360, List of Killed and Wounded Soldiers in December 1993 in Vogošća, p. 1; Ex. P361, Obituaries of Goran Galjak, 18 January 1994; Borivoje Tešić, T. 1932, 1934-1935, 1938; Ex. P362, Certificates for VJ Soldiers Killed or Injured on 27 December 1993 in Vogošća, pp 1-7; Ex. P1840, ABiH Report on Enemy Casualties, 19 January 1994, p. 5 (Dragan Stojković); Ex. P1841, VJ Personnel File of Dragan Stojković, Doc IDs 0422-9335, p. 6, 0422-9392; Ex. P1842, VJ Personnel File of Goran Galjak, Doc ID 0422-9437, p. 6; Ex. P1843, VJ Personnel File of Radovan Ravić, Doc ID 0422-9485, p. 6; Ex. P1843, VJ Personnel File of Radovan Ravić, Doc ID 0422-9523, p. 4. *See also* Ex. P1844, Medical Records, 8 – 31 December 1993, p. 3; Ex. P359, Interim Report of the Sarajevo Romanija Corps Command to VRS Main Staff, 27 December 1993, p. 1.

<sup>3789</sup> MP-11, T. 8953-8954; Borivoje Tešić, T. 1938-1939 (closed session); Ex. P360, List of Killed and Wounded Soldiers in December 1993 in Vogošća, pp 2-3; Ex. P362, Certificates for VJ Soldiers Killed or Injured on 27 December 1993 in Vogošća, pp 3-9.

<sup>3790</sup> Borivoje Tešić, T. 1932-1933 (closed session). *See also* Ex. P1844, Medical Records, 8-31 December 1993.

<sup>3791</sup> MP-11, T. 8954, 8958 (partly private session); Borivoje Tešić, T. 1932-1933 (closed session). *See also* MP-418, T. 3442-3445, 3470 (closed session); Ex. P353, War Diary of the Guards Motorised Brigade, 30 December 1993 – 30 January 1994, p. 3; Ex. P554 (under seal).

<sup>3792</sup> MP-11, T. 8958; Zlatko Danilović, T. 11043; Ex. P354, Order of the Commander of the Special Unit Corps Miodrag Panić, 5 January 1994; Ex. P353, War Diary of the Guards Motorised Brigade, 30 December 1993-30 January 1994, p. 5. According to MP-11, the 72<sup>nd</sup> Special Brigade left immediately after the operation, MP-11, T. 8958 (private session).

<sup>3793</sup> MP-11, T. 8958 (private session); Ex. P353, War Diary of the Guards Motorised Brigade, 30 December 1993-30 January 1994, p. 6; Ex. P355, Set of Nine Reports and One Request to the VJ Special Unit Corps Command or Operation Centre, 2-29 January 1994, p. 5.

<sup>3794</sup> Borivoje Tešić, T. 1900, 2030, 2033-2034 (partly private session).

<sup>3795</sup> Borivoje Tešić, T. 1900, 1905, 1929, 2002-2003.

<sup>3796</sup> Ex. P353, War Diary of the Guards Motorised Brigade, 30 December 1993-30 January 1994, pp 5-6; Ex. P354, Order of the Commander of the Special Unit Corps Miodrag Panić, 5 January 1994; Ex. P356, Briefing Report Authored by the Commander of the Guards Motorised Brigade Stojimirović, 13 January 1994, p. 1; Borivoje Tešić, T. 2063. As of 31 December 1993, the total number of men from the Guards Brigade engaged in the area amounted to about 210, Borivoje Tešić, T. 1905, 2027-2028, 2031-2034; Ex. P356, Briefing Report Authored by the Commander of the Guards Motorised Brigade Stojimirović, 13 January 1994, p. 1.

1332. There is evidence that the Guards Brigade was ordered to take part in military actions in the area. For example, according to one entry in the war diary of the Guards Brigade dated 9 January 1994, the Guards Brigade was to “[c]arry out combat tasks with the unit on orders of the commander of [Brigade’s] BG-1 [combat group]”.<sup>3797</sup> Another entry of the war diary reads as follows:

Order for action 18 January 1994. With one BG from the vVPSpN [Military Police Special Purposes Platoon] and a squad from the bVP [Military Police Battalion], in coordinated action with the forces of the Vogošća Brigade, launch an attack along the axis of k./elevation/ 830 – k850, thereby acting in coordination with BG-2 on the Perivoj – Vis axis and facilitating the BG-2 attack.<sup>3798</sup>

A briefing report by Stojimirović states that a certain number of Guards Brigade forces could be “engaged along the direction of the main impact within the formation of the BG-2 [...] or BG-3[...]”.<sup>3799</sup> A report sent from Colonel Petković – the Chief of Staff of the VJ Special Units Corps (“SUC”) – to the SUC Commander suggests a rotation of units, due to the “increased engagement” of the Guards Brigades, “especially in nocturnal activities”.<sup>3800</sup>

1333. Both Borivoje Tešić – operations officer of the Guards Brigade – and MP-418 stated, however, that the Guards Brigade did not engage in combat activities but rather limited its activity to retrieving the bodies of the 72<sup>nd</sup> Special Brigade soldiers who had been killed on 27 December 1993<sup>3801</sup> and to maintaining, as far as possible, the defence line held by the Vogošća Brigade of the VRS.<sup>3802</sup> Tešić estimated that the total number of Guards Brigade present in Vogošća was not

<sup>3797</sup> Ex. P353, War Diary of the Guards Motorised Brigade, 30 December 1993 - 30 January 1994, p. 7; Borivoje Tešić, T. 1923, 2064 (partly closed session).

<sup>3798</sup> Ex. P353, War Diary of the Guards Motorised Brigade, 30 December 1993-30 January 1994, pp 12-13.

<sup>3799</sup> Ex. P356, Briefing Report Authored by the Commander of the Guards Motorised Brigade Stojimirović, 13 January 1994, p. 2. According to Tešić, BG-1 was within the formation of the Guards Brigade’s police battalion while BG-2 appeared to be part of the VRS, Borivoje Tešić, T. 2041, 2059 (closed session); Ex. P353, War Diary of the Guards Motorised Brigade, 30 December -30 January 1994, pp 3, 20). However, another entry in the war diary, reference is made to a BG-2 from the Military Police Special Purposes Platoon, which according to the evidence is part of the Guards Brigade, Ex. P352, Organisational Chart of the Guards Motorised Brigade in December 1993, 19 November 2008.

<sup>3800</sup> Ex. P368, Set of Documents and Orders on the Mobilisation of Units out of Vogošća, January 1994, p. 1.

<sup>3801</sup> Borivoje Tešić, T. 1900, 1905, 1929, 2002-2003, 2051; Zlatko Danilović, T. 11043; Ex. P353, War Diary of the Guards Motorised Brigade, 30 December 1993 – 30 January 1994, pp 9-10, 20; Ex. P360, List of Killed and Wounded Soldiers in December 1993 in Vogošća, p. 1; Ex. P361, Obituaries of Goran Galjak, 18 January 1994; Ex. P362, Certificates for VJ Soldiers Killed or Injured on 27 December 1993 in Vogošća, pp 1-2; Ex. P1849, List of Casualties, 22 April 1994; Ex. P1850, Certificate by VJ Military Post 8486, undated; Ex. P1851, Death Certificate, 17 January 1994; Ex. P1852, Request for Death Certificate, 6 April 1994; MP-11, T. 8953-8954. But *see* MP-11 stating that by the time he left Vogošća a couple of days after the attack on Mount Žuč, all the bodies had been retrieved, MP-11, T. 8958 (private session).

<sup>3802</sup> Borivoje Tešić, T. 1900, 1905, 1929, 1986, 2002-2004, 2031, 2051, 2063 (partly closed session). The witness agreed with the Defence that the total number of men of the Guards Brigade who were deployed in Vogošća (about 210) amounted to about 10% of the overall number of the Guards Brigade during peacetime. During re-examination, the witness stated that save for one intervention in the area of Srednje with a couple of vehicles and a group of 20 men they did not participate in active action, Borivoje Tešić, T. 2038 (closed session). *See* MP-418, T. 3472 (closed session) (stating that they did not engage in combat activities, but would at times observe if anything was happening at the frontline).

substantial compared to the VRS forces present in the field.<sup>3803</sup> Tešić further stated that, although the Guards Brigade's war diary referenced to the planning of combat operations, these were not carried out.<sup>3804</sup>

1334. Tešić and MP-418 also denied that the Guards Brigade and the SRK cooperated or acted in coordination.<sup>3805</sup> Several documents nonetheless contradict their testimony: the abovementioned briefing report by Colonel Stojimirović states that, upon arrival in Vogošća, the Guards Brigade entered the reserve formation of the SRK pursuant to an order from the SRK Commander;<sup>3806</sup> a communication from the SUC command to Colonel Perković shows that the SUC and the SRK coordinated in the planning of the pullout from combat;<sup>3807</sup> finally, the VRS warned against the use in communications of the term "Yugoslav Army" and stated that VJ units would be treated as reserve forces of the VRS.<sup>3808</sup> Moreover, Tešić himself conceded that, in relation to operations which did not entail engagement in active combat, the superior officers of the Guards Brigade could receive orders from the SRK commander.<sup>3809</sup> He also testified that, between 15 and 17 January 1994, officers of the Military Police Special Purposes Platoon, a unit of the Guards Brigade,<sup>3810</sup> provided training to the snipers of the Rajlovac and the Ilidža Brigades, units of the SRK.<sup>3811</sup>

1335. The Trial Chamber notes that Tešić stated that one of the reasons the Guards Brigade was deployed, was to "stabilise the part of the defence line held by the Vogošća Brigade of the VRS". During re-examination he explained that the Guards Brigade was not engaged in active combat, but rather that there were instances when it had to destroy emerging targets at the front line or respond to fire with fire.<sup>3812</sup> He added that save for one intervention in the area of Srednje with a couple of

<sup>3803</sup> Borivoje Tešić, T. 2028-2030 (private session).

<sup>3804</sup> Borivoje Tešić, T. 2016-2017 (private session), 2064-2070 (closed session).

<sup>3805</sup> Borivoje Tešić, T. 2037-2040, 2050-2051, 2064-2070; MP-418, T. 3472 (closed session).

<sup>3806</sup> Ex. P356, Briefing Report Authored by the Commander of the Guards Motorised Brigade Stojimirović, 13 January 1994, p. 1.

<sup>3807</sup> Ex. P368, Set of Documents and Orders on the Mobilisation of Units out of Vogošća, January 1994, pp 3-7.

<sup>3808</sup> Ex. P358, Warning on the Submission of Regular Combat Reports from the Main Staff of the VRS, 25 December 1993.

<sup>3809</sup> Borivoje Tešić, T. 2013-2014 (private session); Ex. P353, War Diary of the Guards Motorised Brigade, 30 December 1993 – 30 January 1994, pp 7-8. During re-examination the witness defined these operations as instances when emerging targets had to be destroyed at the front line or it was necessary to respond to fire with fire. He also stated that on one occasion a "sabotage attack" was carried out to recapture part of Olovo where members of the VRS had been killed. However, according to the witness, that operation could hardly be considered a combat operation as the ABiH had already withdrawn from the area, Borivoje Tešić, T. 2063, 2069 (closed session).

<sup>3810</sup> *See supra* para. 240.

<sup>3811</sup> Borivoje Tešić, T. 1986-1989 (partly closed session); Ex. P353, War Diary of the Guards Motorised Brigade, 30 December 1993 – 30 January 1994, p. 12. *See also* Ex. P353, War Diary of the Guards Motorised Brigade, 30 December 1993 – 30 January 1994, p. 10, where it is recorded that two officers shall be sent to the Ilidža Brigade to train snipers, Borivoje Tešić, T. 1989 (closed session); Ex. P368, Set of Documents and Orders on the Mobilisation of Units out of Vogošća, January 1994, p. 7; Ex. P367, Urgent Request for Rifles, 8 January 1994.

<sup>3812</sup> Borivoje Tešić, T. 2063, 2069 (closed session).



vehicles and a group of 20 men the Guards Brigade did not participate in active action.<sup>3813</sup> The Trial Chamber finds that this amounts to active engagement and that Tešić was attempting to downplay the role of the Guards Brigade.

1336. Having carefully considered the testimony of Tešić and MP-418 in light of the documentary evidence described above, and their demeanour in court when discussing the engagement of the Guards Brigade and/or their cooperation with the VRS, the Trial Chamber finds that their testimony is not credible when they claimed that the Guards Brigade did not engage in combat activities and that there was no coordination or cooperation with the SRK.

(b) Secrecy of VJ Presence in the Area

1337. According to the Prosecution, the VJ needed to conceal its presence around Sarajevo, as the FRY was under international sanctions for its involvement in the war in BiH and Croatia and it could “ill afford” to be discovered.<sup>3814</sup> The Defence claims that the VJ presence in BiH was not and could not be hidden, and that the VJ deployment was even reported on Sarajevo television.<sup>3815</sup>

1338. In support on its claim, the Defence cites the testimony of Tešić, MP-418 and MP-11. Having reviewed their testimony, the Trial Chamber notes that Tešić testified that as far as his unit was concerned, they did not “hide from anyone” and that in any event it was difficult to hide their presence in the area.<sup>3816</sup> MP-418 added that he had heard rumours that a Sarajevo television reported that a unit from the VJ had allegedly arrived in the area.<sup>3817</sup> Finally, MP-11 admitted that the VJ involvement was supposed to be secret, but that members of his unit suspected that this information reached the ABiH.<sup>3818</sup>

1339. At the same time, the Trial Chamber has been presented with evidence clearly showing that both the VJ and VRS tried to keep the presence of the VJ in the Vogošća area and the involvement of VJ troops in the attack on Mount Žuč secret. On 25 December 1993, General Milovanović issued a warning forbidding the “use of or any reference in the regular and telephone communications to the term Yugoslav Army units”.<sup>3819</sup> One of the witnesses stated that the 72<sup>nd</sup> Special Brigade was aware of this warning and added that “every time they were engaged in Bosnia, they were supposed

<sup>3813</sup> Borivoje Tešić, T. 2038 (closed session).

<sup>3814</sup> Prosecution Final Brief, para. 500.

<sup>3815</sup> Defence Final Brief, para. 812.

<sup>3816</sup> Borivoje Tešić, T. 1961-1962, 1964-1965 (closed session).

<sup>3817</sup> MP-418, T. 3467 (private session).

<sup>3818</sup> MP-11, T. 8960.

<sup>3819</sup> Ex. P358, Warning on the Submission of Regular Combat Reports from the Main Staff of the VRS, 25 December 1993; MP-11, T. 8962. *See also* Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC, 7 February 1994, p. 57.

to act under the Republika Srpska”.<sup>3820</sup> Furthermore, members of the VJ forces deployed to Vogošća were instructed to remove their VJ insignia and leave behind their wallets and identification documents before arriving at their destination.<sup>3821</sup>

1340. Additional support for the intended secret character of the VJ mission in BiH can be found in the official medical certificate issued by the VJ to a Guards Brigade soldier who was wounded while in Vogošća and later transferred by helicopter to the VMA in Belgrade.<sup>3822</sup> The certificate, issued by the Guards Brigade Commander, stated that he had been wounded “while carrying out combat activities, *i.e.* securing [the FRY] state border”.<sup>3823</sup> No mention was made of his engagement in Vogošća. Similarly, the obituaries of one of the 72<sup>nd</sup> Brigade soldiers killed in this operation, Goran Galjak, read that he died heroically “on 27 December 1993, defending his country, the Greater Serbia” with no mention as to where he was killed.<sup>3824</sup> His death certificate likewise states that he was killed while participating in a “national defence operation”.<sup>3825</sup> The death certificate of another soldier who participated in the Pancir-2 Operation, Mladen Stjepanović, records his place of death on 27 December 1993 as Belgrade.<sup>3826</sup>

1341. The Trial Chamber recalls in this context that the FRY was under international sanctions imposed pursuant to Chapter VII of the UN Charter and that the UNSC repeatedly condemned the FRY’s failure to cease any form of interference in the events unfolding in BiH.<sup>3827</sup> Sacirbey testified that the goal of these sanctions was to have the FRY put a halt to all actions that continued to “fuel the conflict”, including sending troops to BiH.<sup>3828</sup>

1342. Against this backdrop, the Trial Chamber finds that, whether or not the VJ was successful in hiding its presence in the area, the evidence described above clearly shows that both the VJ and the VRS intended and strived to keep the VJ involvement in Vogošća secret.

<sup>3820</sup> MP-11, T. 8961-8962, 8964.

<sup>3821</sup> MP-418, T. 3432, 3472 (private session). They were not, however, asked to put on the VRS insignia, MP-418, T. 3466-3467 (private session).

<sup>3822</sup> MP-418, T. 3442-3444 (private session); Ex. P554 (under seal); Ex. P553 (under seal).

<sup>3823</sup> Ex. P363, Certificate Confirming Wounded Status of Private, 23 June 1994. *See also* Ex. P552 (under seal), p. 2, noting that the wounding in Vogošća occurred at a time when in theory the VJ “was not, by any means, involved in the war in Bosnia” and that a retired VJ officer had advised MP-418 “not to mention where and when he had been injured at all”.

<sup>3824</sup> Ex. P361, Obituaries of Goran Galjak, 18 January 1994.

<sup>3825</sup> Ex. P1852, Request for Death Certificate, 6 April 1994, Doc ID 0630-5057, p. 1. *See also* Ex. P1852, Request for Death Certificate, 6 April 1994, Doc IDs 0630-5058, 0630-5056.

<sup>3826</sup> Ex. P1851, Death Certificate, 17 January 1994; Ex. P360, List of Killed and Wounded Soldiers in December 1993 in Vogošća, p. 1.

<sup>3827</sup> Muhamed Sacirbey, T. 7175; Ex. P202, UNSC Resolution 757, 30 May 1992, pp 1-2; Ex. P2454, UNSC Resolution 787, 16 November 1992, p. 3; Muhamed Sacirbey, T. 7173-7176. *See supra* paras 186-187.

<sup>3828</sup> Muhamed Sacirbey, T. 7177.

(c) Perišić's Presence in the Area

1343. The evidence shows that Perišić was present in Vogošća on 8 January 1994. He participated in a meeting held at the Park Hotel between several RS politicians and VRS and VJ military commanders, including Mladić, Krsmanović, Galić, Rajko Koprivica, Ratko Hadžić, Mirko Krajišnik and Panić (the commander of the VJ Special Units Corps).<sup>3829</sup> There is no evidence of what was discussed during the meeting. However, according to a witness, it probably concerned a situation within the area of responsibility of the SRK.<sup>3830</sup>

(d) SDC 18<sup>th</sup> Session of 7 February 1994

1344. During the SDC session held on 7 February 1994, the deployment of VJ units in BiH was discussed and Perišić stated that those men went in the area voluntarily, in the absence of an SDC decision authorising the use of VJ forces abroad.<sup>3831</sup> Momir Bulatović, however, disputed this statement<sup>3832</sup> and added that they did not even know where they were going. Perišić responded that “[h]ad they known where they were going, they probably wouldn’t have gone!”<sup>3833</sup>

1345. The Trial Chamber does not believe that the VJ soldiers taking part in the Pancir-2 Operation were volunteers. The Trial Chamber notes that Perišić refers to the voluntary nature of the engagement to justify the deployment in the absence of an SDC decision. Yet, Perišić himself seems to concede that the men were not really volunteers when he said that “had they known where they were going they would not have gone”.<sup>3834</sup> In a subsequent statement made in 1996 at the 58<sup>th</sup> Session of the SDC, Perišić also recalled that “we engaged a unit to regain Žuč. [...] We lost eight men [...]”.<sup>3835</sup>

1346. The voluntary engagement of the soldiers is further undermined by the evidence showing that both the VJ’s 72<sup>nd</sup> Special Brigade and the Guards Brigades were ordered to deploy to the

<sup>3829</sup> Ex. P505, Transcript of Nikola Tošović Deposition Hearing, 13 December 2008, T. 7; Ex. P507, Diary of Nikola Tošović, 1994, p. 3. Tošović explained that Rajko Koprivica and Ratko Hadžić were the presidents of the Vogošća and the Ilijaš municipalities, respectively. In relation to Krsmanović, Tošović stated that he was either an active officer and engineer at *Pretis*, or the Assistant Commander of the SRK for logistics. Mirko Krajišnik, Momčilo Krajišnik’s brother, was Chief of the Technical Services in Logistics in the Vogošća Brigade, Ex. P505, Transcript of Nikola Tošović Deposition Hearing, 13 December 2008, T. 5, 18-19.

<sup>3830</sup> Ex. P505, Transcript of Nikola Tošović Deposition Hearing, 13 December 2008, T. 20; Ex. P506, Transcript of Nikola Tošović Deposition Hearing, 14 December 2008, T. 81-82. *See also* Ex. P505, Transcript of Nikola Tošović Deposition Hearing, 13 December 2008, T. 7-9, 16; Ex. P506, Transcript of Nikola Tošović Deposition Hearing, 14 December 2008, T. 77-78.

<sup>3831</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC, 7 February 1994, pp 56, 58, 60.

<sup>3832</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC, 7 February 1994, pp 56-57, 59.

<sup>3833</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC, 7 February 1994, p. 56.

<sup>3834</sup> *Ibid.*

<sup>3835</sup> Ex. P800, Stenographic Transcript of the 58<sup>th</sup> Session of the SDC, 21 November 1996, p. 7.

area.<sup>3836</sup> In addition, MP-418 expressly stated that he and his colleagues did not volunteer to go to BiH.<sup>3837</sup>

#### 4. Other Instances of Direct Involvement of the VJ in BiH

1347. The Trial Chamber has been presented with some evidence pertaining to the plans of further use of the VJ units in BiH. According to MP-11, in 1994 plans were formulated to involve the 72<sup>nd</sup> Brigade in Srebrenica, in coordination with VRS units, in order to boost morale of other units taking part in combat there.<sup>3838</sup> MP-11 testified that on several occasions Perišić visited the military police battalion for special operations of the 72<sup>nd</sup> Special Brigade to discuss such potential engagement.<sup>3839</sup> Nonetheless, the battalion was never deployed to Srebrenica in 1994.<sup>3840</sup> The same witness *heard*, however, that members of the 72<sup>nd</sup> Brigade were deployed in the area of Srebrenica in 1995.<sup>3841</sup> However, this evidence remains uncorroborated hearsay and is not sufficient to convince the Trial Chamber.

1348. On 13 May 1995, Perišić issued an order establishing that the 72<sup>nd</sup> Special Brigade and 63<sup>rd</sup> Parachute Brigade, units of the SUC, should be ready for engagement in the Baranja region (Croatia) at the request of the SVK 11<sup>th</sup> Corps Commander and with Perišić's approval.<sup>3842</sup>

1349. Perišić addressed a telegram to Mladić on 23 June 1995, referring to the following assistance:

- One battalion of volunteers with about 400 men led by Colonel TRKULJA – checked for contact with you. The Battalion is armed and battle ready.
- One battalion of about 200 men is being prepared, to come to you next week, around Kušić.
- We are sending volunteers the same as we have done so far.
- An air group (three Kraguj aircraft) will relocate from Skelani to Sokolac, about 10 men (provide them with a ready runway, one truckload of fuel and accommodation). They are coming on Tuesday.<sup>3843</sup>

Siniša Borović, who at the time was Perišić's Chef de Cabinet and who forwarded the telegram to the VRS Main Staff, testified that he was not aware whether the battalion under the command of Trkulja was in fact dispatched from the VJ. However, he stated that had the battalion been sent to

<sup>3836</sup> See *supra* paras 1325-1327, 1331-1332.

<sup>3837</sup> MP-418, T. 3433 (private session).

<sup>3838</sup> MP-11, T. 8939-8941.

<sup>3839</sup> MP-11, T. 8942.

<sup>3840</sup> MP-11, T. 8944-8945.

<sup>3841</sup> MP-11, T. 8964-8965, 9018-9020.

<sup>3842</sup> Ex. P2755, Order from Perišić to Enhance RSK Combat-Readiness in Baranja Area, 13 May 1995, p. 1

<sup>3843</sup> Ex. P2729, Urgent Cable from Perišić to Mladić, 23 June 1995.

the VRS, his office would have received confirmation from the VRS Main Staff.<sup>3844</sup> In the absence of any such evidence, the Trial Chamber cannot make any finding as to whether these men were sent to the VRS.

1350. Later that year, in September, Perišić suggested to have an urgent SDC meeting to discuss the RS request for the deployment of 3 to 5 VJ brigades to stabilise the front in Northwest Bosnia.<sup>3845</sup>

1351. According to Charles Kirudja's confidential sources, in 1995, around 300-400 members of the VJ 63<sup>rd</sup> Paratroops Command Brigade from Niš joined the VRS forces at the battle on Mt. Majevica near Bijeljina to help them defend a communication tower.<sup>3846</sup>

##### 5. Assistance in Communications and Electronic Data Transmissions

1352. The Prosecution submits that the VJ assisted the VRS by permitting use of their communication centres and nodes located in Serbia and Montenegro, and by providing equipment and technical expertise.<sup>3847</sup> The Defence contends that VRS was responsible for the operation of its own communications.<sup>3848</sup> It acknowledges that the VRS utilised FRY communication hubs but challenges any inference that such use was expressly permitted by the VJ or by Perišić.<sup>3849</sup>

1353. Milenko Jevđević, who served as the Signals Battalion Commander of the VRS Drina Corps, acknowledged that the VJ provided the VRS with access to "connecting pathways and the available capacities of its communication channels at FRY stationary communications hubs".<sup>3850</sup> Similarly, Drago Čovilo, who served as the Chief of the Department for Operations and Staff Affairs in the Sector for Communications, Information Technology and Electronic Warfare within the VJ General Staff from 1993 to 1999, testified that while at no point in time "access or entry to the VJ communications system was allowed", communication hubs would be "used as an intermediary radio relay station to ensure communication that went further".<sup>3851</sup> The communication hubs used by the VRS Drina Corps were the Cer and Crni Vrh stations in Serbia and the Stražbenica station in Montenegro.<sup>3852</sup>

<sup>3844</sup> Siniša Borović, T. 13999-14000, 14170.

<sup>3845</sup> Ex. P2716, VJ GS 1<sup>st</sup> Administration proposal to FRY President signed by Perišić, 15 September 1995, p. 1.

<sup>3846</sup> Ex. P475, Code Cable from Charles Kirudja to Akashi, 31 March 1995, para. 3; Charles Kirudja T. 2842-2843.

<sup>3847</sup> Prosecution Final Brief, paras 273-275.

<sup>3848</sup> Defence Final Brief, paras 771, 774.

<sup>3849</sup> Defence Final Brief, paras 772, 775.

<sup>3850</sup> Milenko Jevđević, T. 11118, 11121.

<sup>3851</sup> Drago Čovilo, T. 13872.

<sup>3852</sup> Milenko Jevđević, T. 1111-11125, 11169-11170. *See also* Ex. P1246, IBK Request to the VJ Communications Administration, 20 September 1994 (request by VRS East Bosnia Corps to activate radio relay route).

1354. The Trial Chamber notes that Jevdević testified that messages transmitted *via* these channels were subject to encryption, and only decrypted at the final destination.<sup>3853</sup> According to the witness, the VJ did not have the code books used by individual VRS units to decode messages sent to them.<sup>3854</sup>

1355. Jevdević also testified that for the Krivaja 95 operation (Srebrenica), he used specific technical equipment to encrypt written communications between the forward command post and the Drina Corps command, as well as with subordinate VRS units.<sup>3855</sup> Oral non-encrypted communications among the various VRS units, *e.g.* between the Zvornik Brigade and the Bratunac Brigade, went through the FRY stationary communication hubs, and took place on a "regular military communication line".<sup>3856</sup>

1356. One witness testified that unlike the communications system, the radar system and the anti-aircraft defence system of the VRS could operate independently of the VJ.<sup>3857</sup> However, according to him, it was logical that each system was better off when it was backed up by, and acted in coordination with, the other system.<sup>3858</sup> At the same time, the witness was shown a document approved by Ratko Mladić which provided instructions for coordination between the air forces and/or the anti-aircraft defences of the VRS, VJ and SVK.<sup>3859</sup> The witness testified that he never saw any order or decision implementing these instructions.<sup>3860</sup>

1357. The Defence points out numerous requests by the VRS to the VJ for other communications assistance which were unfulfilled.<sup>3861</sup> Although the Trial Chamber does not contest that some of the requests were not met by the VJ,<sup>3862</sup> the record contains evidence showing that at times the VJ General Staff did, in fact, provide assistance to the SVK and the VRS in other areas of

<sup>3853</sup> Milenko Jevdević, T. 11122-11123.

<sup>3854</sup> Milenko Jevdević, T. 11171.

<sup>3855</sup> Milenko Jevdević, T. 11135.

<sup>3856</sup> Milenko Jevdević, T. 11119, 11135-11141.

<sup>3857</sup> MP-5, T. 2438-2439 (private session), also mentioning an incident in which the anti-aircraft defence system of the VRS brought down a French aircraft in 1995.

<sup>3858</sup> MP-5, T. 2454-2455 (private session).

<sup>3859</sup> MP-5, T. 2368-2369, 2372-2375 (partly private session); Ex. P395 (under seal), pp 1, 3, 9, providing for (i) exchange of information on air surveillance among the operations centres of the air forces and/or the anti-aircraft defences of the VRS, VJ and SVK; (ii) exchange of air controllers among the operations centres and command posts of the air forces and/or the anti-aircraft defences of the VRS, VJ and SVK; and (iii) joint analyses of the information by the commands of the air forces and/or the anti-aircraft defences of the VRS, VJ and SVK.

<sup>3860</sup> MP-05, T. 2450 (private session).

<sup>3861</sup> Defence Final Brief, para. 773, referring to *e.g.* Ex. P627, Response from the Cabinet of the Chief of the VJ General Staff to the VRS Main Staff, 20 October 1993; Ex. P2176, Documents Regarding the Cooperation Between VRS, SVK and VJ in April and May 1994.

<sup>3862</sup> See also *supra* paras 954-955, 1247.

communication, including by providing: communications equipment,<sup>3863</sup> “jamming capabilities”,<sup>3864</sup> and repairs and maintenance of existing equipment.<sup>3865</sup>

1358. Based on the above evidence, the Trial Chamber is satisfied that the VRS used communication hubs present in the FRY territory with the consent of the VJ and that Perišić provided communication equipments and technical expertise to the VRS.

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<sup>3863</sup> Ex. P874, VJ General Staff Operations Sector Document, Perišić Handwritten Note, 19 October 1993. *See* Ex. P2732, Documents Relating to a Request from D. Milošević to the Chief of VJ General Staff, 28 July 1995; Ex. P2769, Request from Mladić to the Chief of VJ General Staff for Providing Means of Communications, 1 September 1995; Ex. P1254, VJ General Staff Internal Memo Regarding VRS Request for Assistance, 6 September 1995, p. 2; Ex. P2176, Documents Regarding the Cooperation Between VRS, SVK and VJ in April and May 1994, p. 12.

<sup>3864</sup> Ex. P2851, Perišić’s Response to Mladić Proposal that VJ Jam Radio Frequencies, 24, 30 December 1993.

<sup>3865</sup> Ex. P2742, Request from VRS Main Staff to the Chief of VJ General Staff for VRS Communications Facility Materials, 15 October 1995; Ex. P2156, Memorandum on Co-ordination Between the VJ, VRS and SVK, 19 November 1993, p. 2.

## H. Perišić's Relationship with Mladić

### 1. Personal Relationship between Perišić and Mladić

1359. During his suspect interview, Perišić stated that before he became the Chief of the VJ General Staff he had only seen General Ratko Mladić three times.<sup>3866</sup> Perišić also asserted that, once he became the Chief of the VJ General Staff, Mladić maintained “a certain distance” from him “because he knew very well that I was against any illicit actions”.<sup>3867</sup> According to Perišić, this was because “[t]he entire leadership of Republika Sprska knew that I was against any destruction of buildings, against any [...] use of force against the civilian population and so on”.<sup>3868</sup> He further claimed that “we did not talk all that much, so I could not really tell if he was lying to me or deceiving me [...] and we were not close enough for me to detect such a character trait”.<sup>3869</sup>

1360. Perišić also discussed his relationship with Mladić in *Vreme*, a Belgrade weekly newspaper, in a statement published on 2 January 1995.<sup>3870</sup> Perišić stated that “Mladić and I are acquaintances and war comrades. Our relationship is utterly normal, that is a relationship of two professional officers who are fighting against the physical extermination of their people”.<sup>3871</sup>

1361. General Đorđe Ćurčin, the former Chief of Operations and Training of the VJ 1<sup>st</sup> Army from 1993 to 1998, testified that Perišić, Mladić and Ćurčin were in the same group in the National Defence School and ever since had known each other as colleagues.<sup>3872</sup> Ćurčin described himself as a “personal or family friend[...]” of General Ratko Mladić, whom he had known for 32 years, and a “pal” of Momčilo Perišić.<sup>3873</sup> During his testimony, Ćurčin would not describe the extent of Perišić's relationship with Mladić because he lacked “firsthand” knowledge, but, in his previous witness interview, characterised them as “mates and close friends”.<sup>3874</sup>

<sup>3866</sup> Ex. P815, Transcript of Interview with Perišić, 25 January 2004, p. 22.

<sup>3867</sup> Ex. P815, Transcript of Interview with Perišić, 25 January 2004, p. 23.

<sup>3868</sup> *Ibid.*

<sup>3869</sup> *Ibid.*

<sup>3870</sup> Ex. P2880, Statement of Momčilo Perišić in the Weekly Newspaper *Vreme*, 2 January 1995.

<sup>3871</sup> Ex. P2880, Statement of Momčilo Perišić in the Weekly Newspaper *Vreme*, 2 January 1995. On 24 December 1993, in an official request from the VRS Main Staff to Perišić, Mladić writes: “*Dear friend*, for the purpose of jamming Ustasha radio communication, I would ask that you allocate the necessary jamming equipment [...]”. Ex. P2851, VJ CGS Perišić Response to Mladić Request for Jamming Equipment with the Request Attached, 30 December 1993, p. 5. (Emphasis added).

<sup>3872</sup> Đorđe Ćurčin, T. 4646, 4648.

<sup>3873</sup> Đorđe Ćurčin, T. 4648.

<sup>3874</sup> Ćurčin denied that the two bore the relationship of *kum*, a Serbo-Croat term referring to a “very valuable, dear friend” who typically serves as a witness at the person's wedding and thereafter gives the first names to the couple's children, Đorđe Ćurčin, T. 4648-4649; Ex. P2216, Record of Interview of Đorđe Ćurčin Before the Investigative Judge of the War Crimes Chamber in Belgrade, 6 November 2007, p. 8.



1362. Nikola Tošović, General Mladić's cousin and the Chief of Technical Services in Logistics in the Vogošća Brigade, referred to Perišić and Mladić as only "acquaintances".<sup>3875</sup>

## 2. Perišić's Support for Mladić's Selection as Commander of the VRS Main Staff

1363. The Trial Chamber reviewed an excerpt from General Ratko Mladić's notebook that described a meeting held in Nevisinje, East Herzegovina, on 11 May 1992.<sup>3876</sup> According to the excerpt, the meeting was attended by Mladić, Perišić, Vukan Bratić, the President of the Nevesinje Municipality, and other military and political leaders from the region.<sup>3877</sup> The excerpt attributed the following comments to Perišić during the meeting: "Ninković and I undertook an initiative with Karadžić to come here[.] He [Mladić] showed with his own example what a JNA officer should be like. You have the right person, if you support him, you will get what you want".<sup>3878</sup>

1364. On 12 May 1992, Mladić, who was then a Lieutenant-General, was appointed Commander of the VRS Main Staff by the Assembly of the Serbian People in BiH.<sup>3879</sup>

## 3. Peace Plans

1365. The evidence shows that Perišić and Milošević attempted several times to convince Mladić to accept the peace plan. For example, on 12 August 1994, Perišić travelled to the VRS command post to meet with Mladić.<sup>3880</sup> On that occasion, he conveyed a message from Slobodan Milošević, asking Mladić to reject the RS leadership and accept the Contact Group Plan.<sup>3881</sup> According to an excerpt from Mladić's diary, Perišić urged the acceptance of a peace plan by stating that Milošević was "asking that you [Mladić] make a major turnabout in terms of politics so that the plan is accepted".<sup>3882</sup> This proposal was refused.<sup>3883</sup>

<sup>3875</sup> Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, p. 70.

<sup>3876</sup> Ex. P2938, Extract from Ratko Mladić's Notebook, 11 May 1992.

<sup>3877</sup> Ex. P2938, Extract from Ratko Mladić's Notebook, 11 May 1992, pp 2-13.

<sup>3878</sup> Ex. P2938, Extract from Ratko Mladić's Notebook, 11 May 1992, p. 8.

<sup>3879</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 2. *See* Ex. P190, Decision on Formation of the Army of Serbian BiH, 12 May 1992, p. 1.

<sup>3880</sup> Ex. D344, Excerpt from Mladić's Notebook (meeting with Perišić), 12 August 1994.

<sup>3881</sup> Ex. D344, Excerpt from Mladić's Notebook (meeting with Perišić), 12 August 1994, p. 4. *See* Ex. D344, Excerpt from Mladić's Notebook (meeting with Perišić), 12 August 1994, p. 2 (Perišić conveying the message that if the RS accepts the peace plan, the FRY will continue to provide support to the VRS). *See also* Ex. D344, Excerpt from Mladić's Notebook (meeting with Perišić), 12 August 1994, p. 3 (Perišić stating that the FRY leadership has done "[...] everything to reason" with the RS leadership in order to convince them to accept the peace plan); Petar Škrbić, T. 11753, stating that Perišić asked Mladić and others not to recognize the authority of the VRS leadership. The transcript of his testimony states that: "Q. It was written here in no uncertain terms that Slobodan Milošević was asking from you to reject the authority of the leadership of Republika Srpska. This is something that General Perišić told you on this occasion; is that right? A. Yes, that's correct", Petar Škrbić, T. 11753.

<sup>3882</sup> Ex. D344, Excerpt from Mladić's Notebook (meeting with Perišić), 12 August 1994, p. 4.

<sup>3883</sup> Ex. D344, Excerpt from Mladić's Notebook (meeting with Perišić), 12 August 1994, pp 7-10; Petar Škrbić, T. 11755.

1366. On 20 September 1994, Perišić participated in another meeting during which the FRY leadership attempted to convince Mladić to stop the war and accept a peace plan.<sup>3884</sup> According to Mladić's diary, members of the FRY SDC attempted to persuade him to reject the RS leadership because it had refused to accept a peace plan.<sup>3885</sup> The efforts of the members of the FRY were unsuccessful in this instance.<sup>3886</sup>

1367. During the SDC session of 2 November 1994, both Perišić and Milošević expressed their frustration that the RS leadership had refused to accept the Contact Group Plan.<sup>3887</sup> Perišić stated that Mladić's goals with respect to the resolution of the conflict were "unrealistic"<sup>3888</sup> and that as a result, his previous attempts to "persuade" Mladić were unsuccessful.<sup>3889</sup> He stated that that "I went there on behalf of both presidents in order to persuade them subsequently about the pure military facts, but to no avail".<sup>3890</sup> Perišić further stated that members of the RS leadership, including Mladić, could not be persuaded to accept the peace plan and that Mladić "has been manipulated by his politics and that is how he behaves".<sup>3891</sup> President Milošević referred to the Bosnian Serbs' decision to reject the Contact Group Plan "as a disastrous mistake".<sup>3892</sup> In response to General Perišić's recommendation that "we should invite *our men from Bosnia* and try to persuade them to accept the plan[...]",<sup>3893</sup> Milošević stated that "the Army [the VJ] is the sole factor that has influence on them and you know very well that you cannot do anything there".<sup>3894</sup> Perišić then stated that "at least we can invite them, and we can try to persuade those people in front of this

<sup>3884</sup> Ex. D764, Excerpt from Mladić's Notebook, 20 September 1994, pp 11-13.

<sup>3885</sup> *Ibid.*

<sup>3886</sup> See Ex. D764, Excerpt from Mladić's Notebook, 20 September 1994, p. 18 (writing in his diary in response to Milošević's efforts to convince him to stop the war, "oh what strong words"). The Defense argues that this line suggests a lack of control because it illustrates the dismissive manner in which Mladić treated the FRY leadership. See Defense Final Brief, para. 878.

<sup>3887</sup> Ex. P779, Stenographic Transcript of the 28<sup>th</sup> Session of the SDC, 2 November 1994, pp 24-26.

<sup>3888</sup> Ex. P779, Stenographic Transcript of the 28<sup>th</sup> Session of the SDC, 2 November 1994, p. 28.

<sup>3889</sup> See Ex. P779, Stenographic Transcript of the 28<sup>th</sup> Session of the SDC, 2 November 1994, p. 29.

<sup>3890</sup> *Ibid.*

<sup>3891</sup> *Ibid.*

<sup>3892</sup> Ex. P779, Stenographic Transcript of the 28<sup>th</sup> Session of the SDC, 2 November 1994, pp 23, 33. See Carl Bildt, T. 14253-14254.

<sup>3893</sup> Ex. P779, Stenographic Transcript of the 28<sup>th</sup> Session of the SDC, 2 November 1994, p. 33 (emphasis added). See also Ex. P779, Stenographic Transcript of the 28<sup>th</sup> Session of the SDC, 2 November 1994, p. 33 (Perišić stating that another meeting should be held with the RS Leadership so that "we can try to bring them to reason[...]"); Ex. P779, Stenographic Transcript of the 28<sup>th</sup> Session of the SDC, 2 November 1994, p. 34 (Perišić stating that "I suggest we try and persuade them if we can still can do anything. Otherwise, they will face a complete disaster. And it is not that they will face it, but such a situation will have dramatic consequences for Serbian and Montenegrin peoples"); Ex. P779, Stenographic Transcript of the 28<sup>th</sup> Session of the SDC, 2 November 1994, p. 29 (Lilić suggesting that "[...] we should use our direct contacts in order to exert as much pressure on those who can bring about the termination of this conflict").

<sup>3894</sup> Ex. P779, Stenographic Transcript of the 28<sup>th</sup> Session of the SDC, 2 November 1994, p. 36.

audience”.<sup>3895</sup> Then, Milošević, with the agreement of Lilić and Momir Bulatović, specifically recommended that Perišić should contact Mladić “so we can talk to him once more”.<sup>3896</sup>

1368. The evidence shows that another attempt to persuade Mladić to accept a peace plan was made by FRY leadership, particularly by Milošević, during the SDC session of 24 January 1995.<sup>3897</sup>

1369. In addition, at the 42<sup>nd</sup> Session of the FRY SDC, held on 23 August 1995, members of the SDC attempted again to persuade Mladić to abandon the current RS leadership and support the international peace process.<sup>3898</sup> According to the SDC minutes, Perišić was present at this meeting and participated in the efforts to persuade Mladić.<sup>3899</sup> Mladić, however, repeatedly refused the requests of the FRY to forsake the RS leadership and to endorse a peace plan. For instance, the SDC minutes state that “having listened to the arguments tendered by President Milošević, President Bulatović, President Lilić, and General Perišić, General Ratko Mladić *persisted* with his proposal”.<sup>3900</sup> Moreover, Perišić also attempted to persuade Mladić to support the peace process by warning him of the “impending danger of Croatian aggression against Prevlaka and Eastern Slavonia”.<sup>3901</sup> The evidence demonstrates that any attempts made by Perišić and the FRY leadership to persuade Mladić at this meeting were unsuccessful.<sup>3902</sup>

#### 4. Release of French Humanitarian Workers

1370. On 4 March 1995, the VRS detained four French nationals from the *Pharmaciens Sans Frontieres* humanitarian organisation.<sup>3903</sup> On 12 April 1995, a French military representative sent a letter to Perišić expressing the notion that even though the VRS agents who were holding the French humanitarian workers were not technically subordinate to the VJ General Staff, the representative hoped that Perišić would nonetheless use his influence to help bring about their release.<sup>3904</sup>

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<sup>3895</sup> *Ibid.*

<sup>3896</sup> Ex. P779, Stenographic Transcript of the 28<sup>th</sup> Session of the SDC, 2 November 1994, p. 47.

<sup>3897</sup> Ex. P2783, Excerpt from Ratko Mladić’s notebook, 1995, p. 2, stating that “we have decided to use the plan of the Contact Group [...] the enclaves will wither away. The peace will dry them up, the war is keeping them alive[...] you cannot allow Karadžić and Krajišnik to do as they like, you have to dictate the priorities to them”.

<sup>3898</sup> Ex. P713 Minutes from the 42<sup>nd</sup> Session of the SDC, 23 August 1995.

<sup>3899</sup> Ex. P713 Minutes from the 42<sup>nd</sup> Session of the SDC, 23 August 1995, p. 1.

<sup>3900</sup> Ex. P713, Minutes from the 42<sup>nd</sup> Session of the SDC, 23 August 1995, p. 3 (emphasis added).

<sup>3901</sup> See Ex. P713, Minutes from the 42<sup>nd</sup> Session of the SDC, 23 August 1995, p. 5

<sup>3902</sup> Ex. P713, Minutes from the 42<sup>nd</sup> Session of the SDC, 23 August 1995, pp 6-7.

<sup>3903</sup> MP-902, T. 14545-14546 (closed session); Ex. D510 (under seal); Dragan Vukšić, T. 12130-12131, 12135, 12137.

<sup>3904</sup> Ex. D510 (under seal) (emphasis in original). The Trial Chamber notes that the letter refers to an attached document that requests the release of the French humanitarian organisation members. This document is not in evidence.

1371. According to Dragan Vukšić, the Chief of the VJ Administration for relations with foreign armies and missions within the VJ from 1993 to 1997, Perišić played a “particularly significant and delicate role” in discussions with Mladić in order to obtain the release of the hostages<sup>3905</sup> and that “neither General Perišić nor I were ever in a position to tell General Mladić or anyone else that they had done something wrong”.<sup>3906</sup> Nevertheless, Vukšić confirmed that “Perišić took steps” to ensure that the four Frenchmen were ultimately released.<sup>3907</sup>

##### 5. UNPROFOR Hostages

1372. On 26 and 27 May 1995, in response to the NATO forces’ air strikes on Pale earlier that day, the VRS took approximately 400 UNPROFOR personnel as hostages and used some as human shields to deter further air strikes.<sup>3908</sup> Some hostages were later distributed across Bosnian Serb territory to protect potential targets.<sup>3909</sup>

1373. By 9 June 1995, between 105 and 146 UNPROFOR hostages still had not been released.<sup>3910</sup> Charles Kirudja, the Delegate of the Special Representative of the UN Secretary-General in Belgrade, testified that he met with Jovica Stanišić, President Milošević’s Special Envoy, who travelled to Bosnia to meet with Mladić in order to obtain the release of the UNPROFOR hostages.<sup>3911</sup>

1374. Kirudja confirmed that Stanišić and those who were conducting the operation “were under instructions from both President Milošević and General Perišić to do their utmost to obtain the release of those additional three on a day that was also rainy with poor flight conditions”.<sup>3912</sup> According to Kirudja, Stanišić “undertook to pressure Mladić to deblock the UN group and simply let them go to their units”.<sup>3913</sup> The crisis ended when Mladić sent the remaining hostages by bus to Niš, where they were released to UNPROFOR.<sup>3914</sup>

<sup>3905</sup> Dragan Vukšić, T. 12131.

<sup>3906</sup> Dragan Vukšić, T. 12131-12132.

<sup>3907</sup> Dragan Vukšić, T. 12136.

<sup>3908</sup> Rupert Smith, T. 6337; Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 59.

<sup>3909</sup> Ex. P2348, Statement of Rupert Smith, 14 August 1996, para. 60; MP-409, T. 5705 (closed session).

<sup>3910</sup> Charles Kirudja, T. 2924; Ex. D32, Code Cable from Charles Kirudja to Akashi Regarding UNPROFOR Hostage Crisis, 9 June 1995, para. 6; Ex. D33, Code Cable from Charles Kirudja to Akashi Regarding UNPROFOR Hostage Crisis, 10 June 1995, p. 2.

<sup>3911</sup> Charles Kirudja, T. 2921; Ex. D32, Code Cable from Charles Kirudja to Akashi Regarding UNPROFOR Hostage Crisis, 9 June 1995, paras 1, 9.

<sup>3912</sup> Charles Kirudja, T. 2924-2925; Ex. D32, Code Cable from Charles Kirudja to Akashi Regarding UNPROFOR Hostage Crisis, 9 June 1995, para. 8.

<sup>3913</sup> Ex. D33, Code Cable from Charles Kirudja to Akashi Regarding UNPROFOR Hostage Crisis, 10 June 1995, p. 3.

<sup>3914</sup> Charles Kirudja, T. 2934.

## 6. Meeting between Perišić and Mladić in Bosnia on 18 July 1995

1375. The Trial Chamber heard the testimony of Ned Krayishnik, a Canadian Serb who along with Milan Lešić and others established the Republika Sprska Humanitarian Organisation (“Organisation”) in Hamilton, Ontario, Canada, in 1992.<sup>3915</sup> Between 1992 and 1996, Krayishnik and other members of the Organisation made five or six trips to the former Yugoslavia to provide humanitarian aid to the Bosnian Serbs.<sup>3916</sup>

1376. On 14 July 1995, Krayishnik, along with other members of the Organisation, travelled to Serbia and RS to deliver money to RS and, upon the request of General Mladić, a medical scanner to the Military Academy Hospital in Belgrade.<sup>3917</sup> On 17 July 1995, the Organisation’s delegation travelled to Han Pijesak in the BiH, where the VRS headquarters was located, approximately 27 kilometres from Srebrenica, in order to meet Mladić and receive his appreciation for their donations.<sup>3918</sup> During the meeting, Mladić congratulated himself on the “liberation of Srebrenica” and for “solv[ing] our problems with Srebrenica”.<sup>3919</sup> He stated that he hoped that “in the course of the next day that Žepa would be solved in the same way as the area of Srebrenica”.<sup>3920</sup>

1377. On 18 July 1995, the delegation arrived at a picnic area at Crna Rijeka,<sup>3921</sup> where Generals Perišić, Mladić and Gvero were waiting to meet them.<sup>3922</sup> The group met for a couple of hours.<sup>3923</sup> Krayishnik stated that Mladić and Gvero discussed the liberation of Srebrenica in the presence of Perišić and that there was “a lot of joking around at lunch” and no signs of disagreement among the generals.<sup>3924</sup>

## 7. Release of the French Pilots by the VRS

1378. On 30 August 1995, Frederic Chiffot and Jose Souvignet, the French crew of a NATO Mirage 2000 aircraft (“French pilots”), were captured by the VRS after their aircraft was shot down

<sup>3915</sup> Ned Krayishnik, T. 9464, 9468-9469.

<sup>3916</sup> Ned Krayishnik, T. 9470-9472.

<sup>3917</sup> Ned Krayishnik, T. 9491-9493, 9496-9497; Ex. P2794, Lešić Photograph with Ned Krayishnik showing Canadian Serb Delegation at Hotel, 16 July 1995.

<sup>3918</sup> Ned Krayishnik, T. 9536, 9483; 9538. *See* Ex. P2795, Map marked by Ned Krayishnik of Crna Rijeka’s Location, 2 November 2009; Ex. P2796, Map marked by Ned Krayishnik of route from Belgrade through Bijelina, 3 November 2009; Ex. P2797, Map marked by Ned Krayishnik of route from Zvornik to Crna Rijeka, 3 November 2009. According to the witness, Han Pijesak is located approximately 40 kilometers from Pale.

<sup>3919</sup> Ned Krayishnik, T. 9552; Ex. P2806, Lešić Videotape of Mladić and others in Belgrade, Han Piljesik and Crna Rijeka, 16-18 July 1995 at 27 minutes and 19.4 seconds; Ex. P2807, Lešić Videotape Transcript, 16-18 July 1995, p. 12.

<sup>3920</sup> Ned Krayishnik, T. 9550-9551; Ex. P2807, Lešić Videotape Transcript, 16-18 July 1995, p. 12.

<sup>3921</sup> Ned Krayishnik, T. 9482-9483, 9559. The witness testified that Crna Rijeka is located in the outskirts of Han Pijesak.

<sup>3922</sup> Ned Krayishnik, T. 9560, 9577; Ex. P2798, Lešić Photo of Gvero and Canadian Serbs in Crna Rijeka, 18 July 1995; Exs P2799-P2805, Lešić Photographs of Perišić with Mladić and others in Crna Rijeka, 18 July 1995.

<sup>3923</sup> Ned Krayishnik, T. 9577.

over Pale by the VRS's anti-aircraft defence system.<sup>3925</sup> In the following months, Perišić organised a series of meetings between international representatives and Mladić and others in RS to obtain the release of the French pilots.<sup>3926</sup>

1379. The first meeting, which occurred while NATO temporarily halted air-strikes against Bosnian Serb military targets around Sarajevo,<sup>3927</sup> was between UNPROFOR Commander General Bernard Janvier and Mladić in Zvornik on 1 September 1995.<sup>3928</sup> The Trial Chamber was presented with testimony that Perišić helped to broker this meeting.<sup>3929</sup> The Trial Chamber also reviewed an excerpt from Mladić's diary, which described a meeting between Mladić and General Bertrand de la Presle, UNPROFOR Force Commander, at Milići, in RS, on 22 September 1995.<sup>3930</sup> On 27 October 1995, the VJ also facilitated passage for de la Presle, to travel to RS to meet with General Tolimir and President Karadžić about the negotiations for the release of the French pilots.<sup>3931</sup> During the month of November, Perišić made "some serious efforts and did everything in his power to get the pilots released".<sup>3932</sup> Finally, the Trial Chamber reviewed an excerpt from Mladić's diary, describing a meeting between de la Presle, Mladić, Tolimir and Davidović in Jela on 3 December 1995.<sup>3933</sup>

1380. On 10 December 1995, at the Jela Restaurant in the Romanija plateau, FRY and VRS leaders met to discuss negotiations for the release of the crew to the French government.<sup>3934</sup> The FRY was represented by President Zoran Lilić, Perišić and Aleksandar Dimitrijević, Chief of Administration for Security of the General Staff, whereas the VRS group included Mladić, Gvero, Tolimir, Škrbić, Milovanović and Đukić.<sup>3935</sup> Prior to the meeting, the entire VRS Main Staff delegation, including Mladić, denied having any knowledge of the fate of the French pilots.<sup>3936</sup>

1381. At the beginning of the meeting, President Lilić stated that "[t]he French are convinced that the pilots are here [...]. Today is the last day for us to tell France what we know about the pilots [...] We will sign, Momo [General Perišić] and I, [so] that nobody will be extradited to the Hague

<sup>3924</sup> Ned Krayishnik, T. 9579.

<sup>3925</sup> Dragan Vukšić, T. 12192; Carl Bildt, T. 14314; MP-5, T. 2438-2439 (private session).

<sup>3926</sup> Dragan Vukšić, T. 12185.

<sup>3927</sup> Ex. D368, Code Cable from Annan to Akashi, 6 September 1995, p. 4.

<sup>3928</sup> Dragan Vukšić, T. 12179-12182; Ex. D368, Code Cable from Annan to Akashi, 6 September 1995, p. 4.

<sup>3929</sup> Dragan Vukšić, T. 12181, 12185.

<sup>3930</sup> Ex. D767, Excerpt from Ratko Mladić's Notebook, 22 September 1995, p. 1.

<sup>3931</sup> Ex. P2708VRS Intelligence Cable Regarding Meeting with UNPROFOR General De La Presle, 27 October 1995, pp 1-2; Dragan Vukšić, T. 12189 (private session); Ex. D369, VJ General Staff Letter, 27 October 1995.

<sup>3932</sup> Dragan Vukšić, T. 12193.

<sup>3933</sup> Ex. D772, Excerpt from Mladić Diary, 3 December 1995, p. 1.

<sup>3934</sup> Petar Škrbić, T. 11759, 11788-11789, 11792; Ex. D346, Excerpt of Mladić's Diary (Meeting with Lilić and Perišić, 10 December 1995), p. 1.

<sup>3935</sup> *Ibid.*

<sup>3936</sup> Petar Škrbić, T. 11788.

Tribunal”.<sup>3937</sup> For the first half of the meeting, Mladić still denied all knowledge of the French pilots, but later admitted that the pilots were in his custody.<sup>3938</sup> Once Mladić conceded that the pilots were in his custody, there was considerable debate among the participants of the meeting as to the appropriate course of action.<sup>3939</sup> During this debate, according to an excerpt from Mladić’s notebook, Perišić advocated for the release of the French pilots. He argued that “handing over the pilots prevents the division of the Serbian ethnic entity”.<sup>3940</sup> However, despite Perišić’s arguments, no decision with respect to the appropriate course of action was made immediately after his comments. Škrbić subsequently recommended to Mladić that the pilots be released to the FRY instead of France or Russia, so that the FRY could be a mediator in their release “to raise its image in the world”.<sup>3941</sup> Mladić then agreed that the pilots would be handed over to the French Government through the mediation of the FRY.<sup>3942</sup>

1382. On 11 December 1995, at the Batajnica military airbase near Belgrade, Perišić organised a meeting between General Jean-Philippe Douin, the Chief of Staff of the French Armed Forces, and Mladić, accompanied by Tolimir and Gvero, in order to release the French pilots to Douin.<sup>3943</sup> According to Vukšić, Douin and Mladić initially refused to meet each other. In particular, Douin refused to speak to Mladić because he was accused of war crimes.<sup>3944</sup> Perišić served as a mediator in order to help facilitate the talks.<sup>3945</sup> Vukšić testified that Perišić’s actions were instrumental “[...]in the simple act of getting two men into the same room”.<sup>3946</sup> Perišić played a decisive role in these conversations, according to Vukšić, Perišić:

[...]was the only person who could influence his colleague, the Chief of General Staff of the French army, in order for him to understand that the situation he was in was considerably different from what he had expected. On the other hand, he could influence General Mladić in order for him to understand that it was not a question of his vanity.<sup>3947</sup>

1383. Perišić led Douin to a room to meet Mladić to begin discussions that lasted 30 hours non-stop under “tense” conditions.<sup>3948</sup> Mladić initially refused to tell Douin whether the pilots were alive

<sup>3937</sup> Petar Škrbić, T. 11927-11928; Ex. D346, Excerpt of Mladić’s Diary (Meeting with Lilić and Perišić, 10 December 1995), p. 1.

<sup>3938</sup> Petar Škrbić, T. 11789. Škrbić stated that during the discussion, the collegium asked why Mladić did not inform them that he had custody of the pilots, but that he did not answer and instead asked them what they should do with the pilots.

<sup>3939</sup> Petar Škrbić, T. 11789-11795.

<sup>3940</sup> Ex. D346, Excerpt of Mladić’s Notebook (Meeting with Lilić and Perišić), 10 December 1995, p. 4.

<sup>3941</sup> Petar Škrbić, T. 11790.

<sup>3942</sup> *Ibid.*

<sup>3943</sup> Dragan Vukšić, T. 12194-12195; MP-901, T. 14554 (closed session).

<sup>3944</sup> Dragan Vukšić, T. 12197-12198.

<sup>3945</sup> Dragan Vukšić, T. 12193.

<sup>3946</sup> Dragan Vukšić, T. 12200.

<sup>3947</sup> Dragan Vukšić, T. 12208-12209.

<sup>3948</sup> Dragan Vukšić, T. 12197-12198; MP-901, T. 14557-14559 (closed session); MP-902, 14540 (closed session).

or dead.<sup>3949</sup> Finally, the negotiations concluded with the release of the pilots to Douin, in Zvornik on 12 December 1995.<sup>3950</sup> According to Vukšić and MP-902, Perišić made “decisive” contributions to furthering the release of the pilots, which led them to conclude that he was committed to the peace.<sup>3951</sup> In addition, Perišić’s role as a mediator in the release of the French pilots is also mentioned in Exhibit D371, which states that:

[...]the military attaché has witnessed how efficient the role of the Yugoslav Army was, under the guidance of the Chief of the General Staff, in resolving sensitive problems in connection with the Blue Helmets who had been taken prisoner or detained in May and June 1995, as well as with the crew of the French aircraft[.]<sup>3952</sup>

1384. On 12 December 1995, in exchange for the RS release of the French pilots, President Lilić signed an agreement in which the FRY pledged a series of measures including its guarantee “that no citizen of [RS] shall be handed over by them to be called to account before the International Court in The Hague”.<sup>3953</sup> Borović, the Chef de Cabinet of the Chief of the VJ General Staff, recalled that the agreement, which was not signed by RS leadership, was issued by the Office of the VJ General Staff but bears the stamp of the President’s Office because they had no other stamp available.<sup>3954</sup> According to Carl Bildt, the former European Union Co-Chairman of the International Conference on the former Yugoslavia (ICFY), French President Jacques Chirac conditioned the signing of the Dayton Peace Agreement of 14 December 1995 on the release of the French pilots.<sup>3955</sup>

#### 8. Perišić’s Attendance at Darko Mladić’s Wedding in July 1997

1385. The Trial Chamber reviewed videotape footage which was recorded at the wedding of Darko Mladić, Ratko Mladić’s son, on 21 June 1997, which Perišić attended.<sup>3956</sup> It shows Perišić entering a home and speaking with Ratko Mladić and other wedding attendants. He is then seen standing up from a table in the center of the room where Ratko Mladić, members of his family and others were sitting and enjoying live music.<sup>3957</sup>

<sup>3949</sup> Dragan Vukšić, T. 12203-12205; MP-901, T. 14559 (closed session); Ex. D370, Excerpt from Ratko Mladić’s Notebook, 11 December 1995.

<sup>3950</sup> Dragan Vukšić, T. 12206-12207. *See also* Vladimir Rodić, T. 14234.

<sup>3951</sup> Dragan Vukšić, T. 12208-12210; MP-902, T. 14545 (closed session); Ex. D371, Letter from Embassy of France in Belgrade, 13 December 1995, p. 1.

<sup>3952</sup> Ex. D371, Letter from Embassy of France in Belgrade, 13 December 1995. *See also* Ex. D510 (under seal); MP-901, T. 14559, 14561, 14565-14566.

<sup>3953</sup> Ex. P2709, Agreement between the FRY and the RS Leadership on Releasing the French Pilots, 12 December 1995, p. 2.

<sup>3954</sup> Siniša Borović, T. 14034-14035; Ex. P2709, Agreement between the FRY and the RS Leadership on Releasing the French Pilots, 12 December 1995.

<sup>3955</sup> Carl Bildt, T. 14314.

<sup>3956</sup> Ex. P2784, Video of Wedding of Darko Mladić.

<sup>3957</sup> Ex. P2784, Video of Wedding of Darko Mladić (20 minutes, 50 seconds, 27 minutes, 54 seconds, 46 minutes, 55 seconds).



### 9. Perišić's Visit to Mladić at the Rajac Facility in July 1997

1386. In late July 1997, on a weekend morning, Perišić visited Mladić at a VJ facility at Rajac.<sup>3958</sup> The Rajac facility, which provided “rest and recreation” for VJ officers and their family members, was located on a mostly uninhabited small mountain, approximately one and a half kilometres away from the nearest village and included a hotel with lodging for thirty persons, three small weekend homes, athletic fields and a restaurant.<sup>3959</sup> Mladić and his entourage stayed at the facility for over a month under conditions of secrecy so that the public would not learn of his whereabouts.<sup>3960</sup> General Ćurčin provided “fatherly advice” to those individuals present at the Rajac facility to not disclose any information regarding Mladić’s visits because there were people “who wanted to give him in, in exchange for some money[...]”.<sup>3961</sup> Milan Gunj, the manager of the Rajac Hotel, stated that shortly before Mladić’s arrival, the hotel was renovated and that during Mladić’s stay no one outside of his entourage stayed there.<sup>3962</sup> He also testified that for the first few days, Mladić and his entourage solely used the food and drink they had brought with them.<sup>3963</sup> As their supplies decreased, they gave Gunj money so that he could buy what was needed at the market.<sup>3964</sup> Very soon, however, they started relying mainly on provisions coming from the VJ that Gunj himself would pick up either from the Topčider warehouse or from the central warehouse in Belgrade.<sup>3965</sup>

1387. Ćurčin, who was visiting Mladić at the Rajac facility for the second time that month, testified that he coincidentally encountered Perišić in a parked car in a non-parking zone outside of the facility and eventually persuaded Perišić to visit the Rajac facility.<sup>3966</sup> According to Ćurčin, Perišić, who was traveling without security and dressed in civilian clothes, was on his way to Belgrade after visiting his mother in Koštunići.<sup>3967</sup> At Rajac, Perišić had a conversation and played chess with Mladić before he departed for Belgrade in the afternoon.<sup>3968</sup>

### 10. Perišić's Visit to Mladić at the VJ Command Post in Stragari in the Autumn of 1997

1388. In the early autumn of 1997, Perišić visited Mladić at the VJ command post in Stragari, which was used for training and included a one-story administration building, a couple of small

<sup>3958</sup> Đorđe Ćurčin, T. 4666-4667.

<sup>3959</sup> Milan Gunj, T. 3869; Đorđe Ćurčin, T. 4650.

<sup>3960</sup> Đorđe Ćurčin, 4676-4677; Milan Gunj, T. 3791-3792.

<sup>3961</sup> Đorđe Ćurčin, T. 4676-4677.

<sup>3962</sup> Milan Gunj, T. 3864.

<sup>3963</sup> Milan Gunj, T. 3782.

<sup>3964</sup> Milan Gunj, T. 3783.

<sup>3965</sup> Milan Gunj, T. 3782-3783.

<sup>3966</sup> Đorđe Ćurčin, T. 4658, 4669.

<sup>3967</sup> Đorđe Ćurčin, T. 4669.

<sup>3968</sup> *Ibid.*

houses/huts for personnel and other facilities.<sup>3969</sup> The facility was gated with a duty officer to restrict access and was located approximately 70 to 100 kilometres from Belgrade.<sup>3970</sup> According to Ćurčin, after the end of the war in Bosnia, Mladić stayed at the Stragari facility “on and off” and “would spend some time [there] and then [would] go back home or [to] some other place”.<sup>3971</sup> Ćurčin stated that he, Perišić and Mladić met in the mid-morning and walked through the woods, played games and had lunch.<sup>3972</sup>

#### 11. Perišić’s Visit to Mladić at the Rajac Facility in February 1998

1389. Gunj testified that Perišić again visited Mladić at the Rajac facility during one day in late January or early February of 1998.<sup>3973</sup> Outside of the facility’s meeting hall, Gunj spoke briefly with Perišić, who requested that Gunj ensure that the meeting did not become public.<sup>3974</sup> During this visit, Gunj again provided food and everything that was necessary for him to stay there for a few days.<sup>3975</sup>

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<sup>3969</sup> Đorđe Ćurčin, T. 4651, 4674.

<sup>3970</sup> Đorđe Ćurčin, T. 4651; Milan Gunj, T. 3765.

<sup>3971</sup> Đorđe Ćurčin, T. 4670.

<sup>3972</sup> Đorđe Ćurčin, T. 4674-4675.

<sup>3973</sup> Milan Gunj, T. 3787, 3792-3793 (private session).

<sup>3974</sup> Milan Gunj, T. 3793 (private session).

<sup>3975</sup> Milan Gunj, T. 3788.

## I. Perišić's Access to Information

### 1. Background

1390. The gathering and exchange of current and reliable information regarding the conflict in Croatia and BiH remained a significant task of the VJ throughout Perišić's tenure as Chief of the General Staff of the VJ.<sup>3976</sup> Miodrag Simić, Chief of the 1<sup>st</sup> Administration within the VJ from November 1994, testified that it was in "the interest of the [VJ] for the sake of its security to be constantly informed of what was going on in that area".<sup>3977</sup> The 1995 Work Plan of the VJ introduces the priority task of "monitor[ing] and assess[ing] the military-political and security situation in the surrounding area, primarily in the crisis areas of the country and the areas of the seceded republic where there are hostilities, ensuring prompt and reliable reports for relevant measures to be taken with respect to [VJ] [combat readiness] and the defence of the FRY".<sup>3978</sup>

1391. There were multiple channels within the VJ through which information was collected and processed before it was reported to Perišić. As described previously, organs subordinated to the Chief of the VJ General Staff included the Sector for Operations and Staff Affairs, the Intelligence Administration, the Security Administration and the Information and Moral Department.<sup>3979</sup> Perišić had operative lines of communication with his subordinates in the various units.<sup>3980</sup> Moreover, Perišić had different channels of communication outside of the VJ - with the President of the FRY, the President of Serbia, the President of Montenegro, and with the FRY MUP.<sup>3981</sup> Perišić's office received on average between 50 and 300 documents daily.<sup>3982</sup>

1392. Collegium meetings of the VJ General Staff were held weekly and facilitated the timely interaction and exchange of intelligence between its relevant organs.<sup>3983</sup> It would begin with briefings by the heads of the Intelligence Administration, the Security Administration and the

<sup>3976</sup> See Ex. D202, VJ General Staff Work Plan for 1995 by Chief of the VJ General Staff 1st Administration, 22 December 1994, p. 5; Ex. D358, Letter from Perišić to Slobodan Milošević, 17 December 1993; Miodrag Simić, T. 10341.

<sup>3977</sup> Miodrag Simić, T. 10341.

<sup>3978</sup> Ex. D202, VJ General Staff Work Plan for 1995 by Chief of the VJ General Staff 1st Administration, 22 December 1994, p. 5; Miodrag Simić, T. 9972.

<sup>3979</sup> See *supra* paras 214-219.

<sup>3980</sup> Siniša Borović, T. 13907; Miodrag Simić, T. 9939-9940. See also Ex. D195, First Organisational Chart of the VJ General Staff, 15 June 1993.

<sup>3981</sup> Siniša Borović, T. 13907, 13919-13920, 13923-13925. For the reports Perišić received from the FRY MUP – see Miodrag Simić, T. 10335.

<sup>3982</sup> Siniša Borović, T. 13911-13913; Ex. P727, Order from Office of Chief of General Staff on Organisation and Method of Work of the Chief of the General Staff and VJ Supreme Command Staff, 15 October 1993, p. 1, ordering that mail check is to be done twice daily.

<sup>3983</sup> Siniša Borović, T. 13930.

Operational Staff Sector.<sup>3984</sup> The Trial Chamber notes that an assessment of the state of FRY security and relevant intelligence was a standing item on the agenda.<sup>3985</sup>

1393. Perišić also received coded telegrams from the FRY missions abroad. In the words of Borović, “the 2<sup>nd</sup> Administration also received such information, but we always double-checked that we had actually received the same telegrams”.<sup>3986</sup>

## 2. Activities and Reports of Relevant VJ Organs

### (a) Operations Centre

1394. Within the 1<sup>st</sup> Administration of the General Staff, the Operations Centre collected and analysed information received on a 24-hours basis from lower units deployed in the FRY and from other federal organs within the FRY.<sup>3987</sup> This information was processed based on its relevance and importance and included in daily reports sent to the Chief of General Staff.<sup>3988</sup> Borović, Chef de Cabinet from November 1994, confirmed that Perišić received these daily reports.<sup>3989</sup> The Operations Centre maintained communication also with the relevant operative centres of the SVK

<sup>3984</sup> Siniša Borović, T. 13932; Miodrag Simić, T. 9981; Branko Gajić, T. 10813. *See e.g.* Ex. P2207, Transcript of the Collegium of the Chief of the VJ General Staff, 4 December 1995; Ex. P727, Order from Office of Chief of General Staff on Organisation and Method of Work of the Chief of the General Staff and VJ Supreme Command Staff, 15 October 1993, p. 5. The record contains many transcripts of the Collegium meetings – *see* Ex. P2193, Transcript of the Collegium of the Chief of the VJ General Staff, 15 September 1997; Ex. P2194, Transcript of the Collegium of the Chief of the VJ General Staff, 13 September 1995; Ex. P2195, Transcript of the Collegium of the Chief of the VJ General Staff, 14 September 1995; Ex. P2196, Transcript of the Collegium of the Chief of the VJ General Staff, 18 September 1995; Ex. P2197, Transcript of the Collegium of the Chief of the VJ General Staff, 28 October 1995; Ex. P2198, Transcript of the Collegium of the Chief of the VJ General Staff, 2 October 1995; Ex. P2199, Transcript of the Collegium of the Chief of the VJ General Staff, 6 October 1995; Ex. P2200, Transcript of the Collegium of the Chief of the VJ General Staff, 9 October 1995; Ex. P2201, Transcript of the Collegium of the Chief of the VJ General Staff, 19 October 1995; Ex. P2202, Transcript of the Collegium of the Chief of the VJ General Staff, 30 October 1995; Ex. P2203, Transcript of the Collegium of the Chief of the VJ General Staff, 6 November 1995; Ex. P2204, Transcript of the Collegium of the Chief of the VJ General Staff, 18 September 1995; Ex. P2205, Transcript of the Collegium of the Chief of the VJ General Staff, 23 October 1995; Ex. P2206, Transcript of the Collegium of the Chief of the VJ General Staff, 13 November 1995; Ex. P2207, Transcript of the Collegium of the Chief of the VJ General Staff, 4 December 1995; Ex. P2208, Transcript of the Collegium of the Chief of the VJ General Staff, 13 September 1995; Ex. P2209, Transcript of the Collegium of the Chief of the VJ General Staff, 14 September 1995, 29 December 1995; Ex. P2210, Transcript of the Collegium of the Chief of the VJ General Staff, 9 October 1995; Ex. P2211, Transcript of the Collegium of the Chief of the VJ General Staff, 19 October 1995; Ex. P2212, Transcript of the Collegium of the Chief of the VJ General Staff, 30 October 1995; Ex. P2213, Transcript of the Collegium of the Chief of the VJ General Staff, 6 November 1995; Ex. P2214, Transcript of the Collegium of the Chief of the VJ General Staff of 18 September 1995, 29 December 1995; Ex. P2215, Transcript of the Collegium of the Chief of the VJ General Staff, 23 October 1995.

<sup>3985</sup> Siniša Borović, T. 13935; Mladen Mihajlović, T. 3883, 3956.

<sup>3986</sup> Siniša Borović, T. 13918. The record contains many examples of such telegrams sent, *inter alia*, to Perišić – *see e.g.* Exs P852-P857 (all under seal); Ex. P1832, FRY Diplomatic Cable, 26 May 1995; Ex. P2855 (under seal).

<sup>3987</sup> Miodrag Simić, T. 9968, 10011.

<sup>3988</sup> Miodrag Simić, T. 10010. The information gathered from all organs was based on a 24 hour period (from 06:00 the previous day until 06:00 the next day), and was processed into a report reflecting what happened the previous day. This information involved all events affecting the security of the FRY that occurred on land, in the water space, and in the air-space, Miodrag Simić, T. 10009.

<sup>3989</sup> Siniša Borović, T. 13915.

and VRS.<sup>3990</sup> In his OTP interview, Perišić stated that the Operations Centre was used to monitor the situation in *inter alia* Croatia and the BiH, and that the “update level” for these territories was high.<sup>3991</sup>

1395. In addition, in April 1994, Perišić created an Operations Duty Team within the 1<sup>st</sup> Administration and tasked it with “monitoring and assessing [...] the situation in the VJ and the armed forces of the neighbouring countries”.<sup>3992</sup> It consisted of personnel from the Operations Centre of the 1<sup>st</sup> Administration, the Security Administration and the Information Administration.<sup>3993</sup> Information regarding military activities in Croatia and BiH was also supplied through communication lines the Operations Duty Team maintained with their counterparts in the SVK and VRS Main Staff.<sup>3994</sup> The Operations Duty Team prepared daily operational reports including *inter alia* a detailed description of the SVK and the VRS military activities, which were sent to Perišić.<sup>3995</sup>

(b) Intelligence Administration

1396. Subsumed within the Sector for Operational and Staff Affairs, the 2<sup>nd</sup> Administration, or Intelligence Administration, operated round the clock and produced daily bulletins on relevant intelligence information, including on military activities and plans of the VRS, SVK, ABiH, HV and NATO.<sup>3996</sup> The bulletins would be sent to Perišić.<sup>3997</sup> Moreover, the Chief of the Intelligence Administration would report up-to-date information directly to Perišić by visiting his office.<sup>3998</sup> The Administration would also provide regular reports to the Operations Centre.<sup>3999</sup>

<sup>3990</sup> Miodrag Simić, T. 9968-9969. *See infra* section VI.I.3.(c).

<sup>3991</sup> Ex. P815, Transcript of Interview with Perišić, 25 January 2004, pp 18-19. *See* Miodrag Simić, T. 10011; Ex. P860, VJ General Staff Report Regarding Status and Activities in the Former Republic of Bosnia, RS, 24 May 1994; Ex. P861, VJ General Staff Report Regarding Status and Activities in the Former Republic of Bosnia, RS, 26 May 1994; Ex. P862, VJ General Staff Report Regarding Status and Activities in the Former Republic of Bosnia, RS, 27 May 1994.

<sup>3992</sup> Ex. P859, Order by Chief of General Staff to Form a Duty Operations Team, 12 April 1994, p. 3.

<sup>3993</sup> *Ibid.*

<sup>3994</sup> Ex. P2177, Letter from VJ General Staff to SVK Main Staff, 11 May 1994; Ex. P2847, VJ General Staff Memo on Deployment of Forces in Corridor, 11 May 1994, wherein the VJ General Staff asked (using the form “please”) that the VRS ensure “phone contact through a secure line between the VJGS Duty Team Leader and yours, every day at 06:00 hrs and 20:00 hrs”.

<sup>3995</sup> Miodrag Simić, T. 10012, 10033 (private session); Branko Gajić, T. 10814-10815. *See* Ex. P859, Order by Chief of General Staff to Form a Duty Operations Team, 12 April 1994, p. 5; Ex. P860, VJ General Staff Report Regarding Status and Activities in the Former Republic of Bosnia, RS, 24 May 1994; Ex. P861, VJ General Staff Report Regarding Status and Activities in the Former Republic of Bosnia, RS, 26 May 1994; Ex. P862, VJ General Staff Report Regarding Status and Activities in the Former Republic of Bosnia, RS, 27 May 1994.

<sup>3996</sup> Siniša Borović, T. 13915-13916, 13918-13919; Miodrag Simić, T. 10012.

<sup>3997</sup> Miodrag Simić, T. 10335; Ex. D200, Chief of the VJ General Staff Order on the Competences of Organisational Units of the VJ General Staff in Peacetime, 25 July 1994.

<sup>3998</sup> Siniša Borović, T. 13915-13916, 13918-13919.

<sup>3999</sup> *See e.g.* Ex. D212, VJ General Staff 2<sup>nd</sup> Administration Report, 1 May 1995; Ex. D213, VJ General Staff 2<sup>nd</sup> Administration Report, 2 May 1995; Ex. P2600, Intelligence Report from General Staff to the Operational Centre of VJ, 1 July 1995; Ex. P2601 Intelligence Report from General Staff to the Operational Centre of VJ, 2

1397. The sources of the bulletins comprised both regular reports from the SVK and VRS Main Staff<sup>4000</sup> and other sources connected to NATO or UNPROFOR.<sup>4001</sup>

1398. The Trial Chamber has been presented with a number of intelligence bulletins produced by the VJ Intelligence Administration and it is satisfied of the detailed, up-to-date nature of the information as well as of the variety of sources employed in those bulletins.<sup>4002</sup> Siniša Borović testified that among the different types of information the VJ General Staff received, the highest degree of authenticity and reliability was given to that provided by the Intelligence Administration.<sup>4003</sup>

1399. Finally, the Intelligence Administration played a significant role in maintaining close coordination and interaction between the VJ General Staff intelligence apparatus and their counterparts in the VRS and the SVK.<sup>4004</sup>

(c) Security Administration

1400. The Security Administration produced a number of reports gathering counter-intelligence information, which were circulated within the VJ.<sup>4005</sup> A daily report was sent to the Chief of the Security Administration and members of his collegium.<sup>4006</sup> An extract of the daily report was sent to the VJ General Staff Operative Centre.<sup>4007</sup> A monthly report was produced and submitted to the VJ General Staff and the SDC.<sup>4008</sup> The VJ General Staff could also seek information from the Security Administration on specific issues.<sup>4009</sup> Gajić, who during the time relevant to the Indictment served as the Chief of the Counter-Intelligence Department at the Security Administration of the VJ General Staff, testified that this was done frequently.<sup>4010</sup>

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July 1995; Ex. P2602, Intelligence Report from General Staff to the Operational Centre of VJ, 3 July 1995; Ex. D214, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 7 July 1995; Ex. D215, VJ General Staff 1<sup>st</sup> Administration Daily Operations Report, 9 July 1995; Ex. D216, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 9 July 1995; Ex. P2610, Intelligence Report from General Staff to the Operational Centre of VJ, 26 July 1995.

<sup>4000</sup> See *infra* paras 1429-1432.

<sup>4001</sup> See *e.g.* Ex. P1047, SVK Main Staff Document, 10 September 1994; Ex. P1854, VRS Report to VJ Security Administration, 11 August 1995; Ex. D212, VJ General Staff 2nd Administration Report, 1 May 1995, pp 1-2; Ex. D213, VJ General Staff 2nd Administration Report, 2 May 1995.

<sup>4002</sup> See *supra* fn. 3999.

<sup>4003</sup> Siniša Borović, T. 13955. The witness used the following comparison about the reliability of the sources: if one grades the Security Administration information with 3, the media information would receive 0.25.

<sup>4004</sup> Rade Orlić, T. 5737; Ex. P1622, Proposal of the VJ General Staff to the VRS Main Staff on Secondment of the Personnel, 23 November 1994.

<sup>4005</sup> Miodrag Simić, T. 10012.

<sup>4006</sup> Branko Gajić, T. 10813-10814.

<sup>4007</sup> Branko Gajić, T. 10814; Miodrag Simić, T. 10021-10023; Siniša Borović, T. 13918.

<sup>4008</sup> Branko Gajić, T. 10815.

<sup>4009</sup> *Ibid.*

<sup>4010</sup> *Ibid.*

1401. The Security Administration had also contacts with foreign military diplomatic representatives, mostly from the Western countries, accredited in Belgrade.<sup>4011</sup> These contacts were usually maintained by the Chief of the Security Administration who would, if need be, inform Perišić about any important topics discussed with them.<sup>4012</sup>

1402. It was routine for the Intelligence Administration and Security Administration to share information with each other.<sup>4013</sup>

1403. The Trial Chamber notes that the Security Administration obtained information regarding the military activities of the SVK and the VRS directly from their counterparts in these armies.<sup>4014</sup>

(d) Information Administration

1404. The Information Administration was tasked with collecting and assessing the veracity of media information of interest to the VJ before transmitting it to the VJ General Staff with “what one may call a press clipping”.<sup>4015</sup> Perišić himself during a telephone conversation with Slobodan Milošević, confirmed that he watched the TV news.<sup>4016</sup>

1405. According to Borović, the VJ never trusted the media treating the latter as being prone to propaganda and sensationalism.<sup>4017</sup> Although the VJ General Staff considered those sources, it always tasked the Intelligence Administration to verify any information coming from the media.<sup>4018</sup>

3. Information Flow between VJ, SVK and VRS

(a) Coordination Meetings

1406. As discussed earlier, the high representatives of the SVK, VRS and the VJ held monthly coordination meetings in Belgrade in order to exchange data and strengthen the cooperation between these armies.<sup>4019</sup>

1407. On 27 September 1993, Perišić issued the following tasks to the branch section of the VJ General Staff:

<sup>4011</sup> Branko Gajić, T. 10872-10873.

<sup>4012</sup> Branko Gajić, T. 10873.

<sup>4013</sup> Branko Gajić, T. 10792.

<sup>4014</sup> Branko Gajić, T. 10852; Rade Rašeta, T. 5912. *See infra* paras 1425-1427.

<sup>4015</sup> Siniša Borović, T. 13918, 13956. *See also* Petar Škrbić, T. 11875-11876, 11879-11881, 11884-11885, testifying that during his tenure in the GŠ VJ – in the period of pre mid-1993, such bulletins would include reports from television stations such as BBC, Sky News, CNN, international radio like the Voice of America as well as print media or news agencies including Reuters and the Associated Press.

<sup>4016</sup> Ex. P1366, Intercepted Conversation, 1 May 1995, pp 3-4.

<sup>4017</sup> Siniša Borović, T. 13956.

[...]Ensure continuous, secure and protected communication with the GŠ [SVK] and the GŠ VRS.<sup>4020</sup>

[...]Ensure the inflow of as much verified intelligence as possible on the situation and condition in the [RSK] and [RS] and their surroundings, with assessments of the effect of that situation on the degree of threat to the [FRY].<sup>4021</sup>

1408. Among the participants in those meetings were Perišić, Ratko Mladić, Mile Novaković and subsequently Milan Čeleketić or Dušan Lončar.<sup>4022</sup> Items of their agenda concerned “exchange of information and harmonisation of positions between the VJ, VRS, and SVK”<sup>4023</sup> including, *inter alia*, the issues of activity and assessment of the enemy, the results of the combat operations and activities of the SVK and VRS forces, the security situation in the RSK and RS, logistical requests and personnel problems.<sup>4024</sup>

1409. As an example, the Trial Chamber notes that the issue of “operative-strategic disposition of SVK troops” was discussed during the May 1994 coordination meeting.<sup>4025</sup> In the words of one witness:

Descriptions such as this one contributed to the competent officers in the [GŠ VJ] and [VRS] getting a clear picture and full information about the situation and about the problems that existed, and, of course, the action that [the SVK] would take and the tasks that [the SVK] would implement in the forthcoming period, because that was useful for them in terms of their own troops and their own tasks.<sup>4026</sup>

<sup>4018</sup> Siniša Borović, T. 13956.

<sup>4019</sup> See *supra* paras 943-945. See also *infra* para. 1411.

<sup>4020</sup> Ex. P878, Tasks set by Perišić at the Supreme Command Staff meeting of 27 September 1993, 26 October 1993, p. 3; Ex. P1626 Official Note from the Meeting of the VJ Supreme Command Staff, 27 September 1993, p. 5.

<sup>4021</sup> Ex. P878, Tasks set by Perišić at the Supreme Command Staff meeting of 27 September 1993, 26 October 1993, p. 4. See Ex. P1626, Official Note from the Meeting of the VJ Supreme Command Staff, 27 September 1993, p. 5.

<sup>4022</sup> Ex. P2175, Documents Regarding Meetings between SVK, VRS and VJ Chiefs of Staff, fall 1993, Doc ID 0630-5894; Ex. P2156, Memorandum on Co-ordination Between the VJ, VRS and SVK, 19 November 1993; Ex. P317, Aide Mémoire of the Chief of the Office of the SVK Commander to the General Staff of the VJ, December 1993; Ex. P919, SVK Main Staff Memo on the Coordination of Tasks in the VJ General Staff, January 1994; Ex. P2625, SVK Summary for the Coordination of Tasks in the VJ General Staff, 17 February 1994; Ex. P1798, VJ Report on Coordination with SVK, May 1994; Ex. P2176, Documents Regarding the Cooperation Between VRS, SVK and VJ in April and May 1994; Ex. P2177, Letter from VJ General Staff to SVK Main Staff, 11 May 1994; Ex. P2764, Document from Mladić to VJ GS, 17 May 1994; Ex. P2621, Aide-Memoire for the Coordination in the General Staff of the VJ, July 1994; Mile Novaković, T. 13175, 13177-13178.

<sup>4023</sup> Ex. P2175, Documents Regarding Meetings between SVK, VRS and VJ Chiefs of Staff, fall 1993, Doc ID 0630-5899, p. 1.

<sup>4024</sup> MP-80, T. 8322-8325, 8327-8328, 8338-8339 (closed session); Mile Novaković, T. 13175-13176; Ex. P2175, Documents Regarding Meetings between SVK, VRS and VJ Chiefs of Staff, fall 1993, Doc IDs 0630-5894, p. 1; 0630-5899, p. 1; Ex. P2157, Communication between SVK and VJ, 3 November 1993, p. 1. See also Miodrag Simić, T. 10038-10039, testifying that such coordination meetings were not held on a regular basis but as the need arose.

<sup>4025</sup> Ex. P1798, VJ Report on Coordination with SVK, May 1994, p. 4.

<sup>4026</sup> MP-80, T. 8328 (closed session).



Similarly, at the same meeting, Ratko Mladić gave a presentation on *inter alia*: “enemy strength, grouping and intentions”, possible further enemy operations and the situation in the VRS corps.<sup>4027</sup>

1410. The evidence suggests that at the coordination meetings no orders were issued by the VJ to the SVK and/or the VRS.<sup>4028</sup> Mile Novaković even testified that he attended the first two or three meetings, but decided to appoint his subordinate to attend meetings thereafter explaining that “those meetings were not of importance because they were not beneficial”.<sup>4029</sup>

(b) Other Meetings

1411. Slobodan Milošević and Perišić held several meetings with the prominent members of the SVK and the VRS.<sup>4030</sup> Some of these meetings were also attended by the highest authorities of the RSK and/or RS.<sup>4031</sup>

1412. The record also shows that Perišić was holding quite regular meetings with Ratko Mladić. According to Siniša Borović, the latter visited Perišić “once per month or less”.<sup>4032</sup> There were also meetings where Slobodan Milošević and/or various military and political leaders of the FRY, VRS and/or RS were present.<sup>4033</sup>

<sup>4027</sup> Ex. P2764, Document from Mladić to VJ General Staff, 19 May 1994.

<sup>4028</sup> MP-080, T. 8338-8339 (closed session).

<sup>4029</sup> Mile Novaković, T. 13176.

<sup>4030</sup> Ex. D440, Excerpt from Mladić diary, 24 September 1993. *See also* Ex. P2174, Telegram from General Novaković to General Perišić, 18 September 1993, Novaković asking Perišić for a meeting (also with Mladić); Mile Novaković, T. 13114, testifying about the meeting with Perišić in 1993 to discuss the situation in the RSK, to update Perišić on the essential elements of the situation, and to request help with the personnel and financial problems of the SVK; Mile Novaković, T. 13125, 13127-13128, testifying about a Belgrade meeting between President Milošević, General Perišić, and the witness on 24 September 1993; Mile Novaković, T. 13167-13168, testifying about Mladić’s proposal regarding the creation of a Joint General Staff in which the VRS and SVK would be considered the 4<sup>th</sup> and 5<sup>th</sup> Army of the VJ; Ex. P2937, Extract from Ratko Mladić’s Notebook, 7 October 1994; and Ex. P2783, Ratko Mladić’s notebook from 1995, pp 10-16, depicting a meeting that took place on 30 June 1995.

<sup>4031</sup> Ex. D441, Excerpt from Mladić Diary, 21 October 1993; Ex. D442, Excerpt from the Mladić Diary, 8 November 1993; Ex. P2936, Extract from Ratko Mladić’s Notebook, 8 July 1994. The Trial Chamber notes the instances of meetings between the FRY authorities, RS, VRS and/or RSK officials; however, the evidence does not show that Perišić took part in them – these were held on: 15 March 1994 - with *inter alia* Mladić, S. Milošević, Martić, Karadžić, Lilić - Ex. P2940, Extract from Ratko Mladić’s Notebook, 15 March 1994; on 3 March 1995 with Mladić and “President MS” - Ex. P2783, Ratko Mladić’s notebook from 1995, pp 6-7; on 7 July 1995 with S. Milošević, Mladić and Carl Bildt – Carl Bildt, T. 14284-14285; on 14-15 July 1995 - S. Milošević, Mladić, Yasuki Akashi and Carl Bildt - Carl Bildt, T. 14284-14286; Ex. P2369, Note of a Meeting, 15 July 1995.

<sup>4032</sup> Siniša Borović, T. 14086. For meetings held on 27 December 1993 – *see* Ex. P2935, Extract from Ratko Mladić’s Notebook, 27 December 1993; on 7 July 1994 in the Krušik special purpose company in Valjevo - *see* Ex. P2928, Extract from Ratko Mladić’s Notebook, 7 July 1994; on 6 April 1995 – *see* Ex. P2783, Excerpt from Ratko Mladić’s Notebook, 1995, pp 8-9. *See also* Ex. P1441, Intelligence Note, 3 April 1994; Ex. P1462, Intelligence Note, 28 November 1995; Ex. P1467, Intercepted Conversation, 10 December 1995, p. 6; Ex. P779, Stenographic Transcript of the 28<sup>th</sup> Session of the SDC, 2 November 1994, pp 7, 28, referring to contacts between Perišić and Mladić leading to the former being well informed as to the situation in the VRS – *see* Ex. P780, Stenographic Transcript of the 15<sup>th</sup> Session of the SDC, 10 November 1993, pp 21-22; Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, p. 47.

<sup>4033</sup> These were held on 13-14 December 1993 - Ex. P2933, Extract from Ratko Mladić’s Notebook, 13 December 1993; Ex. P2934, Extract from Ratko Mladić’s Notebook, 14 December 1993; on 24 January 1995 at the SDC

1413. On 9 July 1995, Perišić visited the commander of the 11<sup>th</sup> Corps of the SVK in Vukovar and on a separate occasion in autumn he toured the units of SVK 11<sup>th</sup> Corps.<sup>4034</sup>

1414. The evidence also shows that Perišić visited RS in the period relevant to the Indictment.<sup>4035</sup> On 7 January 1994, he visited the Drina Corps Command.<sup>4036</sup> The next day, he met with Mladić and Galić in Vogošća.<sup>4037</sup> On 12 August 1994, Perišić met with Mladić and the inner collegium of the Commander of the GŠ VRS in Crna Rijeka.<sup>4038</sup> Around 7 and 8 September 1994, Perišić visited Novi Grad on the Una River.<sup>4039</sup> On 18 July 1995, Perišić was in Han Pijesak meeting with *inter alia* Mladić.<sup>4040</sup>

(c) Reporting

(i) Regular Operations Reports

1415. The evidence establishes that in the period of October 1993 until August 1995, the SVK Main Staff was sending reports to the VJ General Staff on quite a regular basis.

1416. In October 1993, the SVK Main Staff started sending weekly operation reports to the VJ General Staff. The provision of those reports was laid down in the following SVK document:

Chief of VJ General Staff Operations Administration has agreed for the [SVK] General Staff Operations and Training Organ to submit weekly operation report on the activities of the enemy, our forces and measures taken by SVK General Staff in order to have better insight into the defence of RSK, so the following has been done:

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session, Ex. P2783, Ratko Mladić's notebook, 1995, pp 1-4; on 16 February 1995 - Ex. P2783, Ratko Mladić's notebook, 1995, p. 5; on 24 July 1995 - Ex. P2783, Ratko Mladić's notebook, 1995, pp 17-18; on 23 August 1995 at the SDC session - Ex. P713, Minutes from the 42<sup>nd</sup> Session of the SDC, 23 August 1995; on 25 and 29 August 1995 in Dobranovci - Ex. P230, Notes of the Meeting Held in Dobanovci, 25 August 1995; P232, Notes of Meeting Held in Dobanovci, 30 August 1995. *See also* Ex. P1296, Intercepted Conversation, 1 May 1995; Ex. P1338, Intercepted Conversation, 7 May 1995; Ex. P797, Stenographic Transcript of the 41st Session of the SDC, 14 August 1995, p. 25.

<sup>4034</sup> For the meeting of 9 July 1995 – *see* Ex. P1455, Intercepted Conversation, 9 July 1995; Ex. P2276, Intercepted Communication, 9 July 1995; Ex. P1933, Intelligent Report of the HVO, 10 July 1995; and for the one in autumn 1995 (after the fall of the RSK) – *see* Siniša Borović, T. 14092; Vladimir Rodić, T. 14220-14221.

<sup>4035</sup> *See also* Ex. P792, Stenographic Transcript of the 27<sup>th</sup> Session of the SDC, 27 September 1994, pp 86, 93, mentioning that Perišić went to discuss things with Mladić.

<sup>4036</sup> Ex. P1824, Drina Corps Combat Report, 7 January 1994.

<sup>4037</sup> Ex. P507, Diary of Nikola Tošović, 1994, p. 2; Ex. P505, Transcript of Nikola Tošović Deposition Hearing, 13 December 2008, pp 7-13.

<sup>4038</sup> Petar Škrbić, T. 11740-11741; Ex. D344, Excerpts from Mladić's diary, 12 August 1994.

<sup>4039</sup> Ex. P2861, Forward Command Post 3 Intelligence sent to SVK Main Staff re: Perišić Secret Visit to "Breza-94" with Handwritten note, 11 September 1994.

<sup>4040</sup> Exs P2800-P2805, Lešić Photos of Perišić with Mladić and others in Crna Rijeka, 18 July 1995; Ex. P2705, Copies of three photos of Perišić in uniform sitting with Mladić and others, including General Milan Gvero, 18 July 1995; Ned Krayishnik, T. 9568-9569. For the meeting concerning release of the French pilots, *see supra* paras 1378-1384.

-SVK General Staff Command has started to report to Operations Administration by sending a summary of weekly report.<sup>4041</sup>

1417. The task of operative reporting started functioning in November 1993.<sup>4042</sup> On 10 November 1993, the Commander of the SVK Main Staff set forth a detailed procedure providing for reporting from the SVK to the VJ General Staff on a twice-per week basis:

In order to achieve full and high-quality drawing up of the combat reports and their timely submission to the VJ GŠ[...]

1. A combat report shall be submitted to the FRY VSO[...] twice a week (on Mondays and Thursdays).
  2. A combat report, which is to be drawn up and submitted, shall contain the following information:
    - 2.1. Enemy – situation, intentions, possibilities, combat activities carried out [...]
    - 2.2. Our forces: combat readiness status, planning, carrying out of the combat activities and results. Managing and commanding and problems. Training: commanding personnel, commands, units, recruits, critical fields etc. [...]
    - 2.2.1. Combat morale status: positive indicators, negative actions, problems and causes [...]
    - 2.2.2. Material and health security: men, situation and problems [...]
    - 2.2.3. Mobilization and personnel issues [...]
    - 2.2.4. Security: security situation in units and in the territory [...]
  3. Cooperation with the UNPROFOR [...]
  4. Conclusions and forecast:
    - 4.1. Enemy [...]
    - 4.2. Status of our forces, conditions for problem solving [...]
    - 4.3. Situation in the territory: overall influence on the SVK, direction and the intensity [...]
  5. Drafter of the report NŠ [...] SVK.
- Report items shall be completed by 14:00 hrs. each Monday and Friday, and shall be submitted to the [Operations and Training Organ], which shall further integrate, process and submit them by 20.00 hrs to the FRY VSO [...].<sup>4043</sup>

1418. Miodrag Simić, a member of the VJ General Staff administration, testified that on several occasions Perišić unsuccessfully requested the SVK and VRS Main Staffs to submit timely reports to the VJ.<sup>4044</sup> At the same time, there is evidence of many examples of reports prepared in line with the abovementioned procedure and which between November 1993 and 26 August 1995 were sent weekly by the SVK to the Operations Centre of the VJ General Staff, as well as to Perišić.<sup>4045</sup> There is evidence that occasionally reports were sent more frequently - e.g. in April 1995 - even daily.<sup>4046</sup>

<sup>4041</sup> Ex. P1797, Report by SVK on Cooperation with VJ General Staff, October 1993, p. 2.

<sup>4042</sup> Ex. P2156, Memorandum on Co-ordination between the VJ, VRS and SVK, 19 November 1993.

<sup>4043</sup> Ex. P1023, SVK Main Staff Command Order, 10 November 1993; Mile Novaković, T. 13244-13245.

<sup>4044</sup> Miodrag Simić, T. 10016. For the problems in the process of reporting at the beginning and in mid-1993 – see Ex. P2175, Documents Regarding Meetings between SVK, VRS and VJ Chiefs of Staff, fall 1993, Doc IDs 0630-5906 and 0630-5908; Ex. P1617, Request of the VJ General Staff to the VRS and SVK Main Staffs to Provide Reports, 6 February 1993; Ex. D209, Letter from Blagoje Kovačević to the Chief of the VJ General Staff; Miodrag Simić, T. 10028. See also Mile Novaković, T. 13106-13109, 13244, 13247-13249, testifying *inter alia* that the information was requested and not ordered and that the VJ was the General Staff of the state which they considered to be their home ethnic state and if any other General Staff had been friendly to the SVK, they would have also received such reports.

<sup>4045</sup> MP-80, T. 8398, 8400 (closed session). See for 1993 – Ex. P1027, SVK Regular Operations Report to the FRY SDC, Slobodan Milošević and Perišić, 9 December 1993; Ex. P1017, Operations Report re: Personnel and Logistical Assistance of the VJ, 21 December 1993; Ex. P1042, SVK Main Staff Regular Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 24 December 1993; Ex. P1043, SVK Main Staff Regular

1419. Similarly, the evidence shows that the VRS copied the VJ General Staff, or Perišić personally, on the operations reports sent, *inter alia*, to the President of RS. According to Miodrag Simić this practice started even before Perišić became Chief of the VJ General Staff.<sup>4047</sup> The Trial Chamber was presented with many such reports sent between 11 April 1994 and 28 August 1994 that included sections on enemy activities, the situation in the VRS Corps and combat actions carried out by the VRS units.<sup>4048</sup> Simić, while commenting on one of these reports, called it “a high-quality comprehensive document”.<sup>4049</sup> Although the Trial Chamber has not been provided with reports for every day in the period relevant to the Indictment, the evidence suggests that the VRS

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Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 31 December 1993; for 1994 – see Ex. P1019, SVK Main Staff Operations Report, 7 January 1994; Ex. P1031, SVK Main Staff Regular Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 27 February 1994; Ex. P1029, SVK Report Regarding Logistical Assistance, 6 March 1994; Ex. P1030, SVK Report Regarding Personnel Assistance, 13 March 1994; Ex. P1032, SVK Main Staff Regular Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 20 March 1994; Ex. P1021, SVK Report Addressed to S. Milošević, M. Martić and M. Perišić, 3 April 1994; Ex. P1044, SVK Main Staff Regular Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 10 April 1994; Ex. P1033, SVK Main Staff Regular Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 24 April 1994; Ex. P1034, SVK Main Staff Regular Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 8 May 1994; Ex. P2335, SVK Main Staff Report to the VJ General Staff, President of the RSK and the President of Serbia, 15 May 1994.; Ex. P1028, SVK Report Addressed to S. Milošević, M. Martić and M. Perišić, 22 May 1994; Ex. P1035, SVK Main Staff Regular Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 28 May 1994; Ex. P1036, SVK Main Staff Regular Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 12 June 1994; Ex. P1037, SVK Main Staff Regular Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 26 June 1994; Ex. P1038, SVK Main Staff Regular Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 27 June 1994; Ex. P1022, SVK Report Addressed to S. Milošević, M. Martić and M. Perišić, 10 July 1994; Ex. P1039, SVK Main Staff Regular Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 17 July 1994; Ex. P1040, SVK Main Staff Regular Operations Report, 24 July 1994; Ex. P1045, SVK Main Staff Regular Operations Report, 31 July 1994; Ex. P1026, Regular Operations Report on the Situation in Croatia and BiH Submitted to Slobodan Milošević, 14 August 1994; Ex. P1041, SVK Main Staff Regular Operations Report Addressed to S. Milošević, M. Martić and M. Perišić, 25 September 1994; for 1995 – see Ex. P1020, SVK Main Staff Regular Combat Report, 10 April 1995; Ex. P1054, Operations Report on the Aggression Against the RSK and the SVK Activities between 4 August and 10 August 1995, 26 August 1995. See also Ex. P1051, SVK Main Staff Regular Combat Report, 11 November 1993, similar report but sent directly to the SDC. For the reports sent by the VRS, see *infra* para. 1419.

<sup>4046</sup> MP-80, T. 8398-8400 (closed session). See Branko Gajić, T. 10861-10863, 10936-10937; Ex. P1926, Report of the SVK Security Department, 1 July 1994. But see Miodrag Simić, T. 10038-10039, testifying that the SVK reports were irregular and incomplete.

<sup>4047</sup> Miodrag Simić, T. 10016.

<sup>4048</sup> See Ex. P889, VRS Main Staff Report Signed by Lt Col Gen Milovanović, 11 April 1994; Ex. P1501, Report by the VRS Main Staff, 12 April 1994; Ex. P891, VRS Main Staff Situation Report to *inter alia* RS President, 14 April 1994; Ex. P1508, Report by the VRS Main Staff, 17 April 1994; Ex. P1502, Report by the VRS Main Staff, 4 May 1994; Ex. P888, VRS Main Staff Situation Report to *inter alia* RS President, VJ Chief of General Staff, 15 May 1994; Ex. P890, VRS Main Staff Situation Report to *inter alia* RS President, VJ Chief of General Staff, 16 May 1994; Ex. P1489, Report by the VRS Main Staff, 17 May 1994; Ex. P1490, Report by the VRS Main Staff, 18 May 1994; Ex. P1491, Report by the VRS Main Staff, 19 May 1994; Ex. P1492, Report by the VRS Main Staff, 20 May 1994; Ex. P1493, Report by the VRS Main Staff, 21 May 1994; Ex. P1494, Report by the VRS Main Staff, 22 May 1994; Ex. P1495, Report by the VRS Main Staff, 23 May 1994; Ex. P1496, Report by the VRS Main Staff, 24 May 1994; Ex. P1497, Report by the VRS Main Staff, 25 May 1994; Ex. P1498, Report by the VRS Main Staff, 26 May 1994; Ex. P1499, Report by the VRS Main Staff, 27 May 1994; Ex. P1509, Report by the VRS Main Staff, 29 May 1994; Ex. P1500, Report by the VRS Main Staff, 31 May 1994; Ex. P1505, Report by the VRS Main Staff, 6 June 1994; Ex. P1504, Report by the VRS Main Staff, 29 June 1994; Ex. P1507, Report by the VRS Main Staff, 4 July 1994; Ex. P1511, Report by the VRS Main Staff, 19 July 1994; Ex. P1506, Report by the VRS Main Staff, 27 July 1994; Ex. P1503, Report by the VRS Main Staff, 4 August 1994; Ex. P1510, Report by the VRS Main Staff, 28 August 1994.

<sup>4049</sup> Miodrag Simić, T. 10017, commenting on Ex. P1489, Report by the VRS Main Staff, 17 May 1994.

sent reports to the VJ General Staff on a daily basis at least until 19 September 1995.<sup>4050</sup> On that day, Perišić sent a request to the VRS Main Staff to accept a group of VJ liaison officers whose task would be to compile daily combat reports to be sent to the VJ General Staff<sup>4051</sup> and issued an order regarding details of forming such a team to be dispatched as of 21 September 1995.<sup>4052</sup> According to Miodrag Simić, however, such teams were never sent to the VRS.<sup>4053</sup>

1420. The evidence confirms that the VRS reports were received by Perišić. It was common practice for a document addressed to the Chief of the VJ General Staff personally to be delivered *directly* to him.<sup>4054</sup> An order dated 1 July 1994 also instructed the “duty operations team” of the VJ General Staff to forward the daily VRS reports each morning to the Cabinet of the Chief of the VJ General Staff.<sup>4055</sup>

1421. In addition to the VJ General Staff receiving regular combat reports from the VRS Main Staff, the operations duty team of the VJ General Staff was in direct contact with the VRS and could make requests for specific information. In a memorandum dated 11 May 1994, the VJ General Staff requested the VRS Main Staff to provide information on the disposition and strength of forces in RS at the coordination meeting to be held on 19 May 1994, and to “ensure that there is a phone contact through a secure line between the VJ General Staff Duty Team Leader and yours, every day at 06:00 hrs and 20:00 hrs”.<sup>4056</sup>

1422. The SVK and the VRS were also receiving some reports and/or information from the VJ.<sup>4057</sup>

(ii) Reporting during Operation “Pauk”

1423. Novaković testified that during Operation “Pauk” he sent combat reports to Perišić, the SVK Main Staff, and “from time to time” to the Serbian State Security Service to transmit to the attention

<sup>4050</sup> Ex. P2848, Order re: VJ General Staff Duty Team, 1 July 1994, p. 1, referring to daily reports received from the VRS; Ex. D237 (under seal); Ex. P2758, Proposal of VJ General staff 1<sup>st</sup> Administration to send VRS Main Staff Communications Liason Teams, signed by Perišić, 19 September 1995, p. 2, in which Perišić submitted a proposal to the VRS Main Staff which if accepted would lead to the withdrawal of the VJ request for the delivery of the VRS daily combat reports. *See also* Ex. P2204, Transcript of the Collegium of the Chief of the VJ General Staff, 18 September 1995, Doc ID 0618-7234, p. 2.

<sup>4051</sup> Ex. P2758, Proposal of VJ General staff 1<sup>st</sup> Administration to send VRS Main Staff Communications Liason Teams, signed by Perišić, 19 September 1995; Ex. D237 (under seal).

<sup>4052</sup> Ex. P2759, Order of the Chief of VJ General Staff, 19 September 1995.

<sup>4053</sup> Miodrag Simić, T. 10136 (private session).

<sup>4054</sup> Miodrag Simić, T. 10017.

<sup>4055</sup> Ex. P2848, Order Regarding VJ General Staff Duty Team, 1 July 1994.

<sup>4056</sup> Ex. P2847, VJ General Staff Memo on Deployment of Forces in Corridor, 11 May 1994. The VJ General Staff sent a similar memorandum to the SVK Main Staff on the same date: *see* Ex. P2177, Letter from VJ General Staff to SVK Main Staff, 11 May 1994.

<sup>4057</sup> MP-80, T. 8398 (closed session); Ex. P2859, Intelligence from VJ General Staff forwarded to Čeleketić, 28 December 1994; MP-5, T. 2361-2362, 2365, 2444 (private session), testifying that there was an exchange of data between the operations centre of the 7<sup>th</sup> Corps of the VRS and a radar position in Banovci belonging to the VJ; Ex. P394 (under seal).

of Milošević.<sup>4058</sup> He would send them to Perišić “about once a week”.<sup>4059</sup> Novaković also stated that he sent “extraordinary combat reports to Perišić to “keep him posted of the situation”.<sup>4060</sup>

(iii) SVK and VRS Intelligence and Security Administrations’ Reports

1424. Branko Gajić, testified that the Security Administration had “some *ad hoc* contacts and exchange[s] of information” with the security bodies of the VRS and SVK.<sup>4061</sup> However, according to him, it had “no formal relationship” with its counterparts in the two other armies.<sup>4062</sup> He also testified that the VJ Security Administration never requested information from the VRS and SVK security organs nor invited their representatives to participate in VJ meetings.<sup>4063</sup>

1425. At the same time, the Trial Chamber has been presented with evidence showing that the security organs of the SVK sent reports to its counterparts in the VJ.<sup>4064</sup> According to Branko Gajić, the Security Administration of the General Staff obtained sufficient information from the “official organs” and there was no need to have its own personnel deployed in the RSK or in RS.<sup>4065</sup>

1426. Rade Rašeta testified that as Chief of the Security Department in the SVK Main Staff he was in daily contact with the Security Administration of the VJ General Staff and in certain cases he reported to the chief of the latter.<sup>4066</sup> The reports concerned the personnel of the VJ who were sent for “temporary service” to the security sector in the SVK.<sup>4067</sup> Rašeta testified:

In view of the fact that the security service of the SVK used all instructions, all the rules, all special operational and technical means and cadres from the security of the General Staff of the Federal Republic of Yugoslavia, I had the duty, pursuant to all the applicable special measures and special measures as regulated by all our regulations, to report regularly to the Security Administration of the General Staff of the Federal Republic of Yugoslavia.<sup>4068</sup>

<sup>4058</sup> Mile Novaković, T. 13461-13463.

<sup>4059</sup> Mile Novaković, T. 13462-13465. *See* Ex. P2927, Combat Report from Novaković, 3 May 1995, Doc ID 0280-6335.

<sup>4060</sup> Mile Novaković, T. 13462-13463.

<sup>4061</sup> Branko Gajić, T. 10841.

<sup>4062</sup> Branko Gajić, T. 10841.

<sup>4063</sup> Branko Gajić, T. 10849, T. 10870-10872. *See also* Ex. D267, KSJ Command no. 138-4-1 – Warning Regarding Releasing Communications to Unauthorized Individuals, 27 September 1995.

<sup>4064</sup> *See* Ex. P1926, Report of the SVK Security Department, 1 July 1994, reporting on situation in Autonomous Province of Western Bosnia; Ex. P1018, SVK Security Department Report Addressed to the VJ General Staff Security Department, 3 August 1995.

<sup>4065</sup> Branko Gajić, T. 10854.

<sup>4066</sup> Rade Rašeta, T. 5912-5917, 5919-5921, regarding certain VJ soldiers who were under the scrutiny of the security organs of the VJ; Ex. P2334, Report from the SVK Main Staff to the VJ General Staff Regarding the Course of the War, 2 May 1995; Ex. P1018, SVK Security Department Report Addressed to the VJ General Staff Security Department, 3 August 1995.

<sup>4067</sup> Rade Rašeta, T. 5913.

<sup>4068</sup> *Ibid.*

At the same time, he admitted that he did not have a duty to send reports to the VJ General Staff concerning other matters.<sup>4069</sup>

1427. The evidence also shows that the senior members of the Security Administrations of the SVK and VRS Main Staffs occasionally met with their VJ counterparts in Belgrade and passed on information about the military situation in the RSK and RS.<sup>4070</sup>

1428. The Security Department of the SVK Main Staff was responsible for preparing parts of combat reports which were regularly dispatched to the VJ and which formed part of the regular operations reports discussed above.<sup>4071</sup>

1429. The Chamber notes that on 22 September 1993, the Intelligence Administration of the VJ General Staff reported: “together with intelligence organs of the [SVK] and the VRS we have established a system of mutual daily reporting of all significant data of interest to all three parties”.<sup>4072</sup>

1430. On 23 November 1994, the 2<sup>nd</sup> Administration of the VJ General Staff sent a coded telegram to the VRS Main Staff, stating:

On proposal of the 2<sup>nd</sup> Administration, the Chief of the General Staff of the Army of Yugoslavia Col Gen M. Perišić has agreed to dispatch one officer from the 2<sup>nd</sup> Administration of the GŠ to the GŠ VRS Intelligence Organ, with the task of assisting your organs in the processing of information on the activities and the combat engagements of the enemy forces *and the timely submission of the said to this Administration*. The cost of his stay in your Command shall be borne by the 2<sup>nd</sup> Administration of the GŠ VJ, while the GŠ VRS shall provide him with the accommodation and include him in your work.<sup>4073</sup>

1431. Rade Orlić testified that in his capacity as the SVK Main Staff Chief Intelligence Officer, he would “from time to time as required” share intelligence information about activities and movements of Bosnian and Croatian armies with the VRS and the VJ.<sup>4074</sup> Orlić would also request

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<sup>4069</sup> Rade Rašeta, T. 5923.

<sup>4070</sup> Branko Gajić, T. 10852-10854, 10859-10861. *See also* MP-80, T. 8397-8398 (closed session).

<sup>4071</sup> Rade Rašeta, T. 5931-5934; Ex. P1023, SVK Main Staff Command Order, 10 November 1993, Section 2.2.4.

<sup>4072</sup> Ex. P2175, Documents Regarding Meetings between SVK, VRS and VJ Chiefs of Staff, fall 1993, Doc ID 0630-5909, p. 1.

<sup>4073</sup> Ex. P1622, Proposal of the VJ General Staff to the Main Staff of the VRS on Secondment of the Personnel, 23 November 1994, p. 1 (emphasis added).

<sup>4074</sup> Rade Orlić, T. 5737, 5751. *See also* Mile Novaković, T. 13264-13265, testifying that there was a limited cooperation between the intelligence organs of the SVK, the VJ, and the VRS. However, according to him such cooperation was intermittent and never useful or “actionable”.

and, at times, would receive information from the VRS or the VJ when necessary.<sup>4075</sup> This type of communication was transmitted using telegrams.<sup>4076</sup>

1432. Similarly, the evidence shows that the Intelligence and Security Section of the VRS Main Staff was copying the VJ General Staff Security Administration and/or Intelligence Administration on its intelligence reports, even on a daily basis during some periods.<sup>4077</sup>

(iv) Ad Hoc Reports and Communication Lines

1433. The evidence shows that Perišić was also receiving *ad hoc* reports from prominent figures in the SVK and the VRS. The Trial Chamber has been presented with some reports sent by the Commander of the SVK Main Staff directly to Perišić.<sup>4078</sup> Similarly, on 15 August 1995, Perišić received a report from the Air-Force and Anti-Aircraft Defence Organ of the SVK.<sup>4079</sup> The record also includes a report sent on 11 April 1994 by Ratko Mladić directly to Perišić.<sup>4080</sup> The VJ General Staff was also copied on some reports sent by Mladić to various RS political and military authorities.<sup>4081</sup> Moreover, the document pertaining to the discussion held on 15 September 1995, mentions a telegram sent by Milovanović (the Chief of Staff of the VRS Main Staff) to Perišić informing him about the VRS territorial losses.<sup>4082</sup>

1434. There were also encoded lines of communication between the VJ General Staff and the SVK Main Staff, the SVK and Slobodan Milošević, as well as the VJ General Staff and the VRS Main

<sup>4075</sup> Rade Orlić, T. 5738-5739, 5766-5767; see Ex. P2859, Intelligence from VJ General Staff forwarded to Čeleketić, 28 December 1994; Ex. P1621, Report of the VJ General Staff to the SVK Main Staff, 11 August 1994.

<sup>4076</sup> Rade Orlić, T. 5767.

<sup>4077</sup> For 1993 – see Ex. D547, Intelligence Report of the VRS Main Staff, 15 September 1993; for 1994 – see Ex. P2187, VRS Main Staff Intelligence Report, 9 August 1994; for 1995 – see Ex. P2185, VRS Main Staff Intelligence Report, 11 May 1995; Ex. P2179, VRS Main Staff Intelligence Report, 14 May 1995; Ex. P1831, VRS Intelligence Report, 18 May 1995; Ex. P2184, VRS Main Staff Intelligence Report, 19 May 1995; Ex. P2178, VRS Main Staff Intelligence Report, 21 May 1995; Ex. P2183, VRS Main Staff Intelligence Report, 25 May 1995; Ex. P2180, VRS Main Staff Intelligence Report, 26 May 1995; Ex. P2182, VRS Main Staff Intelligence Report, 27 May 1995; Ex. P2188, VRS Main Staff Intelligence Report, 25 July 1995; Ex. P2189, VRS Main Staff Intelligence Report, 26 July 1995; Ex. P2190, VRS Main Staff Intelligence Report, 27 July 1995; Ex. P2191, VRS Main Staff Intelligence Report, 28 July 1995; Ex. P2186, VRS Main Staff Intelligence and Security Report, 30 July 1995; Ex. P2192, VRS Main Staff Intelligence Report, 31 July 1995; Ex. P1854, VRS Report to VJ Security Administration, 11 August 1995.

<sup>4078</sup> Ex. P2816, SVK Combat report sent to Chief of VJ General Staff, 9 September 1994; Ex. P2857, SVK Main Staff Commander Čeleketić Communication to Perišić and Milošević, 7 December 1994; Ex. P1024, SVK Main Staff Interim Combat Report to VJ Chief of General Staff, 9 September 1994. See also Ex. P1379, Intercepted Conversation, 2 May 1995, p. 7, where Perišić confirms that he receives information from Čeleketić; Siniša Borović, T. 14006, testifying that on two occasions Mile Mrkšić submitted his reports on the events in the RSK (Operation Storm).

<sup>4079</sup> Ex. P2756, Report from SVK Assistant Commander for Air Force and Anti-Aircraft Defence Branislav Petrović to VJ CGS.

<sup>4080</sup> Ex. P887, VRS Main Staff Dispatch Signed by Mladić Addressed to the Chief of VJ General Staff, 11 April 1994.

<sup>4081</sup> Ex. P2181, VRS Main Staff Document Regarding Movement of Croatian Forces, 19 January 1995.



Staff.<sup>4083</sup> Such lines and their supporting infrastructure already existed before Perišić assumed the position of the VJ General Staff Commander.<sup>4084</sup> Members of the Main Staffs of the SVK and the VRS, and the VJ General Staff communicated directly through such lines.<sup>4085</sup> There were instances of the SVK Corps Commanders communicating directly with Perišić.<sup>4086</sup> There existed also analogue radio connections between the VJ, VRS and SVK.<sup>4087</sup> Moreover, the evidence shows that at least as of September 1995, Perišić had direct communication with the Commander of the VRS East Bosnia Corps and indirectly also with the VRS Herzegovina Corps.<sup>4088</sup>

1435. Further, there existed an intelligence centre in Petrova Gora – in the area of the SVK 21<sup>st</sup> Kordun Corps.<sup>4089</sup> This centre was part of the intelligence department of the VJ General Staff and was in charge of monitoring activities of foreign military formations and reporting this to the intelligence administration of the VJ General Staff.<sup>4090</sup> This centre was not subordinated to the SVK.<sup>4091</sup>

(d) Conclusion

1436. The Trial Chamber finds that there were multiple channels through which the information flowed from SVK and the VRS to the VJ General Staff. Through the system of regular reports, monthly meetings in Belgrade, various other *ad hoc* instances of reporting and exchanges of

<sup>4082</sup> Ex. P2193, Transcript of the Collegium of the Chief of the VJ General Staff held on 14 September 1995, 29 December 1995.

<sup>4083</sup> Siniša Borović, T. 13908; MP-80, T. 8397-8398 (closed session). *See also* Miodrag Simić, T. 10340-10341.

<sup>4084</sup> Siniša Borović, T. 13908-13909. *See* Ex. P2764, p. 8, referring to the main radio relay link between Belgrade-Banja Luka-Knin.

<sup>4085</sup> For the communications between the SVK and the VJ - *see e.g.* Ex. P2260, Intercepted Communication, 7 August 1995. *See also* MP-80, T. 8559 *et seq.* (closed session) - although only based on assumption of the witness; *see e.g.* Ex. P1297, Intercepted Conversation, 1 May 1995; Ex. P1316, Intercepted Conversation, 2 May 1995, both mentioning that Perišić was in contact with Milan Čeleketić. Ex. P2279, Intercepted Communication, 5 August 1995, depicting a conversation between Perišić and the Chief of the 15<sup>th</sup> Corps of the SVK; Ex. P2286, Intercepted Communication, 2 May 1995; Ex. P1447, Intelligence Note, 24 August 1994; Ex. P1454, Intercepted Conversation, 9 July 1995; Ex. P2281, Intercepted Communication, 9 May 1995; Ex. P1459, Intercepted Conversation, 5 August 1995; Ex. P1460, Intercepted Conversation, 5 August 1995; Ex. P1461, Intercepted Conversation, 6 August 1995; For the communications between the VRS and the VJ - *see e.g.* Ex. P1432, Intelligence Note, 22 October 1993. *See also* Ex. P2269, Intercepted Communication, 23 November 1995; Ex. P2266, Intercepted Communication, 19 November 1995; Ex. P2271, Intercepted Communication, 1 December 1995.

<sup>4086</sup> Ex. P2286, Intercepted Communication, 2 May 1995; Ex. P1333, Intercepted Conversation, 6 May 1995, p. 26. *See* Ex. P1456, Intelligence Note, 10 July 1995; Ex. P2279, Intercepted Communication, 5 August 1995, depicting a conversation between Perišić and the Chief of the 15<sup>th</sup> Corps of the SVK; Ex. P1447, Intelligence Note, 24 August 1994.

<sup>4087</sup> Miodrag Simić, T. 10159; Ex. P1558, Chart of the VRS Daily Communication System.

<sup>4088</sup> Ex. P2195, Transcript of the Collegium of the Chief of the VJ General Staff, 14 September 1995, Doc ID 0618-7188, p. 7; Ex. P2204, Transcript of the Collegium of the Chief of the VJ General Staff, 18 September 1995, Doc ID 0618-7222, p. 4.

<sup>4089</sup> Rade Rašeta, T. 5938-5939.

<sup>4090</sup> Rade Rašeta, T. 5939.

<sup>4091</sup> *Ibid.*

information, during his tenure as Chief of the VJ General Staff, Perišić was well informed of all important aspects on the functioning of the SVK and the VRS as well as their activities.

1437. The exact content of subjects discussed at the meetings and/or reports sent to the VJ General Staff by the Main Staffs of the SVK and the VRS will be discussed in a separate part of the Judgement devoted to Perišić's knowledge of the crimes charged in the Indictment.<sup>4092</sup>

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<sup>4092</sup> See *infra* section VI.J.

## **J. Perišić's Knowledge of the Crimes Committed in Sarajevo and Srebrenica**

### **1. Submissions of the Parties**

1438. The Prosecution submits that Perišić knew that the VRS had a discriminatory intent to commit the crimes in BiH and that the VRS committed ethnic cleansing in BiH. It posits that Perišić had this knowledge before becoming Chief of the VJ General Staff and “this knowledge continued throughout his tenure”.<sup>4093</sup> The Prosecution also submits that it is not necessary to establish that Perišić had knowledge of specific incidents alleged in the Indictment.<sup>4094</sup>

1439. The Defence argues that the Prosecution failed to demonstrate that the VRS was engaged in criminal behaviour or that Perišić knew of that criminal behaviour.<sup>4095</sup> It submits that UNSC resolutions that refer to wrongful conduct usually attributed such conduct to Bosnian Serb paramilitaries and not to the VRS.<sup>4096</sup>

1440. The Trial Chamber will first consider whether Perišić was aware of criminal conduct and discriminatory intent on the part of the VRS in the BiH theatre of war generally and second, whether he knew of crimes committed by the VRS specifically in Sarajevo and Srebrenica. Perišić's awareness of the discriminatory intent of the VRS and criminal conduct in this context will serve as a basis for the finding as to whether Perišić knew that crimes would probably be committed in Sarajevo and Srebrenica, and that crimes committed in those areas would probably be followed by further crimes.

### **2. Perišić's Knowledge of the VRS's Criminal Conduct**

1441. The trial record includes evidence regarding Perišić's knowledge of the VRS's conduct from periods preceding and following his appointment as Chief of the VJ General Staff. The Trial Chamber will discuss the evidence relating to these two periods in turn.

#### **(a) Evidence Preceding Perišić's Appointment as Chief of the VJ General Staff**

1442. The Trial Chamber will analyse whether the evidence demonstrates that Perišić was aware of the VRS's discriminatory intent and criminal conduct prior to his appointment as Chief of the VJ General Staff.

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<sup>4093</sup> Prosecution Final Brief, paras 563-565, 581.

<sup>4094</sup> Closing Arguments, T. 14676.

<sup>4095</sup> Defence Final Brief, paras 820-821.

<sup>4096</sup> *Ibid.*

1443. The Trial Chamber recalls that prior to his appointment as Chief of the VJ General Staff on 26 August 1993, Perišić served as the commander of the JNA Artillery School Centre in Zadar, Croatia until January 1992, when he was appointed Commander of the JNA 13<sup>th</sup> Corps in BiH. He held this position until the formal withdrawal of the JNA from BiH in May 1992, when he became the Chief of Staff and then Commander of the 3<sup>rd</sup> Army of the VJ.<sup>4097</sup>

1444. In his OTP interview, Perišić stated that in April 1992, when he was Commander of the JNA 13<sup>th</sup> Corps Bileća Corps in BiH, he refused Karadžić's offer to become VRS Commander.<sup>4098</sup> Perišić explained that among his reasons for doing so had been the fact that "they wanted [an] ethnically clean army, and [he] was against that".<sup>4099</sup>

1445. In the same interview, Perišić noted that the Bileća Corps had responsibility over an area that contained three big Muslim enclaves, Stolac, Kula Fazlagića, and Podveležje. Perišić declared that while he was present in the area, "not a single Muslim was killed by soldiers and not a single soldier was killed by Muslims", but that after he left in June 1992, "the exodus in this territory started".<sup>4100</sup>

1446. The OTP interview is corroborated by the following evidence. On 27 May 1993, when Perišić was the 3<sup>rd</sup> VJ Army Commander,<sup>4101</sup> the Supreme Command Staff held a meeting with the commanders of the VJ's Armies, which Perišić was ordered to attend.<sup>4102</sup> At the meeting, FRY President Dobrica Ćosić commented that the assistance of the VJ to the VRS and SVK "was huge, so the reserves have dwindled".<sup>4103</sup> He added: "[w]e unnecessarily and irrationally used up massive war reserves. That is particularly apparent in Bosnia and Herzegovina. How could we allow one commander using more than 5,000 shells around Žepa to unnecessarily destroy Muslim houses? For such an irrational act, he should, at the very least, have been stripped of his rank of officer".<sup>4104</sup>

1447. On 26 August 1993, the day on which Perišić became Chief of the VJ General Staff, the VRS 1<sup>st</sup> Krajina Corps Command wrote a congratulatory letter to him, reflecting the desire to join the VJ and VRS to create a unified Serbian state:

Your appointment comes at a difficult and complicated time, when the Serb people are fighting for their freedom and dignity, proving to the whole world that their fight is justified, a fight that is

<sup>4097</sup> See *supra* para. 2.

<sup>4098</sup> Ex. P803, Transcript of Interview with Perišić, 8 December 2003, p. 4.

<sup>4099</sup> *Ibid.*

<sup>4100</sup> Ex. P803, Transcript of Interview with Perišić, 8 December 2003, p. 6.

<sup>4101</sup> Ex. P810, Transcript of Interview with Perišić, 23 January 2004, p. 6. See Ex. P815, Transcript of Interview with Perišić, 25 January 2004, p. 15.

<sup>4102</sup> See Ex. P2887, Telegram Calling for a Meeting of the Commanders of the Armies, 25 May 1993.

<sup>4103</sup> Ex. P2888, Record of the Closing Remarks at the Meeting of the Supreme Command Staff, 27 May 1993, p. 2.

<sup>4104</sup> *Ibid.*

becoming increasingly acknowledged, justified, as it fills us with confidence that that we will withstand until a final victory.

We wish you to settle at your new duty as soon as possible, to choose your associates, transform the army where needed, removing the weaknesses of the old system and the former JNA, creating together a unified Serbian state and army, a state in which all the Serbs will live together, proudly and with dignity.<sup>4105</sup>

1448. The Trial Chamber is satisfied that this evidence shows that by the time he became Chief of the VJ General Staff, Perišić knew that the VRS wanted an ethnically pure army and Serbian state, and that he was aware of instances of criminal behaviour by the VRS against Muslims in BiH.

1449. In addition to the foregoing evidence of Perišić's direct knowledge, there is evidence suggesting that, prior to Perišić's appointment as Chief of the VJ General Staff, the FRY leadership was aware of allegations of ethnic cleansing in BiH. This evidence is summarised briefly below.

1450. Between May 1992 and May 1993, the UNSC adopted several resolutions and issued statements expressing alarm about ethnic cleansing and other crimes committed in BiH, although the VRS was not expressly accused of those crimes:

- (i) Resolution 752 of 15 May 1992 called upon all parties to the conflict to ensure that "the forcible expulsion of persons from the areas where they live and any attempts to change the ethnic composition of the population [...] cease immediately".<sup>4106</sup>
- (ii) On 30 May 1992, Resolution 757 imposed sanctions on the FRY, "deploring [...] that [this call] has not been heeded".<sup>4107</sup>
- (iii) On 4 August 1992, the UNSC President issued a statement referring to continued reports of widespread violations of international humanitarian law ("IHL") within the territory of the former Yugoslavia and in the BiH particularly.<sup>4108</sup>
- (iv) Resolution 771 of 13 August 1992 strongly condemned the practice of "ethnic cleansing" and expressed "grave alarm at continuing reports of widespread violations of [IHL] occurring within the territory of the former Yugoslavia and especially in [BiH], including reports of mass forcible expulsion and deportation of civilians, [...] deliberate

<sup>4105</sup> Ex. P1801, Letter from 1<sup>st</sup> Krajina Corps to Perišić, 26 August 1993.

<sup>4106</sup> Ex. P201, UNSC Resolution 752, 15 May 1992.

<sup>4107</sup> Ex. P202, UNSC Resolution 757, 30 May 1992.

<sup>4108</sup> Ex. P2436, Statement by the President of the UNSC, 4 August 1992.

attacks on non-combatants, hospitals and ambulances, [...] and wanton devastation and destruction of property”.<sup>4109</sup>

(v) Resolution 780 of 6 October 1992 again expressed grave alarm at continuing reports of widespread violations of IHL occurring within the territory of the former Yugoslavia and especially in BiH, including reports of mass killings and the continuance of the practice of “ethnic cleansing”.<sup>4110</sup> It also called on the UN Secretary-General to establish an impartial Commission of Experts to investigate violations of IHL.<sup>4111</sup>

(vi) Resolution 808 of 22 February 1993 again expressed grave alarm at continuing reports of widespread violations of IHL in the former Yugoslavia including reports of mass killings and the practice of “ethnic cleansing”, and decided that an international tribunal would be established to prosecute persons responsible for serious violations of IHL.<sup>4112</sup>

(vii) Resolution 827 of 25 May 1993 reiterated the UNSC’s grave alarm at continuing reports of widespread and flagrant violations of IHL in BiH, including the practice of “ethnic cleansing”.<sup>4113</sup> Resolution 827 also established the ICTY.<sup>4114</sup>

(viii) On 16 April 1993, the UNSC took note of the ICJ’s Order of 8 April 1993 in which the ICJ had indicated that as a provisional measure, the FRY government should immediately take all measures within its power to prevent genocide.<sup>4115</sup> The UNSC also reaffirmed its condemnation of all violations of IHL, including “ethnic cleansing”; expressed concern about the “pattern of hostilities by Bosnian Serb paramilitary units against towns and villages in eastern Bosnia”; and demanded that the FRY immediately cease the supply of military arms, equipment and services to the Bosnian Serb paramilitary units in BiH.<sup>4116</sup>

(ix) On 24 August 1993, the UNSC passed Resolution 859, which particularly noted that the Bosnian Serb Party had yet to comply with all relevant UNSC resolutions and

<sup>4109</sup> Ex. P2438, UNSC Resolution 771, 13 August 1992, p. 1.

<sup>4110</sup> Ex. P2451, UNSC Resolution 780, 6 October 1992.

<sup>4111</sup> *Ibid.*

<sup>4112</sup> Ex. P2452, UNSC Resolution 808, 22 February 1993. *See also* Muhamed Sacirbey, T. 7233.

<sup>4113</sup> Ex. P2453, UNSC Resolution 827, 25 May 1993.

<sup>4114</sup> *Ibid.*

<sup>4115</sup> Ex. P208, UNSC Resolution 819, 16 April 1993, p. 1. BiH’s application before the ICJ was filed on 20 March 1993 and sought that the FRY cease all of its involvement in violations of international humanitarian law in BiH. On 8 April 1993, the ICJ indicated that as a provisional measure, the FRY government should immediately take all measures within its power to prevent genocide in BiH. The FRY responded to the BiH’s application. Muhamed Sacirbey, T. 7266-7270, 7274-7276; Ex. P2460, ICJ Order of 8 April 1993; Ex. P2461, Letter of the SG of the UN to the President of the UNSC, 29 April 1993.

<sup>4116</sup> Ex. P208, UNSC Resolution 819, 16 April 1993, p. 1.

condemned “all war crimes and other violations of international humanitarian law, by whomever committed, Bosnian Serbs or other individuals”.<sup>4117</sup> The Resolution further expressed “[c]oncern about the continuing siege of Sarajevo, Mostar and other threatened cities”.<sup>4118</sup>

1451. On 18 August 1992, five days after the UNSC issued Resolution 771, the FRY leadership discussed information it had received from the UN about the FRY’s alleged assistance in ethnic cleansing. Milan Panić, President of the Federal Government of the FRY, explained that he had been personally informed by the UN that he should stop the ethnic cleansing in Sanski Most, where 15,000 Muslims had been given eight hours to leave their homes and travel twenty kilometres to Jajce.<sup>4119</sup> Panić expressed deep concern that the FRY could not silence the persistent talk about ethnic cleansing, and that it did not matter what the FRY actually did or said but only “what the whole world thinks”.<sup>4120</sup>

1452. Also in August 1992, the UN Human Rights Commission appointed Tadeusz Mazowiecki as Special Rapporteur to report on the human rights situation in the territory of the former Yugoslavia.<sup>4121</sup> Prior to Perišić’s appointment as Chief of the VJ General Staff, Mazowiecki issued five reports, which concluded that ethnic cleansing had been committed in Serb-controlled areas with the involvement of “Serb soldiers” and “Serbian mercenaries”.<sup>4122</sup> Muhamed Sacirbey, the BiH Ambassador to the UN during the war, testified that Mazowiecki received most of his information on the ground, and that he reviewed the facts in the BiH first-hand.<sup>4123</sup> Sacirbey also testified that Mazowiecki’s reports were extensively covered in the media.<sup>4124</sup>

<sup>4117</sup> Ex. P2474, UNSC Resolution 859, 24 August 1993.

<sup>4118</sup> *Ibid.*

<sup>4119</sup> Ex. P2883, Short Hand Notes from the Session of the Council for Coordination of State Policy, 18 August 1992, p. 18.

<sup>4120</sup> Ex. P2883, Short Hand Notes from the Session of the Council for Coordination of State Policy, 18 August 1992, pp 18-19.

<sup>4121</sup> Muhamed Sacirbey, T. 7198-7199, 7215. *See* Ex. P2439, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 28 August 1992.

<sup>4122</sup> Ex. P2439, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 28 August 1992; Ex. P2440, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 27 October 1992; Ex. P2441, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 17 November 1992; Ex. P2442, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 10 February 1993; Ex. P2443, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 5 May 1993.

<sup>4123</sup> Muhamed Sacirbey, T. 7215.

<sup>4124</sup> Muhamed Sacirbey, T. 7224.

1453. The commission of crimes “by Serbs in Bosnia and Herzegovina” was mentioned at the 6<sup>th</sup> SDC Session on 9 December 1992.<sup>4125</sup> At the 8<sup>th</sup> SDC Session on 12 March 1993, one of Mazowiecki’s reports was mentioned in the context of a discussion on paramilitary formations and alleged human rights violations.<sup>4126</sup>

1454. The evidence demonstrates that prior to Perišić’s appointment as Chief of the VJ General Staff, the FRY leadership monitored what other countries were saying about the FRY’s involvement in the war, and that it was aware of allegations of ethnic cleansing in BiH made by the UN and by Special Rapporteur Mazowiecki.

1455. The following observations and findings on the UNSC Resolutions and the Mazowiecki reports are made by the Majority of the Trial Chamber, Judge Moloto dissenting.

1456. The Majority notes that no direct evidence shows that Perišić had knowledge of the UNSC Resolutions and the Mazowiecki reports issued prior to his appointment as Chief of the VJ General Staff. However, the Majority recalls that these documents expressing alarm about serious violations of IHL, ethnic cleansing and other crimes committed in BiH were public documents.<sup>4127</sup> Furthermore, the Majority notes that between January and May 1992, at a time when the situation was already rapidly deteriorating in BiH, Perišić was stationed in BiH and was therefore directly exposed to these events. Thereafter, in May 1992, Perišić held a position of authority as Chief of Staff and Deputy Commander of the 3<sup>rd</sup> Army within the VJ and in April 1993, he became the Commander of the 3<sup>rd</sup> Army.<sup>4128</sup> As Commander of the 3<sup>rd</sup> Army, Perišić attended meetings of the Supreme Command Staff where the FRY leadership also discussed events related to the conflict.<sup>4129</sup> The Majority also notes that the criminal allegations denounced by the international community were extensively covered in the media<sup>4130</sup> and of such a scale and gravity that the Tribunal was established to investigate and prosecute them. Based on this circumstantial evidence, the Majority finds that the evidence leads to the only reasonable inference that Perišić generally knew of basic allegations of war crimes reported in the UNSC Resolutions and the Mazowiecki reports already prior to his appointment as Chief of the VJ General Staff.<sup>4131</sup>

<sup>4125</sup> Ex. P788, Stenographic Transcript of the 6th Session of the SDC, 9 December 1992, pp 17-18.

<sup>4126</sup> Ex. P2692, Shorthand Notes, 8<sup>th</sup> SDC Session, 12 March 1993, p. 45.

<sup>4127</sup> See *supra* paras 1450-1452.

<sup>4128</sup> Ex. P706, Perišić’s Written Response to a Question from Trial Attorney, 23 July 1998, p. 2.

<sup>4129</sup> See *supra* para. 1446.

<sup>4130</sup> See *infra* section VI.J.3.(c).

<sup>4131</sup> The Prosecution has also submitted into evidence General John Wilson’s final report as Chief of UNPROFOR’s UNMO Group, which was tasked with monitoring the security situation in BiH. The report, dated 15 November 1992, observes that in BiH “[t]here are appalling violations of human rights by all parties but, in particular by Serb forces”, and that “[l]arge scale conventional military operations continue with a view to securing an ethnic division of the Republic”. Ex. P148, Final Report on Tour with UNPROFOR Brigadier Wilson,



(b) Evidence Following Perišić's Appointment as Chief of the VJ General Staff

1457. The Trial Chamber will now consider whether the evidence demonstrates that after being appointed Chief of the VJ General Staff, and throughout the period relevant to the Indictment, Perišić was aware of the VRS's discriminatory intent and propensity to commit crimes.

(i) Statements by Perišić

1458. In his OTP interview, Perišić was questioned about his relationship with Mladić while serving as Chief of the VJ General Staff.<sup>4132</sup> Perišić stated:

Well, he was keeping a certain distance from me, because he knew very well that I was against any illicit actions in the course of implementation of tasks. The entire leadership of the [RS] knew that I was against any destruction of buildings, against any [...] use of force against the civilian population and so on.<sup>4133</sup>

1459. At the 21<sup>st</sup> SDC Session on 7 June 1994, Perišić raised the issue of Muslim military students from the RS and RSK who were completing their education in the VJ. He warned: "this is very important, if we send the Muslims there [*i.e.*, to the RS and RSK], they'll kill them".<sup>4134</sup>

1460. These statements show that Perišić was aware that the VRS was committing crimes against civilians in BiH in the implementation of its objectives and was particularly hostile to Muslims.

(ii) Information Received through the UN and Other Diplomatic Channels

1461. The FRY government received, through the UN and other diplomatic channels, a large amount of information about crimes committed by the VRS against the civilian population in BiH, including "ethnic cleansing".

1462. Sacirbey testified that between May 1992 and the end of 1995, representatives of BiH (although not Sacirbey himself) had extensive contacts with the staff of the FRY mission to the UN, including the FRY ambassador.<sup>4135</sup> These contacts were more extensive towards the end of this period.<sup>4136</sup> Sacirbey testified that the FRY representatives were quite well informed as to the events

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15 November 1992, p. 3. Because there is no indication that the final report was made public during the period relevant to the Indictment, and because General Wilson's testimony dates from 2005, the evidence carries no weight in establishing whether Perišić could be placed on notice of the facts contained therein.

<sup>4132</sup> Ex. P815, Transcript of Interview with Perišić, 25 January 2004, pp 22-23.

<sup>4133</sup> Ex. P815, Transcript of Interview with Perišić, 25 January 2004, p. 23.

<sup>4134</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC held on 7 June 1994, p. 41.

<sup>4135</sup> Muhamed Sacirbey, T. 7131-7132, 7137-7138. *See* Muhamed Sacirbey, T. 7133 (describing the BiH mission to the UN); Muhamed Sacirbey, T. 7136 (describing contacts between Sacirbey's deputy and FRY ambassador Đokić).

<sup>4136</sup> Muhamed Sacirbey, T. 7132.

in BiH.<sup>4137</sup> The issues that the BiH tried to bring to the attention of the FRY representatives included reports on atrocities and military actions within BiH, reports by the UN Secretary-General on the condition of the population, and the effects of military actions on the humanitarian situation, including the delivery of food and medicines.<sup>4138</sup>

1463. Sacirbey also testified that, starting in the fall of 1992, the UNGA and the UNSC held frequent discussions about the war in BiH, and that, as far as he was aware, a representative of the FRY mission had always been present.<sup>4139</sup> The UNSC was able to draw on information from various sources, including UNPROFOR, UN rapporteurs, the EU monitoring system and other organisations of states, individual UN member states, and the media.<sup>4140</sup> The UNSC also received reports from the UN High Commissioner for Refugees and the ICRC.<sup>4141</sup> Sacirbey testified that while the UNSC received some confidential briefings, by and large, most of the information that was available to the UNSC was eventually available to all member states, as well as to diplomatic staff and the media.<sup>4142</sup>

1464. Sacirbey further testified that whenever the BiH UN Mission received relevant information about the war from a credible source, it would pass the information on to the President of the UNSC, or sometimes to the UN Secretary-General or the UNGA, with a request that the information be distributed as a document of that UN organ to all member states, including the FRY.<sup>4143</sup> In some instances, the BiH Mission would send the information directly to the representatives of member states.<sup>4144</sup> Sacirbey testified that the information forwarded by the BiH Mission mostly concerned such topics as the “human situation on the ground”, the “abuse of the population, what we referred to at that time as genocide”, and the “humanitarian situation, the interruption of food and medicines”.<sup>4145</sup> Sacirbey estimated that the BiH Mission forwarded about 200 documents per year, as it tried to convey—to the FRY, to the international community, and to the media—not only individual acts that occurred, but also a “systematic approach on the part of the forces of [the FRY] and their agents in Bosnia”.<sup>4146</sup>

<sup>4137</sup> Muhamed Sacirbey, T. 7139.

<sup>4138</sup> Muhamed Sacirbey, T. 7139.

<sup>4139</sup> Muhamed Sacirbey, T. 7140.

<sup>4140</sup> Muhamed Sacirbey, T. 7141. *See also* Muhamed Sacirbey, T. 7383-7385; Ex. P2479, UNSC Resolution 941, 23 September 1994.

<sup>4141</sup> *See* Muhamed Sacirbey, T. 7383-7385; Ex. P2479, UNSC Resolution 941, 23 September 1994.

<sup>4142</sup> Muhamed Sacirbey, T. 7142-7143.

<sup>4143</sup> Muhamed Sacirbey, T. 7143-7145.

<sup>4144</sup> Muhamed Sacirbey, T. 7144.

<sup>4145</sup> Muhamed Sacirbey, T. 7145.

<sup>4146</sup> Muhamed Sacirbey, T. 7146. Sacirbey further testified that the UNSC also received reports from the UNHCR and the ICRC regarding grave violations of international humanitarian law in the Serb-held territories of BiH. The reports mentioned, *inter alia*, the practice of ethnic cleansing in Banja Luka and Bijeljina, Muhamed Sacirbey, T. 7383-7385; Ex. P2479, UNSC Resolution 941, 23 September 1994.

1465. On 27 May 1994, a Commission of Experts, established pursuant to UNSC Resolution 780,<sup>4147</sup> produced a report in which it examined the evidence of grave breaches of the Geneva Conventions and violations of international humanitarian law committed in the territory of the former Yugoslavia.<sup>4148</sup> The Commission concluded that a policy of “ethnic cleansing” had been put into practice by Serbs in BiH and Croatia and by their supporters in the FRY.<sup>4149</sup> Sacirbey testified that the report was the subject of extensive discussion at the UN—at least prior to the report being published—and was widely discussed and disseminated in the media.<sup>4150</sup> The report was published in its entirety in the Belgrade newspaper *Borba* between 14 July 1994 and 12 August 1994.<sup>4151</sup>

1466. In its report, the Commission of Experts described the pattern of ethnic cleansing in the BiH as follows:

First, Bosnian Serb paramilitary forces, often with the assistance of the JNA, seize control of the area. In many cases, Serbian residents are told to leave the area before the violence begins. The homes of non-Serb residents are targeted for destruction and cultural and religious monuments, especially churches and mosques, are destroyed. Second, the area falls under the control of paramilitary forces who terrorize the non-Serb residents with random killings, rapes and looting. Third, the seized area is administered by local Serb authorities, often in conjunction with paramilitary groups. During this phase, non-Serb residents are detained, beaten, and sometimes transferred to prison camps where further abuse, including mass killings, have occurred.<sup>4152</sup>

1467. The Commission found that the manner in which the policy of ethnic cleansing was carried out by Serbs in Bosnia was “consistent throughout a certain geographic area represented by an arc ranging from northern Bosnia and covering areas in eastern and western Bosnia adjoining the Serb Krajina area in Croatia”, and that the practice of ethnic cleansing was carried out in “strategic areas linking Serbia proper with Serb-inhabited areas of Bosnia and Croatia”.<sup>4153</sup>

1468. The Commission observed that the “JNA and Army of the so-called ‘Bosnian-Serb Republic’ have been involved in carrying out and facilitating the policy and practices of ‘ethnic cleansing’ in certain parts of the territory”, and that the “leaders of Bosnian Serbs influenced,

<sup>4147</sup> Ex. P2451, UNSC Resolution 780, 6 October 1992.

<sup>4148</sup> Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994; Ex. P1535, Annexes to the Final Report of the UN Commission of Experts Established Pursuant to the UNSC Resolution 780 (1992), 27 May 1994.

<sup>4149</sup> Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, para. 133.

<sup>4150</sup> Muhamed Sacirbey, T. 7376-7381. *See also* Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, p. 1; Muhamed Sacirbey, T. 7363-7364.

<sup>4151</sup> Ex. P1112, *Borba* Article Reproducing the Report of the UN War Crimes Commission for Former Yugoslavia, 14 July 1994.

<sup>4152</sup> Ex. P1535, Annexes to the Final Report of the UN Commission of Experts Established Pursuant to the UNSC Resolution 780 (1992), 27 May 1994, para. 110; *see* Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, paras 134-137.

encouraged, facilitated and condoned” the most marginal social elements of Bosnian society to carry out the crimes implementing the policy of ethnic cleansing.<sup>4154</sup> The Commission concluded that the practice of ethnic cleansing was purposeful and systematic, and carried out by “persons from all segments of the Serbian population in the area described: members of the army, militias, special forces, the police and civilians”.<sup>4155</sup>

1469. On 23 September 1994, the UNSC issued Resolution 941, in which it took note of information provided by the UNHCR and the ICRC, contained in other relevant reports, regarding “grave violations of international humanitarian law affecting the non-Serb population in those areas of the [BiH] under the control of Bosnian Serb force”.<sup>4156</sup> The UNSC expressed grave concern at the “persistent and systematic campaign of terror perpetrated by the Bosnian Serb forces in Banja Luka, Bijeljina and other areas of the [BiH] under the control of Bosnian Serb forces”, and emphasised that “this practice of ‘ethnic cleansing’ by the Bosnian Serb forces constitutes a clear violation of international humanitarian law”.<sup>4157</sup> Acting under Chapter VII of the UN Charter, the UNSC demanded that the “Bosnian Serb authorities immediately cease their campaign of ‘ethnic cleansing’”.<sup>4158</sup>

1470. Special Rapporteur Mazowiecki continued to submit reports to the UN on the human rights situation in the territory of the former Yugoslavia until August 1995,<sup>4159</sup> after which Mazowiecki’s successor, Elisabeth Rehn, submitted another report in November 1995.<sup>4160</sup> These reports were released as documents of the UN Economic and Social Council (ECOSOC) and the Human Rights

<sup>4153</sup> Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, para. 131.

<sup>4154</sup> Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, para. 141.

<sup>4155</sup> Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, para. 142.

<sup>4156</sup> Ex. P2479, UNSC Resolution 941, 23 September 1994.

<sup>4157</sup> *Ibid.*

<sup>4158</sup> *Ibid.*

<sup>4159</sup> See Ex. P2444, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 26 August 1993; Ex. P2445, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 21 February 1994; Ex. P2446, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 4 November 1994; Ex. P2447, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 16 January 1995; Ex. P2448, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 5 July 1995; Ex. P2449, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 22 August 1995.

<sup>4160</sup> Ex. P2450, Report of the Special Rapporteur of the Commission on Human Rights, Elisabeth Rehn, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 7 November 1995.

Commission.<sup>4161</sup> They were circulated to the entire UN membership, including the FRY.<sup>4162</sup> Sacirbey testified that these reports were also discussed extensively at the UNSC.<sup>4163</sup>

1471. Mazowiecki's reports brought to light information about instances of murder, rape, forced deportation, ethnic cleansing, detention, denial of access to water and medicine, and destruction of cultural and religious sites.<sup>4164</sup>

1472. The evidence shows that FRY representatives received and were familiar with the content of Mazowiecki's reports.<sup>4165</sup> In a *note verbale* to the ECOSOC sub-commission, the FRY Mission to the UN provided detailed comments on Mazowiecki's sixth periodic report and noted that it had previously responded to Mazowiecki's earlier reports.<sup>4166</sup> Further, Sacirbey testified that FRY representatives were present when the reports were discussed within the UNSC and other UN bodies.<sup>4167</sup> Sacirbey also testified that the reports were discussed in the media including those in the Balkans.<sup>4168</sup>

1473. The case between BiH and Serbia and Montenegro before the ICJ on the application of the Convention on the Prevention and Punishment of the Crime of Genocide also put on notice the FRY authorities of allegations of VRS's discriminatory intent and criminal behaviour. The FRY responded to the BiH's application of 20 March 1993 and the proceedings lasted throughout the Indictment period.<sup>4169</sup>

1474. The following evidence shows that Perišić was generally concerned about and aware of the international community's views about Bosnian Serbs' activity in BiH.

1475. On 23 February 1994, Perišić wrote to Karadžić, Mladić and VRS Corps Commanders, stating that he had received information from reliable sources that "in the EU a mood exists that the smallest of incidents in the territory of the former BH, for which the Serb side could be blamed, could be used as a cause for utilising close air support to UN forces".<sup>4170</sup>

<sup>4161</sup> Muhamed Sacirbey, T. 7217.

<sup>4162</sup> Muhamed Sacirbey, T. 7217-7218.

<sup>4163</sup> Muhamed Sacirbey, T. 7217-7218.

<sup>4164</sup> Ex. P2439, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 28 August 1992, referring to the ethnic cleansing. *See also* Muhamed Sacirbey, T. 7219-7220, 7224-7226.

<sup>4165</sup> Muhamed Sacirbey, T. 7221.

<sup>4166</sup> Ex. P2464, Note Verbale from the Permanent Mission of the FRY to the UN, 5 August 1994, p. 2.

<sup>4167</sup> Muhamed Sacirbey, T. 7221-7224, 7239-7240.

<sup>4168</sup> Muhamed Sacirbey, T. 7223-7224.

<sup>4169</sup> The ICJ rendered its judgement in 2007, Muhamed Sacirbey, T. 7274-7275.

<sup>4170</sup> Ex. P2160, Perišić's Communication to Mladić and Other VRS Commanders, 23 February 1994.

1476. At the 25<sup>th</sup> SDC Session on 30 August 1994, the Chief of the VJ Intelligence Administration, Colonel Branko Krga, under Perišić's instruction and in Perišić's presence, gave a presentation.<sup>4171</sup> Krga explained that since the FRY had accepted the peace plan of the Contact Group, the international community had taken a more favourable attitude toward the FRY. He noted that "after a long period of isolation and accusations, a profoundly new attitude of the international community towards the [FRY] is becoming apparent", as reflected in visits paid by foreign political delegations and in "more favourable coverage of the FRY by foreign media, including those from Germany and America".<sup>4172</sup> Krga also analysed how the FRY should respond to imposed sanctions.<sup>4173</sup> Krga explained that "[i]n our contacts with international representatives, we must insist that [the issue of installing observers on the river Drina] be never put on the agenda of UNSC".<sup>4174</sup> He cautioned that even if the FRY were to accept observers, sanctions would not automatically be lifted, as new conditions were raised, including "the issue of human rights, readiness to cooperate with the International War Crimes Tribunal, etc".<sup>4175</sup> Finally, Krga mapped out possible political scenarios if the RS were to reject the peace plan. He concluded that "[h]aving analysed the reaction of the international community", the FRY's best option was to continue seeking a political solution in the BiH, but noted that "it is obvious that the most important international players have agreed that they would not allow any party to achieve a compelling victory, or establish Muslim or Serbian ethnically pure states".<sup>4176</sup>

1477. The Defence argues generally that there is insufficient evidence to infer that the information about the war provided to the FRY Mission to the UN or to the FRY authorities in Belgrade was in fact known by Perišić.<sup>4177</sup> More specifically, the Defence argues that there is no evidence that Perišić personally had knowledge of discussions held at the UNSC sessions or of the BiH Mission's communications to the UNSC.<sup>4178</sup>

1478. The evidence shows that Perišić, as Chief of the VJ General Staff, was directly informed about at least some of the UNSC proceedings and communications concerning accusation of crimes committed by the VRS. Throughout the war, the FRY Mission to the UN sent numerous diplomatic cables to the FRY leadership in Belgrade to inform them about discussions held and resolutions

<sup>4171</sup> Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC held on 30 August 1994, pp 6-18.

<sup>4172</sup> Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC held on 30 August 1994, p. 7.

<sup>4173</sup> Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC held on 30 August 1994, p. 8.

<sup>4174</sup> Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC held on 30 August 1994, pp 8, 10. Krga also listed as a potential effect of the FRY accepting observers that "the possibilities of providing assistance to the [RS] would be narrowed down", Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC held on 30 August 1994, p. 9.

<sup>4175</sup> Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC held on 30 August 1994, p. 11.

<sup>4176</sup> Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC held on 30 August 1994, pp 16-17.

<sup>4177</sup> Defence Final Brief, paras 840-841.

<sup>4178</sup> Defence Final Brief, para. 843.

adopted by the UNSC.<sup>4179</sup> Perišić was copied directly on several of those cables concerning shelling and sniping incidents in Sarajevo, as well as the VRS attack on Srebrenica.<sup>4180</sup> That evidence shows not only that Perišić was aware of certain discussions by the UNSC, but also that Perišić knew that the VRS was being accused of attacking civilians and committing other serious violations of international humanitarian law. Moreover, Colonel Krga's presentation at the 25<sup>th</sup> SDC Session shows that both the VJ Intelligence Administration and Perišić personally were aware of the UNSC's agenda and more generally of the international community's political views and attitudes, including international media coverage, regarding the conflict in BiH.<sup>4181</sup>

1479. The Defence also argues that there is no evidence that Perišić read or had any knowledge of the Mazowiecki reports issued by the UN Commission on Human Rights.<sup>4182</sup> While there is no direct evidence that Perišić knew about the reports, the Majority, Judge Moloto dissenting, makes the following observations.

1480. The Majority recalls that the Mazowiecki reports were discussed extensively at the UNSC (in the presence of FRY representatives).<sup>4183</sup> The diplomatic cables copied to Perišić and the presentation by Colonel Krga also show that Perišić was put on notice of at least certain proceedings before the UNSC.<sup>4184</sup> Furthermore, the FRY Mission deemed the Mazowiecki reports sufficiently important to formally respond to at least several of them.<sup>4185</sup> The fact that, as the Defence points out, the FRY Mission rejected the content of the reports, confirms that the Mission was aware of their content.<sup>4186</sup> Mazowiecki's reports were among the documents that BiH filed with the ICJ in support of its application against Serbia and Montenegro,<sup>4187</sup> a high profile case that was the subject of UNSC Resolution 819.<sup>4188</sup> Finally, Mazowiecki's conclusions about the humanitarian situation in BiH were discussed in the media,<sup>4189</sup> and Perišić was informed of the media's reporting

<sup>4179</sup> See e.g. Ex. P852 (under seal); Ex. P853 (under seal); Ex. P854 (under seal); Ex. P855 (under seal); Ex. P858 (under seal); Ex. P896 (under seal); Ex. P897 (under seal); Ex. P898 (under seal); Ex. P899 (under seal); Ex. P900 (under seal); Ex. P1832, FRY Diplomatic Cable, 26 May 1995. Several of these cables are discussed in the sections of the Judgement addressing Perišić's knowledge about crimes committed in Sarajevo and Srebrenica – see *infra* paras 1489-1495, 1546-1553.

<sup>4180</sup> Ex. P852 (under seal); Ex. P853 (under seal); Muhamed Sacirbey, T. 7470-7471; Ex. P1832, FRY Diplomatic Cable, 26 May 1995; Ex. P854 (under seal); Ex. P896 (under seal); Ex. P897 (under seal); Ex. P855 (under seal). See *infra* paras 1489, 1549-1553.

<sup>4181</sup> Ex. P778, Stenographic Transcript of the 25<sup>th</sup> SDC, 30 August 1994, pp 8, 10.

<sup>4182</sup> Defence Final Brief, para. 842.

<sup>4183</sup> Muhamed Sacirbey, T. 7217.

<sup>4184</sup> E.g. Ex. P852 (under seal); Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC, 30 August 1994, pp 8, 10.

<sup>4185</sup> Ex. P2464, Note Verbale from the Permanent Mission of the FRY to the UN, 5 August 1994.

<sup>4186</sup> See Defence Final Brief, para. 842. As the Defence points out, the Prosecution introduced the Mazowiecki reports into evidence for the purpose of establishing the FRY's notice of their content, not for the purpose of proving the truth of the matters asserted in the reports. See Muhamed Sacirbey, T. 7203.

<sup>4187</sup> Muhamed Sacirbey, T. 7272-7273.

<sup>4188</sup> Ex. P208, UNSC Resolution 819, 16 April 1993.

<sup>4189</sup> Muhamed Sacirbey, T. 7223-7224.

on the war in BiH.<sup>4190</sup> On 22 July 1994, the *Borba* Daily published an article with the headline “What does the Federal Government hold against Tadeusz Mazowiecki’s Sixth Report on the Human Rights situation in the FRY?”, in which it described the FRY’s criticism of Mazowiecki’s report, raised in its *note verbale* to the ECOSOC sub-commission.<sup>4191</sup>

1481. The Defence argues that there is no evidence that Perišić or anyone from the VJ or VJ intelligence organs read the publication in *Borba* regarding the report by the UN Commission of Experts about violations of IHL in the former Yugoslavia.<sup>4192</sup> While there is no direct evidence that Perišić read the report as published in *Borba*, the Majority is satisfied that the publication was available to him. In this regard, the Majority recalls the evidence that Perišić was kept abreast of media information through the Information Administration of the VJ General Staff.<sup>4193</sup>

1482. The Majority finds that, collectively, the aforesaid evidence leads to the only reasonable conclusion that the Mazowiecki reports—which were periodically issued from 1992 to 1995—were of such interest to the FRY authorities and were publicised to such an extent that the information contained therein was known to Perišić.

(c) Conclusion

1483. The following observations and findings are made by the Majority of the Trial Chamber, Judge Moloto dissenting.

1484. The Trial Chamber finds that direct evidence establishes beyond a reasonable doubt that Perišić knew even before being appointed Chief of the VJ General Staff that the VRS was perpetrating gratuitous acts of violence against Bosnian Muslims and that the international community considered the crimes occurring in BiH to be of such magnitude that an extraordinary step was taken in creating the Tribunal. Furthermore, Perišić’s statements in his interview corroborate his direct knowledge of the ethnic hostilities during the war and that Mladić was using force against civilians.

1485. In addition to the foregoing direct evidence, the Majority recalls the evidence that the Chief of the VJ’s Intelligence Administration, Colonel Branko Krga, made a presentation to the FRY SDC reporting the views of the international community, *inter alia*, on questions of human rights and the creation of the Tribunal. The Majority recalls that Perišić, as Chief of the VJ General Staff, was in charge of the “highest professional and staff organ for the preparation and use of the Army

<sup>4190</sup> See *supra* section VI.I.2.

<sup>4191</sup> Ex. P2877, Article in *Borba*, 22 July 1994.

<sup>4192</sup> Defence Final Brief para. 844.

<sup>4193</sup> See *supra* paras 1396-1399.



in times of peace and war”.<sup>4194</sup> By virtue of his position, he closely monitored the events unfolding in BiH, a bordering country where a conflict was ongoing.<sup>4195</sup> The evidence that Perišić received daily reports on information gathered by his intelligence and security organs. Miodrag Simić, Chief of the 1<sup>st</sup> Administration within the VJ from November 1994, testified that it was in “the interest of the [VJ] for the sake of its security to be constantly informed of what was going on in that area”.<sup>4196</sup> Against this backdrop, the Majority is of the view that Krga’s presentation is not an isolated example and that the VJ’s Intelligence Administration regularly informed Perišić of the events in BiH and general opinion of the international community. In this regard, the Majority recalls that the international community was widely concerned about grave allegations of human rights abuses committed by Serb military forces in BiH from the beginning stages of the war. These allegations were extensively and regularly discussed at the UNSC, in diplomatic circles and in the international media, and were matters of common knowledge. The Majority concludes that the only reasonable inference is that the VJ’s Intelligence Administration notified Perišić of these criminal allegations.

1486. Based on the aforementioned evidence, the Majority is satisfied that Perišić, from the early stages of the war, was aware of the VRS’s discriminatory intent and criminal conduct in BiH.

1487. The Trial Chamber will now consider to what extent Perišić had specific knowledge that the VRS was committing crimes in Sarajevo.

### 3. Perišić’s Knowledge of Crimes Committed by the VRS in Sarajevo

1488. The Trial Chamber has been presented with direct evidence to show that Perišić, once he became Chief of the VJ General Staff, was informed about several incidents in Sarajevo.

#### (a) Diplomatic Cables

1489. In 1994 and 1995, Perišić was directly copied on the following two diplomatic cables from the FRY’s UN Mission in New York:<sup>4197</sup>

- (i) A cable dated 7 February 1994 discussed the international community’s reaction to two of the Scheduled Incidents in the Indictment: the artillery attack on the Dobrinja suburb

<sup>4194</sup> See *supra* para. 206.

<sup>4195</sup> See *supra* paras 1390-1404. See e.g. Ex. P2211, Transcript of the Collegium of the Chief of the VJ General Staff, 19 October 1995, p. 1; Ex. P2215, Transcript of the Collegium of the Chief of the VJ General Staff, 23 October 1995, p. 2; Ex. P2214, Tasking of General Perišić Recorded at the Collegium of the Chief of the VJ General Staff, 18 September 1995, p. 4; Ex. P2885, Minutes of the Collegium of the VJ General Staff, 27 November 1995, Doc IDs 0618-7643, p. 3; 0618-7634, p. 2.

<sup>4196</sup> Miodrag Simić, T. 10341.

<sup>4197</sup> Siniša Borović, Perišić’s Chef de Cabinet, confirmed that the office of the VJ General Staff received coded telegrams from military attaches in its missions abroad, which were decoded in that office, Siniša Borović, T. 13918.

of Sarajevo on 4 February 1994 (“Scheduled Incident A2”), and the shelling of Markale market in Sarajevo on 5 February 1994 (Markale I) (“Scheduled Incident A3”).<sup>4198</sup> It specifically referred to “Saturday’s incident in Sarajevo” and referenced an UNPROFOR finding that the “Serbian side was responsible for the previous attack on Dobrinja (4 February 1994)”.<sup>4199</sup> The cable stated that as a result of the most recent incident, NATO air-strikes against the Serb artillery positions outside Sarajevo were being considered.<sup>4200</sup> The cable also referenced an UNPROFOR finding that the Serb artillery positions were “responsible for the attacks on civilian targets in the city”.<sup>4201</sup>

(ii) A cable dated 10 April 1995 stated that UN Under-Secretary-General Gharekhan had reported that the “situation in and around Sarajevo” had “worsened” and that “sniper activities and artillery attacks from large calibre guns had increased”.<sup>4202</sup> The cable added that in one day, “three 120mm projectiles were fired on Sarajevo from the positions of Bosnian Serbs, after which UN requested NATO’s reconnaissance flights above the city”.<sup>4203</sup>

1490. In addition to the diplomatic cables copied to Perišić directly, the VJ General Staff received two cables from the FRY’s London Mission relating to the siege of Sarajevo. On 11 January 1994, the Mission informed the VJ Intelligence Administration that top British officials were of the opinion that “the bombardment of Sarajevo must be halted at once”.<sup>4204</sup> On 7 February 1994, the Mission—apparently referring to the Markale I shelling (Scheduled Incident A3)—informed the Intelligence Administration that “[t]he mass media here and in the West are widely manipulating the latest massacre of civilians in Sarajevo and pressing governments to adopt a decision on air strikes against Serbian positions around Sarajevo”.<sup>4205</sup>

1491. Perišić was also copied on a telegram from the FRY Mission in Rome, dated 9 December 1994, that provided information about crimes in Sarajevo.<sup>4206</sup> The telegram asserted that recent reporting by the Italian media about the situation in BiH had been one-sided, in that blame was placed on the Serbs and that the most-quoted sources were UNPROFOR, representatives of humanitarian organisations, and special rapporteurs. According to the telegram, the main point of the media reports had been that the SVK and VRS continued their attacks by, among other things,

<sup>4198</sup> See Muhamed Sacirbey, T. 7353-7355 (private session).

<sup>4199</sup> Ex. P852 (under seal), pp 1-2.

<sup>4200</sup> Ex. P852 (under seal), p. 2.

<sup>4201</sup> *Ibid.*

<sup>4202</sup> Ex. P853 (under seal); Muhamed Sacirbey, T. 7470-7471 (closed session).

<sup>4203</sup> *Ibid.*

<sup>4204</sup> Ex. P2853 (under seal).

<sup>4205</sup> Ex. P2852 (under seal).

<sup>4206</sup> Ex. P2855 (under seal).

firing missiles on the facilities of the Muslim government in Sarajevo and blocking humanitarian aid on land and in the air, which would lead to hunger and freezing of the population in Bihać and Sarajevo. The telegram stated that by way of contrast there had been no media reports on “what the Muslims or the Croats are doing”.<sup>4207</sup>

1492. At the 18<sup>th</sup> SDC Session on 7 February 1994, two days after the Markale I incident (Scheduled Incident A3) had occurred, Perišić addressed the use of certain explosive devices in Sarajevo and cited the explosion of a shell that had resulted in “massive losses”.<sup>4208</sup> The Trial Chamber is satisfied that this discussion concerned the Markale I incident, as at the SDC meeting, Perišić described the explosion site as a small area that was closed off on all sides by buildings, where a large number of people was concentrated, and which featured a tram stop.<sup>4209</sup> Slobodan Milošević added that the shell had purportedly hit a “stall”.<sup>4210</sup> The Trial Chamber notes that Perišić also stated that people in the RS maintained that they were not responsible for the incident, and he expressed the view that the likelihood was indeed small.<sup>4211</sup> He added:

I think that it would be a good idea to prepare [special projectiles that do not hit the ground] and to have the Government of the Federal Republic of Yugoslavia issue a statement. Our military experts claim that this is impossible. We assume that the same was done in Vase Miskina Street—that the explosive was prepared ahead of time and placed in a number of spots and that at a given moment the signal was given to set it off when the largest number of people were there. Second, there are those who believe that one of their projectiles which was just supposed to mask those effects was actually used. That’s our understanding. The likelihood that a 120mm calibre projectile can kill so many people in that space is very small. We assume that the mujahedin did it, because they are against any kind of negotiations and agreements. Second the possibility that the Croats did it can not be excluded, so as to divert the attention from the threat of sanctions. It is impossible that the Serbs in Sarajevo set it up, except from a distance.<sup>4212</sup>

1493. At a 29 August 1995 meeting in Dobanovci of the highest political and military leadership of the FRY and the RS, including Perišić, President Milošević addressed the fact that a shell had been fired at Markale and had killed a number of civilians.<sup>4213</sup> Milošević cited a UN source as stating that it had been proved that the shell was fired from Serbian positions,<sup>4214</sup> while Mladić cited a statement by a different UN source which, in Mladić’s view, demonstrated that the shell could not have come from Serbian positions.<sup>4215</sup>

<sup>4207</sup> Ex. P2855 (under seal).

<sup>4208</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC held on 7 February 1994, p. 60.

<sup>4209</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC held on 7 February 1994, pp 60-61

<sup>4210</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC held on 7 February 1994, pp 60-61. *See also supra* paras 350-358.

<sup>4211</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC held on 7 February 1994, p. 60.

<sup>4212</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC held on 7 February 1994, p. 61.

<sup>4213</sup> Ex. P232, Notes of Meeting Held in Dobanovci, 30 August 1995, p. 5.

<sup>4214</sup> Ex. P232, Notes of Meeting Held in Dobanovci, 30 August 1995, pp 5, 12.

<sup>4215</sup> Ex. P232, Notes of Meeting Held in Dobanovci, 30 August 1995, p. 12.

1494. On 11 October 1995, the Intelligence Administration of the VJ General Staff reported to the FRY MOD on the Markale II incident (Scheduled Incident A9) discussing UNPROFOR's accusation that the VRS was responsible for the shelling:

By repeating the scenario at the Sarajevo Markale market on 28 August 1995 at 1120 hours, fresh conditions have been created for giving the Serbs yet another ultimatum by NATO. Namely, only half an hour after the event mentioned above, Muslim TV screened images from the location of the incident blaming the Serbs for it [...]. The following day [...] UNPROFOR blamed Serbs for the massacre, a ballistic expert carried out an expert examination only at 1100 hours. The expert examination was not carried out on location (they did not allow the Muslims to carry it out) but on the basis of photographs, sketches and TV images. The dead and the wounded were not examined, nor was any type of medical examination carried out.<sup>4216</sup>

1495. In addition to the evidence discussed above, the Trial Chamber has been presented with significant circumstantial evidence which includes documentation by the international community of crimes committed in Sarajevo and widespread media coverage of the siege of Sarajevo.

(b) Documentation by the International Community of Crimes in Sarajevo

1496. Starting in the spring of 1992, the UNSC discussed the shelling and sniping campaign in Sarajevo almost daily and issued several resolutions on the topic.<sup>4217</sup> Sacirbey also testified that leading up to the issuance of UNSC Resolution 764 in July 1992, he and his staff informed the FRY representatives to the UN directly about a shelling that killed dozens of people standing in a Sarajevo bread line, as well as about other aspects of the siege.<sup>4218</sup> Further, starting in October 1992, Special Rapporteur Mazowiecki began issuing regular reports in which he described the humanitarian situation in Sarajevo—reports of which FRY authorities were aware.<sup>4219</sup> Among other things, Mazowiecki reported that the indiscriminate shelling of Sarajevo had caused countless civilian deaths<sup>4220</sup> and that hospitals in Sarajevo were routinely and deliberately shelled.<sup>4221</sup> Mazowiecki concluded that while “all sides are guilty of use of military force against civilian populations and relief operations in Sarajevo”, “the main responsibility lies with the Serbian forces, since it is they who have adopted the tactic of laying siege on the city”.<sup>4222</sup>

<sup>4216</sup> Ex. D542, Report from the VJ to the FRY MOD, 11 October 1995.

<sup>4217</sup> Muhamed Sacirbey, T. 7179-7181. *See* Ex. P2434, UNSC Resolutions 758, 8 June 1992; 760, 18 June 1992; and 761, 29 June 1992. *See* Muhamed Sacirbey, T. 7187-7188; Ex. P2436, Note of the President of the UNSC, 4 August 1992; Ex. P2437, UNSC Resolution 770, 13 August 1992.

<sup>4218</sup> Muhamed Sacirbey, T. 7184.

<sup>4219</sup> *See supra* paras 1452, 1480.

<sup>4220</sup> Ex. P2441, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 17 November 1992, para. 41.

<sup>4221</sup> Ex. P2442, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 10 February 1993, paras 102-104.

<sup>4222</sup> Ex. P2441, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 17 November 1992, para. 42.

1497. As discussed above, Sacirbey testified that he forwarded numerous documents to the President of the UNSC with the request that they be distributed as public documents to all UN member states, including the FRY.<sup>4223</sup> These documents included several letters from November 1994, May 1995 and June 1995, in which the BiH Mission reported shelling and sniping attacks by Bosnian Serbs against civilian targets in Sarajevo,<sup>4224</sup> such as the Holiday Inn<sup>4225</sup> and the Marin Dvor and Hrasnica neighbourhoods.<sup>4226</sup> In one of the letters, Sacirbey reported the killing of five children by a shell fired by Bosnian Serbs, and then further described what he considered to be a pattern of shelling and sniping, whereby long lulls in the attacks drew the civilian population out to the streets, at which time “the shells from the hills hit once again, sometimes with no success in finding victims and other times claiming scores of them”.<sup>4227</sup>

1498. On 7 January 1994, the President of the UNSC issued a statement in which the SC strongly condemned the “continuing military pressure on and the relentless bombardment by Bosnian Serb forces of the [BiH] capital city, Sarajevo”, and called for an immediate end to the attacks on the city, which had resulted in “a high number of civilian casualties, seriously disrupted essential services and aggravated an already severe humanitarian situation”.<sup>4228</sup>

1499. The 27 May 1994 report of the UN Commission of Experts stated that the “siege and relentless bombardment from the hills surrounding Sarajevo has taken a tremendous physical toll on the city and its inhabitants”. It noted that the Serb forces have “concentrated their efforts on weakening the city through constant bombardment from the surrounding hillsides” and cited estimates by UNPROFOR that the daily shelling ranged from 200 to 300 impacts on a quiet day to 800 to 1,000 impacts on an active day.<sup>4229</sup> The report found: (i) a pattern of specific targeting of certain locations, including the Koševo Hospital, the public transportation system, the Dobrinja apartment complex, the flour mill and main bakery, and the shopping district; (ii) a pattern of

<sup>4223</sup> Muhamed Sacirbey, T. 7143-7146.

<sup>4224</sup> Ex. P2477, Letter of the Permanent Representative of the BiH to the UN, to the President of the UNSC, 15 November 1994; Ex. P2478, Letter of the Permanent Representative of the BiH to the UN, to the President of the UN SC, 17 November 1994; Ex. P2490, Letter of the Permanent Representative of BiH to the UN, to the President of the UNSC, 9 May 1995; Ex. P2493, Letter of the Permanent Representative of BiH to the UN, to the President of the UNSC, 16 May 1995; Ex. P2494, Letter of the Permanent Representative of BiH to the UN, to the President of the UNSC, 24 May 1995; Ex. P2491, Letter of the Charge D’Affaires of the Permanent Mission of BiH to the UN, to the President of the UNSC, 27 June 1995.

<sup>4225</sup> Ex. P2477, Letter of the Permanent Representative of the BiH to the UN, to the President of the UNSC, 15 November 1994.

<sup>4226</sup> Ex. P2478, Letter of the Permanent Representative of the BiH to the UN, to the President of the UNSC, 17 November 1994; Ex. P2490, Letter of the Permanent Representative of BiH to the UN, to the President of the UNSC, 9 May 1995.

<sup>4227</sup> Ex. P2491, Letter of the Chargé d’Affaires of the Permanent Mission of BiH to the UN, to the President of the UNSC, 27 June 1995, p. 2.

<sup>4228</sup> Ex. P2475, Note of the President of the UNSC, 7 January 1994.

<sup>4229</sup> Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, paras 183, 186, 188. *See also supra* paras 323-326.

systematic shelling of cultural and religious structures and public utilities; and (iii) a pattern of random shelling throughout the civilian areas of the city, which had a “terror-inspiring effect on the civilian population” and resulted in deaths, injuries and destruction in “such well-known non-military structures as schools, open streets, public parks, football and athletic fields, cemeteries, hospitals, and even bread, water and relief lines in the city”.<sup>4230</sup> The report also mentioned the Markale I incident, noting that on 5 February 1994 at least 68 persons were killed and 200 others were wounded in the shelling of the market in the city centre”.<sup>4231</sup>

1500. As discussed above,<sup>4232</sup> the report of the Commission of Experts was distributed by the UNSC to the UN membership,<sup>4233</sup> was discussed extensively at the UN,<sup>4234</sup> and was discussed and distributed in the media<sup>4235</sup>—including through publication in full in *Borba*.<sup>4236</sup>

1501. Special Rapporteur Mazowiecki reported periodically about the siege of Sarajevo until 1995. As discussed above,<sup>4237</sup> his reports were released as ECOSOC documents and circulated to all UN members, including the FRY,<sup>4238</sup> and the FRY responded to the reports.<sup>4239</sup> Among other things, Mazowiecki reported the following:

- (i) On 26 August 1993, “the civilian population of Sarajevo has been subjected to brutal violations of the laws on the conduct of war”, observing that “[t]he arbitrary killing of civilians [...] has become a permanent feature of life in the city”.<sup>4240</sup> He reported that at the Dobrinja check-point, located 400 meters from the front line, 130 persons had reportedly been killed and more than 300 wounded by sniper fire from Bosnian Serb positions.<sup>4241</sup>

<sup>4230</sup> Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, paras 189-191.

<sup>4231</sup> Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, para. 193.

<sup>4232</sup> *See supra* para. 1465.

<sup>4233</sup> *See* Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, p. 1; Muhamed Sacirbey, T. 7363-7364.

<sup>4234</sup> Muhamed Sacirbey, T. 7376-7381.

<sup>4235</sup> *Ibid.*

<sup>4236</sup> Ex. P1112, *Borba* Article Reproducing the Report of the UN War Crimes Commission for Former Yugoslavia, 14 July 1994. *See supra* para. 1465

<sup>4237</sup> *See supra* para. 1470.

<sup>4238</sup> *See* Muhamed Sacirbey, T. 7217.

<sup>4239</sup> *See* Ex. P2464, Note Verbale from the Permanent Mission of the FRY to the UN, 5 August 1994, pp 1-2.

<sup>4240</sup> Ex. P2444, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 26 August 1993, para. 36.

<sup>4241</sup> Ex. P2444, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 26 August 1993, para. 36. He also reported that the Koševo hospital in Sarajevo had been shelled 176 times since the siege began, killing staff and patients alike. As the hospital was located 600 meters from the front line and was clearly visible from Bosnian Serb positions, Mazowiecki concluded that the attacks had been deliberate, Ex. P2444, Report of the Special

(ii) On 17 November 1993, mortar attacks by Bosnian Serb forces on Sarajevo earlier that month had killed twelve persons, including children.<sup>4242</sup>

(iii) On 21 February 1994, “Sarajevo remains subject to indiscriminate attacks and to sniping, directed from territory held by the Bosnian Serbs”.<sup>4243</sup> He reported that by early January 1994, there were on average 1,000 shell or rocket impacts per day, and that many civilians had lost their lives.<sup>4244</sup> He concluded that “[a]lthough a number of Bosnian Serb attacks on Sarajevo occur in response to firing by forces of the army of Bosnia and Herzegovina from positions situated close to highly sensitive civilian locations, most attacks would appear to be indiscriminate”.<sup>4245</sup> He also observed that the Markale I shelling (Scheduled Incident A3) which had killed 68 and wounded 200, was “one of the worst attacks perpetrated on civilians during the war”.<sup>4246</sup>

(iv) On 4 November 1994, “attacks by Bosnian Serb forces on the civilians of Sarajevo also manifest themselves by means of blocking of services essential for city life”.<sup>4247</sup> He added that “the heightened scale of attacks and threats to the people of Sarajevo [...] reversed the dramatic improvements of last summer”.<sup>4248</sup>

(v) On 16 January 1995, there had been an intensification of attacks on Sarajevo in November and December 1994. He reported that three children and one adult woman had been killed by sniper fire and mortars; that the Holiday Inn hotel had been hit by two grenades fired from Bosnian Serb army positions; and that Bosnian Serb forces had targeted lines of people at a tram stop, injuring a 16 year-old girl and a 70 year-old man.<sup>4249</sup> He also

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Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 26 August 1993, para. 25.

<sup>4242</sup> Ex. P2881, UN Fifth Periodic Report on the Situation of Human Rights in the Territory of the Former Yugoslavia by Tadeusz Mazowiecki, 17 November 1993, para. 14. In one of the attacks, two shells hit a school building in a densely populated district, killing three children and their teacher and wounding 40 others, mostly children.

<sup>4243</sup> Ex. P2445, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 21 February 1994, para. 59.

<sup>4244</sup> Ex. P2445, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 21 February 1994, para. 59; Muhamed Sacirbey, T. 7357.

<sup>4245</sup> Ex. P2445, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 21 February 1994, para. 61.

<sup>4246</sup> Ex. P2445, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 21 February 1994, para. 5.

<sup>4247</sup> Ex. P2446, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 4 November 1994, paras 28-29.

<sup>4248</sup> *Ibid.*

<sup>4249</sup> Ex. P2447, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 16 January 1995, para. 13. It was also noted that “[s]niper and missile attacks continued to be targeted on an almost daily basis against the city centre, near the presidency building”, Ex. P2447, Report of the Special Rapporteur of the Commission on Human

noted that “[s]niper and missile attacks continued to be targeted on an almost daily basis against the city centre, near the presidency building”.<sup>4250</sup>

(vi) On 5 July 1995, some sniping activity by Bosnian Serb forces against civilians in Sarajevo had been reported in March of that year, and that “[i]n late April the level of firing incidents increased and civilians were reported to have been killed or injured on an almost daily basis by shelling or sniping”.<sup>4251</sup> He further reported that in May 1995, the Bosnian Serb forces had shelled the Butmir suburb, killing 9 people and wounding 50 others (virtually all civilians);<sup>4252</sup> that a 18 June 1995 shelling of the Dobrinja suburb had killed seven and injured twelve civilians at a water distribution centre (Scheduled Incident A7);<sup>4253</sup> and that further shelling by Bosnian Serb forces in June and July 1995 had caused more civilian deaths.<sup>4254</sup>

(c) Media Coverage of Crimes in Sarajevo

1502. Between 1992 and 1995, events in Sarajevo attracted a “tremendous” amount of attention by the international media.<sup>4255</sup> As witness MP-433 testified:

[T]he entire world could follow the siege of Sarajevo, almost in real-time, hour by hour. There couldn't be [...] a casualty on sniper alley either killed or injured by the Serbian snipers that was not immediately related to the press and with a number of photographs that would be broadcasted throughout the world. I can say, I believe honestly that the siege of Sarajevo was offered to the eyes of the entire world, day by day, hour by hour, with all its atrocities being broadcast.<sup>4256</sup>

1503. Martin Bell, a BBC war correspondent who was stationed in Sarajevo several times from 1992 until 1997, testified that a number of major international press agencies were present in Sarajevo during that period, including Reuters, the Associated Press, AFP, as well as television

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Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 16 January 1995, para. 13.

<sup>4250</sup> Ex. P2447, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 16 January 1995, para. 13.

<sup>4251</sup> Ex. P2448, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 5 July 1995, paras 66-67.

<sup>4252</sup> Ex. P2448, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 5 July 1995, para. 68.

<sup>4253</sup> Ex. P2448, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 5 July 1995, para. 70.

<sup>4254</sup> Ex. P2448, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 5 July 1995, para. 70. On 7 November 1995—after the period relevant to the Indictment—Mazowiecki's successor, Special Rapporteur Elisabeth Rehn, reported that the Markale II incident “was a particularly brutal example of the targeting of civilians”, Ex. P2450, Report of the Special Rapporteur of the Commission on Human Rights, Elisabeth Rehn, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 7 November 1995, paras 54-56.

<sup>4255</sup> Muhamed Sacirbey, T. 7184.

<sup>4256</sup> MP-433, T. 2112 (closed session).



media outlets such as BBC and CNN.<sup>4257</sup> In addition, all the large and even small European broadcasters sent correspondents to Sarajevo.<sup>4258</sup>

1504. Despite fluctuations in media attention, particularly during the early phases of the war, the international media maintained a presence in Sarajevo and covered what was happening to civilians.<sup>4259</sup> Witness MP-72 testified that there was a constant media presence in Sarajevo and that the use of the media was part of Mladić's general strategy.<sup>4260</sup> Witness MP-408, who was in the Sarajevo area from October 1993 through September 1994, testified that both the national and international media were present in Sarajevo and reported mainly about the humanitarian situation of the population and about the sniping and shelling incidents.<sup>4261</sup>

1505. SkyNews reporter Aernout van Lynden began making live reports from Sarajevo in May 1992 on the inhabitants of the city living under siege, showing civilians being wounded or killed by Serb gunfire and how Sarajevo was hit "from every side by practically every imaginable projectile", and "was a scene of wholesale devastation".<sup>4262</sup> In June and in September 1992, van Lynden also obtained access to Bosnian Serb positions in order to report events from their side.<sup>4263</sup> In September 1992, he met with Mladić, who took him to see the Serb artillery positions. This visit was filmed by van Lynden's crew. At some point, Mladić can be heard on camera saying that "he holds the city in his palm".<sup>4264</sup>

1506. Van Lynden testified that various political and military figures in the former Yugoslavia were familiar with his work. In 1994, Mladić confronted van Lynden about his reporting on Žuč and Goražde.<sup>4265</sup> That same year, the FRY authorities revoked van Lynden's accreditation in Serbia on the ground that his work had not been in favour of "the peaceful living-together of different

<sup>4257</sup> Martin Bell, T. 3192.

<sup>4258</sup> Martin Bell, T. 3196. While the number of foreign journalists in Sarajevo was relatively small (no more than about 50 at its peak), this circumstance facilitated journalists' direct access to the "main people", such as UN generals and the Bosnian Serb leadership, instead of having to get their information from "spin doctors and press officers", Martin Bell, T. 3192. In May 1992, foreign journalists formed the "Sarajevo Agency Pool" and the video footage obtained by the pool would then be sent out on satellite exchanges all over the world, Martin Bell, T. 3192-3193, 3195.

<sup>4259</sup> Martin Bell, T. 3193-3194. Bell testified that during the early phases of the war, images of the siege were broadcast around Europe and around the world. However, after Bell returned to Sarajevo in 1994, "war fatigue" set in among the international media, which meant that the war in BiH became less of a news priority. It concurrently became more difficult to report on the siege of Sarajevo because an increase in military field security prevented journalists from roaming around freely, Martin Bell, T. 3193-3194. From August 1994 onward, the Bosnian Serb-held territory was closed off to all the journalists except those from Russia, Greece or other "orthodox" countries, Martin Bell, T. 3208, 3211. *See* Martin Bell, T. 3229.

<sup>4260</sup> MP-72, T. 4335, 4337 (closed session).

<sup>4261</sup> MP-408, T. 6171-6172 (closed session).

<sup>4262</sup> Aernout van Lynden, T. 465, 505-507, 519-522, 539-540; Ex. P5, SkyNews Video Clip; Ex. P6, SkyNews Video Clip; Ex. P7, SkyNews Video Clip; Ex. P8, SkyNews Video Clip; Ex. P11, SkyNews Video Clip.

<sup>4263</sup> Aernout van Lynden, T. 521-522.

<sup>4264</sup> Aernout van Lynden, T. 527, 534, 556; *See* Ex. P10, SkyNews Video Clip.

<sup>4265</sup> Aernout van Lynden, T. 536-537.

peoples”.<sup>4266</sup> In 1995, at the 50<sup>th</sup> Session of the RS National Assembly, van Lynden was referred to as the “famous Serb-hater”.<sup>4267</sup>

1507. Several witnesses testified that news about the siege of Sarajevo was reported in Belgrade, either through local broadcasts of international coverage or through Serbian reporters. John Wilson, who served as the Chief of UN Military Observers Mission in Bosnia from March 1992 until 15 November 1992, testified that television coverage provided by Sarajevo Television often contained graphic footage of attacks against civilians in Sarajevo.<sup>4268</sup> International media, including CNN and BBC News, also aired footage of shelling, civilian casualties, and damage to the city, which according to Wilson accurately represented the events that took place in Sarajevo.<sup>4269</sup> Van Lynden testified that many “Yugoslavs right across Yugoslavia” were able to receive SkyNews through their satellite dishes.<sup>4270</sup>

1508. In addition to providing video coverage, the international media also covered the siege of Sarajevo in the printed press.

1509. Morten Hvaal, who worked as a photographer for the Associated Press in Sarajevo from 1992 to 1995, testified that thousands of the photographs he took in Sarajevo during the siege were published in the international media.<sup>4271</sup> His photographs were transmitted to the Associated Press headquarters in London, which were then distributed across the world.<sup>4272</sup>

1510. In the autumn of 1993, after Perišić had become Chief of the VJ General Staff, Hvaal took a photograph at the French Hospital in Sarajevo, depicting a five-year-old girl named Irma Hadžimuratović wounded in a mortar attack, which also killed her mother, in the backyard of the building where she lived.<sup>4273</sup> The media coverage of this incident led to the first proper evacuation of wounded children from Sarajevo since the beginning of the siege.<sup>4274</sup>

1511. General Wilson testified that during his service, he received daily summaries of what was being reported in the written media from throughout the former Yugoslavia and abroad.<sup>4275</sup> Those summaries showed that there was extensive coverage in the Belgrade press of the military attacks

<sup>4266</sup> Aernout van Lynden, T. 546.

<sup>4267</sup> Aernout van Lynden, T. 546-547; Ex. P12, Excerpt from Transcript of the 50<sup>th</sup> Session of the BiH National Assembly, 15 April 1995, p. 4.

<sup>4268</sup> John Wilson, T. 863.

<sup>4269</sup> John Wilson, T. 864.

<sup>4270</sup> Aernout van Lynden, T. 463.

<sup>4271</sup> Morten Hvaal, T. 2232.

<sup>4272</sup> Morten Hvaal, T. 2232.

<sup>4273</sup> Morten Hvaal, T. 2233; Ex. P378, Transcript of Morten Hvaal in *Prosecutor v. Stanislav Galić*, T. 2293; Ex. P380, Photograph.

<sup>4274</sup> Morten Hvaal, T. 2233-2234.

<sup>4275</sup> John Wilson, T. 861.

against Sarajevo through artillery and small-arms fire.<sup>4276</sup> Upon relocating from Sarajevo to Belgrade in June 1992, Wilson saw broadcasts on Belgrade television airing images of very heavy fighting occurring in Bosnia.<sup>4277</sup> He recalled that the staff of the Yugoslav Hotel in Belgrade indicated that they had seen reports of what was happening in Sarajevo, and that they were very concerned about the safety of their families there.<sup>4278</sup>

1512. Martin Bell testified that Yugoslavian television received the material that foreign correspondents in Sarajevo sent out.<sup>4279</sup> Bell also testified that “quite a lot of Serbian journalists” came into Sarajevo.<sup>4280</sup> Further, he testified that many of the media networks initially sent their news reports through Belgrade, such that Serbian journalists were quite heavily involved.<sup>4281</sup>

1513. During the conflict in BiH, Muhamed Sacirbey’s staff paid attention to what was being reported in the FRY media.<sup>4282</sup> According to Sacirbey, allegations of shelling and sniping of civilians in Sarajevo were “certainly sometimes” reported in the media in Belgrade or elsewhere in the FRY.<sup>4283</sup> Sacirbey also testified that allegations of ethnic cleansing by the Serbian forces in BiH were reported,<sup>4284</sup> although according to General Wilson, the Belgrade media would have focused more on the Serb refugees than on the plight of the Bosniaks or Croats.<sup>4285</sup> Sacirbey further testified that BiH representatives to the UN in New York provided information about the situation in Sarajevo at press conferences and through numerous interviews, and that accredited FRY journalists attended those conferences.<sup>4286</sup>

1514. The evidentiary record includes numerous articles relating to the siege of Sarajevo that appeared in the Belgrade printed press.<sup>4287</sup> Several of the articles published after Perišić became Chief of the VJ General Staff discussed the sniping and shelling attacks on civilians:

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<sup>4276</sup> John Wilson, T. 862-863.

<sup>4277</sup> John Wilson, T. 865.

<sup>4278</sup> John Wilson, T. 866.

<sup>4279</sup> Martin Bell, T. 3196.

<sup>4280</sup> Martin Bell, T. 3196.

<sup>4281</sup> Martin Bell, T. 3196-3197.

<sup>4282</sup> Muhamed Sacirbey, T. 7186.

<sup>4283</sup> Muhamed Sacirbey, T. 7186.

<sup>4284</sup> Muhamed Sacirbey, T. 7186.

<sup>4285</sup> John Wilson, T. 863.

<sup>4286</sup> Muhamed Sacirbey, T. 7184-7185.

<sup>4287</sup> Ex. P2828, *NIN* Interview with Mladić, 12 February 1993; Ex. P2870, Article in *Politika*, 14 August 1993; Ex. P2829, Reuters Article Regarding Attacks on Sarajevo, 15 December 1993; Ex. P2830, Reuters Article Regarding Attacks on Sarajevo, 5 January 1994; Ex. P2831, *NIN* Article Reacting to Previous Feature on Mladić, 11 March 1994; Ex. P2871, Article in *Tanjug*, 30 August 1995; P2872, Article in *Tanjug*, 30 August 1995; P2873, Article in *Tanjug*, 8 September 1995; Ex. P2874, Article in *Tanjug*, 20 September 1995; Ex. P2832, V.I.P. Daily New Report, 4 July 1995; Ex. P2833, *Politika* Article Regarding Effect of Karadžić Indictment on Peace Negotiations, 26 July 1995; Ex. P2834, *Politika* Article on War Crimes Indictments of Karadžić, Mladić and Martić, 26 July, 1995; Ex. P2876, Article in *Borba*, 22 July 1994 (Interview with Tadeusz

(i) Reuters article in *Borba*, 15 December 1993: The article reported that “eight people were killed, while ten were injured in yesterday’s mortar and artillery attacks on Sarajevo”. The article cited hospital doctors stating that the killings occurred when two mortar grenades fell in the old part of the city.<sup>4288</sup>

(ii) Reuters article in *Borba*, 5 January 1994: The article reported that “[i]n a fierce grenade attack yesterday in Sarajevo one person was killed while at least 10 persons were wounded”. The article went on to describe how during the previous days, many people had been killed by grenades, including an entire family of six and a nine year-old girl, and that five children had been wounded.<sup>4289</sup>

(iii) *NIN* (a Belgrade weekly newspaper), 28 January 1994: In an interview with Mladić, the interviewer referred to the media coverage of the siege of Sarajevo and the widespread criticism of the Serbs for bombing the city.<sup>4290</sup>

(iv) *NIN*, 11 March 1994: Under the headline “The Burning of Sarajevo”, the article stated that General Mladić deployed heavy artillery around Sarajevo and that, “in accordance with the plan of vengeance whose ideological creators sat in Belgrade and in Pale, he began the long-awaited war feast”. The article explained that “Sarajevo was destroyed, burnt, and demolished for months, and its people were butchered and killed”.<sup>4291</sup>

(v) *Borba*, 31 July 1994 – 12 August 1994: Feuilleton in eleven instalments entitled “A Testimony From Hell”, described the experiences of an inhabitant of Sarajevo during the period from April 1992 to December 1993 and the sniping and shelling on the civilian population.<sup>4292</sup>

(vi) *V.I.P. Daily News Report* (a Belgrade publication in English), 4 July 1995: The report cited the president of the ICTY as stating that formal indictments would soon be presented against Karadžić and Mladić.<sup>4293</sup> The report also stated, under the heading “UNPROFOR Condemns Attacks on Civilians”, that the UN had “asked the Muslims not to

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Mazowiecki); Ex. P2877, Article in *Borba*, 22 July 1994; Ex. P333, Interview of Ratko Mladić for *Nin*, 7 January 1994.

<sup>4288</sup> Ex. P2829, Reuters Article Regarding Attacks on Sarajevo, 15 December 1993.

<sup>4289</sup> Ex. P2830, Reuters Article Regarding Attacks on Sarajevo, 5 January 1994.

<sup>4290</sup> Ex. P333, Interview of Ratko Mladić for *Nin*, 7 January 1994, p. 24.

<sup>4291</sup> Ex. P2831, *NIN* Article Reacting to Previous Feature on Mladić, 11 March 1994, p. 3.

<sup>4292</sup> Ex. P2878, Article in *Borba*, 21 April 1992, 30-31 July 1994.

<sup>4293</sup> Ex. P2832, *V.I.P. Daily News Report*, 4 July 1995, p. 1

use UN members as human shields” and had “accused the Bosnian Serbs of shelling UN HQ [in Sarajevo] on Saturday” and opening fire on UNPROFOR members.<sup>4294</sup>

1515. Members of the FRY political and military leadership were aware of media reports related to BiH.

1516. At the 22<sup>nd</sup> SDC Session on 11 July 1994, President Lilić discussed a promotion decree that had been signed by Karadžić, and expressed the need to verify “what has been published in the press”.<sup>4295</sup> When Lilić referred to “everything that happened in Bileća and Bijeljina” after other promotions had been announced, Slobodan Milošević asked “[w]hat happened in Bileća and Bijeljina?”, to which Lilić responded, “[a]pplauding Karadžić, all sorts of amazing things; all that was pompous; broadcast live on radio and TV”. Perišić added: “It was all reported in the press”.<sup>4296</sup> Further, in an intercepted conversation of 1 May 1995, Perišić told Milošević that he had watched the TV news, and Milošević indicated that he had watched it as well.<sup>4297</sup>

(d) Conclusion

1517. Based on the evidence discussed above, the Majority, Judge Moloto dissenting, is satisfied that Perišić was aware that the VRS was accused of committing crimes in Sarajevo. In support of this conclusion, the Majority makes the following considerations.

1518. The Majority first notes that Perišić was copied on several diplomatic cables related to events in Sarajevo.<sup>4298</sup> The Defence argues that these diplomatic cables sent to Perišić provided “little information that Mr. Perišić could rely upon as knowledge for the commission of crimes”.<sup>4299</sup> In particular, the Defence asserts that the cable of 7 February 1994 from the FRY’s Mission to the UN provided no more information other than that the Markale I incident had occurred and that the international community responded by threatening with air-strikes.<sup>4300</sup> While there is no explicit indication in the cable of 7 February 1994 that the VRS had fired on Markale and killed civilians, the Majority notes that the cable stated that air-strikes would be carried out against the Serb artillery positions outside Sarajevo and referred to a finding by UNPROFOR that these artillery positions were responsible for “the attacks on civilian targets in the city”. The Majority is therefore of the view that this cable put Perišić on notice that the Markale incident in Sarajevo – like many others -

<sup>4294</sup> Ex. P2832, V.I.P. Daily New Report, 4 July 1995, p. 2.

<sup>4295</sup> Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC held on 11 July 1994, p. 48.

<sup>4296</sup> *Ibid.*

<sup>4297</sup> Ex. P1366, Intercepted Conversation, 1 May 1995, p. 3. *See also* Ex. P2212, Transcript of the Collegium of the Chief of the VJ General Staff, 30 October 1995, p. 1; Ex. P2214, Transcript of the Collegium of the Chief of the VJ General Staff of 18 September 1995, 29 December 1995, pp 4-5.

<sup>4298</sup> *See supra* paras 1489, 1491.

<sup>4299</sup> Defence Final Brief, para. 918.

involved a civilian target and that the international community considered the VRS responsible.<sup>4301</sup> Further, the Majority notes that the cable from the FRY's London Mission of the same date informed the Intelligence Administration of the VJ General Staff that the mass media were reporting on a "massacre of civilians in Sarajevo",<sup>4302</sup> which the Defence concedes referred to the Markale I incident.<sup>4303</sup> Moreover, at the 18<sup>th</sup> SDC Session held on the same day, Perišić stated not only that the Markale incident had caused "massive losses", but also gave a detailed description of the site where the incident had occurred, showing that Perišić had obtained information about the incident from sources other than the two diplomatic cables.<sup>4304</sup> Thus, when the evidence is viewed in its entirety, it becomes clear that Perišić was well-informed about the specifics of the Markale I incident, as he was about other attacks on civilians.<sup>4305</sup>

1519. In addition to this direct evidence, the Majority recalls that Perišić was generally informed of the UNSC's agenda and specifically about some UNSC proceedings, and was in regular contact with the FRY leadership.<sup>4306</sup> Accordingly, the Majority is satisfied that Perišić was aware of the findings regarding the VRS's crimes in Sarajevo contained in the BiH documents provided to the FRY, the report of the UN Commission of Experts, the Mazowiecki reports and the filings and orders in the ICJ case between BiH and Serbia and Montenegro.

1520. Finally, the Majority recalls that Perišić received daily bulletins from his Intelligence Administration, reports from his Security Administration and press clippings, containing media information from his Information Administration. In addition, the Majority recalls that during the Collegium presided by Perišić, briefings were held by the heads of the Intelligence Administration, Security Administration and the Operations Staff Sector.<sup>4307</sup> Furthermore, he received reports about local and international press coverage in meetings of the VJ Collegium.<sup>4308</sup>

<sup>4300</sup> Defence Final Brief para. 918.

<sup>4301</sup> Ex. P852 (under seal).

<sup>4302</sup> Ex. P2852 (under seal).

<sup>4303</sup> See Defence Final Brief, para. 918.

<sup>4304</sup> Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC held on 7 February 1994, pp 60-61.

<sup>4305</sup> For example, the cable from the FRY's Mission to the UN dated 10 April 1995 stated that UN Under-Secretary-General Gharekhan had reported that the sniping and shelling attacks on Sarajevo had increased, Ex. P853 (under seal). The Defence argues that because the cable does not refer specifically to civilian casualties, Perišić could have reasonably believed the cable to be discussing military battles in Sarajevo. See Defence Final Brief para. 918. But when the cable is placed in the context of the numerous Serbian and international media reports and the period Mazowiecki reports about the sniping and shelling of civilians in Sarajevo over the course of the siege (discussed below), it would be unreasonable to believe that the cable referred only to the sniping and shelling of combatants and military objectives. In any event, the cables form but one of many sources of information about the activities of the VRS that reached, or most likely reached Perišić.

<sup>4306</sup> See *supra* paras 1455, 1474-1476, 1478, 1480.

<sup>4307</sup> See *supra* para. 1392.

<sup>4308</sup> Ex. P2199, Transcript of the Collegium of the Chief of the VJ General Staff, 6 October 1995, Doc ID 0618-6848, p. 3; Ex. P2200, Transcript of the Collegium of the Chief of the VJ General Staff, 9 October 1995, Doc ID 0618-6979, p. 6; Ex. P2202, Transcript of the Collegium of the Chief of the VJ General Staff, 30 October 1995,

1521. The Majority is therefore satisfied that this evidence shows that Perišić was generally informed of what was being reported in the international and Serbian press, and that he was consequently aware of media reports that the VRS was committing crimes against the civilian population of Sarajevo. Given that Bosnian Serb attacks on Muslim civilians in Sarajevo were widely covered by the national and international press, the Majority finds that the only reasonable inference is that Perišić knew of these general allegations on crimes against civilians in Sarajevo.

1522. On the basis of the foregoing evidence evaluated both in isolation and collectively, the Majority, Judge Moloto dissenting, finds beyond a reasonable doubt that Perišić, while serving as Chief of the VJ General Staff, was aware that the VRS was attacking the civilian population in Sarajevo. The Majority also recalls its previous finding that Perišić was aware of the VRS's discriminatory intent and propensity to commit crimes. Accordingly, the Majority is satisfied beyond a reasonable doubt that Perišić knew not only that the VRS was committing crimes in Sarajevo, but that individual crimes committed by the VRS would probably be followed by more crimes committed by the VRS throughout the city's siege.

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Doc ID 0618-7763, pp 2-3; Ex. P2203, Transcript of the Collegium of the Chief of the VJ General Staff, 6 November 1995, Doc ID 0618-6883, pp 2-3.

#### 4. Perišić's Knowledge of Crimes Committed by the VRS in Srebrenica

##### (a) Perišić's Knowledge of the Sensitivity of the Situation in and Around Srebrenica and the Eastern Enclaves

1523. The Trial Chamber recalls that the third strategic objective of the Bosnian Serb leadership aimed at the establishment of a corridor in the Drina River valley with the eradication of the Drina River as a border between the Serbian states. This underlined the strategic importance of Srebrenica and the surrounding enclaves, which were located right along the Drina River border where the corridor was to be established.<sup>4309</sup> The Trial Chamber also recalls the evidence that the VRS launched a series of attacks in 1992 and early 1993 in areas encompassing the eastern enclaves of Srebrenica, Goražde and Žepa, leading to a flood of refugees into the enclaves.<sup>4310</sup>

1524. UNPROFOR Commander General Morillon and his Personal Staff Officer Colonel Pyers Tucker were present in Srebrenica during a surge of VRS operations in early 1993.<sup>4311</sup> Tucker noted that these attacks proceeded from one village to another, and villagers began to notice a pattern to the attacks and decided to flee as soon as the first few shells were fired.<sup>4312</sup> Around January or February 1993 Tucker hired locals to monitor local print and radio media inside BiH and radio media from Belgrade and Zagreb.<sup>4313</sup> According to him, the situation at the Srebrenica enclave was being covered in the international and local media.<sup>4314</sup>

1525. The Trial Chamber recalls that while in Srebrenica in March 1993, General Morillon was prevented from leaving the area by panicked residents and on that occasion he told the crowd that the town was under the protection of the UN.<sup>4315</sup>

1526. On 16 April 1993, the UNSC unanimously adopted Resolution 819 which: (i) proclaimed Srebrenica to be "a safe area which should be free from any armed attack or any other hostile act"; (ii) urged Bosnian Serb paramilitary forces to immediately cease attacks against Srebrenica and withdraw from its surroundings; (iii) demanded that the FRY cease supplying Bosnian Serb paramilitary forces with weapons and military equipment; and (iv) condemned the Bosnian Serbs for attempting to evacuate civilians from Srebrenica against their will.<sup>4316</sup> On the next day, the

<sup>4309</sup> See *supra* para. 598.

<sup>4310</sup> See *supra* paras 599-601.

<sup>4311</sup> Pyers Tucker, T. 9135, 9141-9142. See also *supra* para. 601.

<sup>4312</sup> Pyers Tucker, T. 9141-9142.

<sup>4313</sup> Pyers Tucker, T. 9182.

<sup>4314</sup> Pyers Tucker, T. 9183.

<sup>4315</sup> See *supra* paras 601-602.

<sup>4316</sup> Ex. P208, UNSC Resolution 819, 16 April 1993.



FRY's UN Mission in New York sent a cable to the FRY leadership informing it of the unanimous adoption of the UNSC Resolution.<sup>4317</sup>

1527. Sacirbey also testified that the UNSC distributed reports on the difficult humanitarian situation from 1992 to 1993 to all UN member states, including to the FRY's representatives.<sup>4318</sup> According to Sacirbey, the reports became the subject of further debate at the UNSC.<sup>4319</sup> Sacirbey explained that, by mid-April 1993, the situation in Srebrenica was dramatic and that recorded footage from the area was broadcast by the media.<sup>4320</sup>

1528. On 17 April 1993, Sacirbey wrote a letter to the UNSC deploring the "horrifying situation in Srebrenica" which he described as an "ongoing massacre", and which was "so well documented by the media around the world".<sup>4321</sup> Sacirbey wrote similar letters to the UNSC frequently, highlighting civilian casualties in Srebrenica and other enclaves resulting from attacks by Serb forces.<sup>4322</sup> These letters were distributed to all UN member states, including the FRY, and were made available as public documents.<sup>4323</sup> In some cases, BiH sent this information directly to the representatives of the FRY.<sup>4324</sup> Sacirbey testified that the FRY representatives read such documents since they subsequently responded to at least some of them either formally or informally.<sup>4325</sup>

1529. The continued and growing attacks against "threatened areas", including Srebrenica and Sarajevo, and their inhabitants led the UNSC in May 1993 to declare other towns in BiH in need of protection as safe areas.<sup>4326</sup> In light of the persistent refusal of the Bosnian Serb party to accept the Vance-Owen plan, as well as the continued grave violations of IHL and practice of ethnic cleansing,

<sup>4317</sup> Ex. P892 (under seal).

<sup>4318</sup> Muhamed Sacirbey, T. 7263-7264, 7302-7304, 7329-7330. *See* Ex. P2462, Report of the UNSC Mission Established Pursuant to Resolution 819, 30 April 1993. *See also* Ex. D159, Report of the UN Secretary-General Pursuant to Resolution 900, 11 March 1994; Muhamed Sacirbey, T. 8146-8147.

<sup>4319</sup> Muhamed Sacirbey, T. 7264-7265, 7323-7325.

<sup>4320</sup> Muhamed Sacirbey, T. 7263; Ex. P2459, Letter of the Permanent Representative of BiH to the UN, to the President of the UNSC, 16 April 1993.

<sup>4321</sup> Ex. P2459, Letter of the Permanent Representative of BiH to the UN, to the President of the UNSC, 16 April 1993.

<sup>4322</sup> *See* Ex. P2469, Letter of the Permanent Representative of BiH to the UN, to the President of the UNSC, 1 June 1993 (referring to attack on Goražde); Ex. P2470, Letter of the Permanent Representative of BiH to the UN, to the President of the UNSC, 2 June 1993; Ex. P2477, Letter of the Permanent Representative of the BiH to the UN, to the President of the UNSC, 15 November 1994 (referring to attack on Bihać); Ex. P2478, Letter of the Permanent Representative of BiH to the UN, to the President of the UNSC, 17 November 1994 (referring to attack on Tuzla). *See also* Ex. P2471, Letter of the Permanent Representative of BiH to the UN, to the President of the UNSC, 2 June 1993; Ex. D158, Report of the UN Secretary-General Pursuant to Resolution 871, 16 March 1994; Muhamed Sacirbey, T. 8143-8144.

<sup>4323</sup> Muhamed Sacirbey, T. 7143-7145.

<sup>4324</sup> Muhamed Sacirbey, T. 7144.

<sup>4325</sup> Muhamed Sacirbey, T. 7145. *See* Ex. P892 (under seal).

<sup>4326</sup> Ex. P212, UNSC Resolution 824, 6 May 1993. *See supra* para. 602.

on 4 June 1993, the UNSC thereafter adopted Resolution 836, authorising UNPROFOR to take necessary measures, including the use of force, in response to attacks against the safe areas.<sup>4327</sup>

1530. Perišić himself stated that, from the establishment of the enclaves until he was appointed Chief of the VJ General Staff on 26 August 1993, he was fully aware of the sensitivity of the situation in the enclaves and “discussed the situation very often” with Milošević.<sup>4328</sup>

1531. The Majority, Judge Moloto dissenting, recalls its finding that Perišić was aware of allegations of crimes being committed in BiH before his appointment as Chief of the VJ General Staff, through a number of sources.<sup>4329</sup> Against this backdrop and based on the evidence discussed in this section, the Majority equally finds that Perišić was aware of the grave existing threat to the safety of the Srebrenica enclave and its inhabitants, as well as of the criminal behaviour of the VRS in general prior to being appointed Chief of the VJ General Staff.

(b) Perišić’s Knowledge of Events in Srebrenica Before and During the Attack

1532. The Trial Chamber recalls that tension in the eastern enclaves reached a crisis point in April 1994, when the VRS attacked Goražde.<sup>4330</sup> Following the attack, the UNSC adopted Resolution 913 on 22 April 1994 which “condemn[ed] in the strongest possible terms the Bosnian Serb forces for their continued offensive against the safe area of Goražde, which has resulted in the death of numerous civilians and tremendous human suffering”.<sup>4331</sup> Perišić was directly aware of the tensions in the eastern enclaves and had direct knowledge of the attack against Goražde. In reference to this attack, Perišić himself stated that the VRS “attacked it and they wanted to clean it up” and that he and Milošević “saved it”.<sup>4332</sup>

1533. Perišić himself admitted during his interview with the OTP that “the fact that Mladić entered Srebrenica was known, it was publicly presented on TV, here and abroad”.<sup>4333</sup> In a telephone intercept of 9 July 1995, following the VRS offensive in Srebrenica which commenced on 6 July 1995, Perišić was informed that “[t]his thing around Srebrenica is mainly going well”.<sup>4334</sup>

<sup>4327</sup> Ex. P2472, UNSC Resolution 836, 4 June 1993, operative clauses 9, 10.

<sup>4328</sup> Ex. P807, Transcript of Interview with Perišić, 19 December 2003, p. 17.

<sup>4329</sup> *See supra* para. 1456.

<sup>4330</sup> *See supra* para. 310.

<sup>4331</sup> Ex. P2882, UNSC Resolution 913, 24 April 1994, p. 1.

<sup>4332</sup> Ex. P807, Transcript of Interview with Perišić, 19 December 2003, p. 17.

<sup>4333</sup> Ex. P807, Transcript of Interview with Perišić, 19 December 2003, p. 33.

<sup>4334</sup> Ex. P1454, Intercepted Conversation, 9 July 1995.

(i) Intelligence Reports

1534. The Trial Chamber notes that the Defence does not dispute that Perišić periodically received “situation reports” from the VRS and that VRS intelligence organs sent reports to the VJ General Staff.<sup>4335</sup> The Trial Chamber recalls in this respect that the VJ General Staff regularly received various types of reports from the VRS, during the early days of Perišić’s tenure and prior to 14 July 1995. The information contained in those reports was processed based on its relevance and importance and included in daily reports sent to Perišić.<sup>4336</sup>

1535. In addition, information and reports from the VRS intelligence and security organs were forwarded to the Security Administration of the VJ General Staff during the war.<sup>4337</sup> In this respect, the Trial Chamber recalls that Perišić received daily reports from his Security and Intelligence Administrations, as well as weekly briefings during the VJ General Staff Collegium.<sup>4338</sup>

1536. From May 1995, the VRS regularly sent reports to the VJ General Staff Intelligence Administration detailing the build-up of offensive activities in Srebrenica. The majority of the reports set out specific ABiH movements in and around the enclaves.<sup>4339</sup> VRS movements were not similarly reported with such precision. The Trial Chamber notes that the VRS reported the following information to the VJ General Staff:

(i) On 11 May 1995: a large number of Muslims [...] wanted to leave the Podrinje enclave and “noted several indications suggesting that [the VRS] can expect offensive activities [...] most probably by mid-May”.<sup>4340</sup>

(ii) On 18 May 1995: “Muslim propaganda is emphasising alleged VRS operations towards the enclaves in the Podrinje region”.<sup>4341</sup>

(ii) On 19 May 1995: “As part of offensive preparations from the Srebrenica and Žepa enclaves, [the 28<sup>th</sup> Division of the ABiH has] taken possession of important facilities [...] linking the enclaves”.<sup>4342</sup>

<sup>4335</sup> Defence Final Brief, paras 823, 825.

<sup>4336</sup> See *supra* paras 1419-1421. See also Ex. D547, Intelligence Report of the VRS Main Staff, 15 September 1993.

<sup>4337</sup> See *supra* paras 1400-1403, 1427-1432.

<sup>4338</sup> See *supra* paras 1392, 1396, 1400.

<sup>4339</sup> See Ex. P2185, VRS Main Staff Intelligence Report Sent to VJ, 11 May 1995, p. 3; Ex. P1831, VRS Main Staff Intelligence Report, 18 May 1995, p. 2; Ex. P2184, VRS Main Staff Intelligence Report Sent to VJ, 19 May 1995, p. 3; Ex. P2178, VRS Main Staff Intelligence Report, 21 May 1995, p. 2.

<sup>4340</sup> Ex. P2185, VRS Main Staff Intelligence Report Sent to VJ, 11 May 1995, p. 3

<sup>4341</sup> Ex. P1831, Intelligence Report, 18 May 1995, p. 3.

<sup>4342</sup> Ex. P2184, VRS Main Staff Intelligence Report Sent to VJ, 19 May 1995, p. 3.

(iii) On 21 May 1995: the Muslim leadership was trying to prevent the abandonment of the Goražde enclave and that Muslim forces in Srebrenica were reinforcing and replenishing forces along the forward line of defence.<sup>4343</sup>

(iv) On 26 May 1995: the VRS reported that “Muslim media” had “euphorically report[ed] on the allegedly large number of victims among the civilian population on the territory of Tuzla, and in doing so wish to force the continuation of NATO air strikes against VRS features and positions”.<sup>4344</sup>

1537. In addition, the Trial Chamber heard that the geographical proximity of Srebrenica to the FRY was of particular military relevance for Perišić and the FRY leadership. Simić testified that any combat operations close to the FRY border would have had security implications for the FRY.<sup>4345</sup> Gajić confirmed that the fact that NATO air-strikes could occur in an area relatively close to the border of the FRY was something that the Security Administration of the VJ General Staff would have been interested in.<sup>4346</sup> Borović, who served as Perišić’s Chef de Cabinet, testified that the take-over of the Srebrenica enclave by the VRS would have had adverse consequences for FRY security.<sup>4347</sup> Perišić was aware of the developments and the potential security threats prior to the attack on Srebrenica, as evidenced by his 21 June 1995 order to the VJ 2<sup>nd</sup> Army Command to form three combat groups to secure FRY territory bordering RS along the Drina valley.<sup>4348</sup>

1538. The evidence shows that from early July 1995 onwards, the VJ General Staff regularly reported and monitored the military developments in and around the enclaves in BiH (specifically, Sarajevo, Srebrenica, Žepa and Goražde).<sup>4349</sup>

1539. Evidence shows that from, 7 July 1995 until the fall of Srebrenica, VJ General Staff Intelligence Administration transmitted reports to the Operations Centre of the VJ General Staff and on the movements and combat readiness of the Muslim forces in and around the enclaves in BiH with both specificity and an eye to the necessity for up-to-date information:

<sup>4343</sup> Ex. P2178, VRS Main Staff Intelligence Report, 21 May 1995, p. 2.

<sup>4344</sup> Ex. P2180, VRS Main Staff Intelligence Report, 26 May 1995, p. 1.

<sup>4345</sup> Miodrag Simić, T. 10094-10095.

<sup>4346</sup> Branko Gajić, T. 10944.

<sup>4347</sup> Siniša Borović, T. 14134.

<sup>4348</sup> Ex. P2761, Order of the Chief of VJ General Staff to 2nd Army Command, 21 June 1995; Miodrag Simić, T. 10130-10131. *See also* Ex. P2755, Order from Perišić to Enhance RSK Combat-readiness in Baranja Area, 13 May 1995.

<sup>4349</sup> *See e.g.* Ex. D214, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 7 July 1995, p. 1. *See also* Ex. D216, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 9 July 1995; Ex. D220, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 12 July 1995; Ex. D222, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 13 July 1995. *See also supra* section VI.I. 3.

- (i) On 7 July 1995: “Muslim forces in the enclaves of Goražde, Žepa and Srebrenica are maintaining a high level of combat readiness and have intensified reconnaissance, sabotage and surprise operations against the VRS”.<sup>4350</sup>
- (ii) On 9 July 1995: “The forces of the 28<sup>th</sup> and 81<sup>st</sup> divisions engaged in provocative fire from the Srebrenica and Goražde enclaves and inserted reconnaissance and sabotage groups in the disposition of the VRS”.<sup>4351</sup>
- (iii) On 9 July 1995: “The units of the 28<sup>th</sup> Division from Srebrenica operated from the safe area with the support of the Dutch Battalion and they also used the OT /armoured personnel’ carrier/ of the Ukrainian Battalion which is stationed in Žepa”.<sup>4352</sup>
- (iv) On 10 July 1995: attacks by the Muslim army in the area of Sarajevo are detailed, and that “[i]n the Muslim enclaves of Goražde, Srebrenica and Žepa a general mobilisation of conscripts was carried out and the units were placed on full combat readiness to carry out offensive operations in order to down forces of the VRS”.<sup>4353</sup>

1540. The Trial Chamber has also been presented with a number of VJ General Staff Intelligence reports that were transmitted to the Operations Centre of the VJ General Staff at the time in which crimes occurred following the fall of Srebrenica:

- (1) On 12 July 1995, the 2<sup>nd</sup> Administration reported that “[o]n the morning of 12 July 1995, units of the VRS Drina Corps entered Potočari village”.<sup>4354</sup>
- (ii) On 13 July 1995, the 2<sup>nd</sup> Administration reported that: “In the fighting so far, about 500 members of the [ABiH 28<sup>th</sup> Infantry Division] have been taken prisoners. So far about 50% of Muslim residents have been evacuated from the Srebrenica area; the evacuation of the remaining residents is made difficult by a shortage of vehicles”.<sup>4355</sup>
- (iii) On 14 July 1995, the daily report of the 1<sup>st</sup> Administration Operations Centre reflected the above information: “VRS units completely smashed the 28<sup>th</sup> Srebrenica Infantry Division”.<sup>4356</sup> It further reported that “[a]bout 500 members of the Muslim army have been captured in the combat to date. About 50% of the Muslim population has been

<sup>4350</sup> Ex. D214, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 7 July 1995.

<sup>4351</sup> Ex. D215, VJ General Staff 1<sup>st</sup> Administration Daily Operations Report, 9 July 1995.

<sup>4352</sup> Ex. D216, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 9 July 1995.

<sup>4353</sup> Ex. D218, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 10 July 1995.

<sup>4354</sup> Ex. D220, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 12 July 1995.

<sup>4355</sup> Ex. D222, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 13 July 1995.

<sup>4356</sup> Ex. D223, VJ General Staff 1<sup>st</sup> Administration Daily Operations Report, 14 July 1995.

evacuated from the Srebrenica area and the evacuation of the remainder is made difficult because of the lack of means of transport”.<sup>4357</sup>

(iv) On 14 July 1995, the 2<sup>nd</sup> Administration reported the movements of the ABiH 28<sup>th</sup> Infantry Division from Srebrenica, which it said was “attempting to avoid skirmishes with and destruction by the VRS”.<sup>4358</sup> It further reported that “at 1100 hours the VRS launched an attack on the Žepa enclave in order to take it and put it under VRS control”.<sup>4359</sup>

(v) On 14 July 1995, the 2<sup>nd</sup> Administration sent a second report, to Perišić directly, stating that “Having taken the Srebrenica enclave, VRS units concentrated their forces around the Žepa enclave and on 12 July 1995 they issued an ultimatum to the Commander of the 1<sup>st</sup> Žepa Brigade [...] to surrender together with civilians without fighting, otherwise an operation was to ensue”.<sup>4360</sup>

1541. Based on the foregoing evidence, the Majority, Judge Moloto dissenting, is satisfied that Perišić was aware that the eastern enclaves were a constant source of tension and subjected to repeated attacks by the VRS. Perišić’s knowledge of the escalating tensions in Srebrenica strongly indicates that he knew that an eventual attack on Srebrenica would occur. The evidence also shows that Perišić received contemporaneous information of the take-over of Srebrenica by the VRS. The Majority is also satisfied that Perišić was aware of the VRS’s discriminatory intent and criminal conduct in Srebrenica and elsewhere in BiH.<sup>4361</sup> The Majority therefore finds that Perišić knew of the high probability that crimes would be committed against its population as a consequence of the VRS attack on Srebrenica.

(ii) Perišić’s Knowledge of Crimes Committed by the VRS in Srebrenica

1542. The Trial Chamber will now consider to what extent Perišić had knowledge of the crimes committed by the VRS in Srebrenica. According to the Prosecution, Perišić had direct and contemporaneous knowledge concerning the crimes committed in Srebrenica and knew that they were taking place by 12 July 1995 at the latest.<sup>4362</sup>

<sup>4357</sup> Ex. D223, VJ General Staff 1<sup>st</sup> Administration Daily Operations Report, 14 July 1995.

<sup>4358</sup> Ex. D224, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 14 July 1995.

<sup>4359</sup> Ex. D224, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 14 July 1995. *See also* Ex. D226, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 15 July 1995; Ex. D228, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 16 July 1995; Ex. D229, VJ General Staff 2<sup>nd</sup> Administration Intelligence Report, 17 July 1995.

<sup>4360</sup> Ex. D269, VJ General Staff Report on Muslim Forces in the Žepa Enclave, 14 July 1995. *See* Branko Gajić, T. 10945-10946.

<sup>4361</sup> *See supra* paras 1484-1487.

<sup>4362</sup> Prosecution Final Trial Brief, para. 684.

a. Statements by Perišić

1543. In his interview with the OTP on 7 December 2003, when asked when he first learned of the allegations of “mass murders and the Srebrenica and the magnitude of the disaster”, Perišić himself stated:

First time I learned about it in the cabinet of Slobodan Milošević when he asked me whether it is possible that Ratko Mladić did that. And I asked: “And what did he do”[?] Then he was surprised that I did not know anything about it. And then he said that mass murder occurred in the wider area of Srebrenica. And I had the feeling that he was caught by surprise by this event and I was especially surprised.<sup>4363</sup>

1544. Perišić recalled this meeting to have taken place in Milošević’s office sometime between 15 and 20 July 1995.<sup>4364</sup> Perišić lamented: “When I heard from Milošević about the terrible crime, believe it or not, since then I did not want to know anything about it. I distanced myself from that because it is unbelievable that something like that happens [...] at the end of the 20<sup>th</sup> and in the beginning of the 21<sup>st</sup> century”.<sup>4365</sup> The Majority notes that, despite this statement, Perišić continued to approve the provision of logistical assistance to the VRS for months after learning of the Srebrenica massacre,<sup>4366</sup> and that Perišić kept urging the SDC to maintain assistance to the VRS.<sup>4367</sup> The Majority additionally notes that Perišić continued to visit Mladić in the VJ facilities of Rajac and Stragari in 1997-1998; at a time when Mladić was wanted by the international community for the crimes allegedly committed in BiH.<sup>4368</sup>

1545. Perišić also stated that he received an important indication that “something was about to happen” when informed by the Užice Corps Commander of the mass escape of Muslims from Žepa, across the Drina River to Serbia.<sup>4369</sup> He elaborated by stating that “there were some clues that

<sup>4363</sup> Ex. P802, Transcript of Interview with Perišić, 3 December 2003, pp 26-27

<sup>4364</sup> Ex. P802, Transcript of Interview with Perišić, 3 December 2003, p. 27.

<sup>4365</sup> Ex. P807, Transcript of Interview with Perišić, 19 December 2003, p. 19.

<sup>4366</sup> On 1 October 1995, the VJ General Staff supplied the Drina Corps with over 35,000 bullets, 52 rockets and 1,008 mortar grenades, pursuant to Perišić’s order. Ex. P595, Matériel List, 1 October 1995. *See* MP-14, T. 3613. On 7 October 1995, the VJ General Staff made twelve “Dvina” rockets available for pick up by the VRS. Ex. P1252, Correspondence Between VJ General Staff and VRS Command Regarding Ammunition Supply, 7 October 1995. On the same day, Mladić asked Perišić for ten aerial bombs, a request that Perišić immediately approved. P2746, Urgent Request from Mladić to Perišić for Approval of 10 Air Bombs, 7 October 1995. *See also* Ex. P951, Coded Dispatch from the Cabinet of the Chief the VJ General Staff, 7 October 1995 (stating that ten air bombs are available for pick up by the VRS). These documents refer to the provision of “FAB-275-4”, namely air bombs. *See* Ex. P505, Transcript of Nikola Tošović Deposition, 13 December 2008, T. 62.

<sup>4367</sup> Ex. P2716, VJ General Staff 1<sup>st</sup> Administration Proposal to FRY President signed by Perišić, 15 September 1995, p. 1 (Perišić proposed an “urgent” SDC meeting to answer the VRS’s requests for assistance in arms and equipment, which Perišić said the VJ was “capable” of satisfying to a certain extent). *See also* Ex. P2193, Transcript of the Collegium of the Chief of the VJ General Staff, 15 September 1995, p. 3 (Perišić told the VJ Collegium that the VRS’s requests were “important” and that “[i]t is realistic to fulfil those requests”).

<sup>4368</sup> *See supra* paras 1386-1389.

<sup>4369</sup> Ex. P802, Transcript of Interview with Perišić, 7 December 2003, p. 27.

something was happening but what actually, that I really did not know”.<sup>4370</sup> Perišić, however, was acutely aware of the high probability that crimes would be committed in Srebrenica. Perišić himself expanded upon this statement and stated, in his interview with the OTP, that the Užice Corps Commander informed him of “what he was to do with all those runaways he caught at the border” and “complained that members of the Užice MUP wanted to kill those refugees”, leading Perišić to ask Milošević to prevent the massacre of refugees by the MUP.<sup>4371</sup>

b. Diplomatic Cables

1546. The Prosecution argues that Perišić was directly and contemporaneously informed by diplomatic cables of the ethnic cleansing which took place in Srebrenica.<sup>4372</sup> The Defence argues that the diplomatic cables that were sent to Perišić provided “little information that [Perišić] could rely upon as knowledge of the commission of crimes”.<sup>4373</sup>

1547. Throughout the war, the FRY’s diplomatic missions at the UN and other missions sent numerous cables to the FRY leadership, some of which were copied to Perišić, conveying notice of the occurrence of several crimes, or at least serious allegations thereof, involving forcible transfers and killings committed in Srebrenica in July 1995.

1548. On 9 July 1995, the UNSC was informed about a VRS attack on Srebrenica.<sup>4374</sup> A diplomatic cable from the FRY’s UN Mission shows that FRY authorities, albeit not Perišić, were informed of the VRS attack on Srebrenica no later than 10 July 1995.<sup>4375</sup> The cable reported that the UNSC was informed that, on 7 July 1995, “Bosnian Serbs had opened tank fire on Srebrenica, on which occasion 4 civilians were killed and 17 wounded. Bosnian Serbs continued shelling Srebrenica on 8 and 9 July”.<sup>4376</sup> The cable further reported that Bosnian Serbs had taken control of five observation posts, in the course of which one Dutch soldier was killed and 30 were taken captive.<sup>4377</sup> No evidence was presented that Perišić in fact read or received this cable.

1549. On 12 July 1995, a cable marked “very urgent” was sent by the FRY’s UN Mission in New York to members of the FRY leadership, including Perišić.<sup>4378</sup> The cable outlined the positions of

<sup>4370</sup> Ex. P803, Transcript of Interview with Perišić, 8 December 2003, p. 4.

<sup>4371</sup> Ex. P802, Transcript of Interview with Perišić, 7 December 2003, pp 27-28.

<sup>4372</sup> Prosecution Final Brief, para. 676.

<sup>4373</sup> Defence Final Brief, para. 918. *See also* para. 1106.

<sup>4374</sup> Muhamed Sacirbey, T. 7460; Ex. P2498, Letter of the Chargé d’Affaires of the Permanent Mission of BiH to the UN, to the President of the UNSC, 9 July 1995.

<sup>4375</sup> Ex. P858 (under seal); Muhamed Sacirbey, T. 7473-7475 (closed session).

<sup>4376</sup> Ex. P858 (under seal), p. 1.

<sup>4377</sup> *Ibid.*

<sup>4378</sup> Ex. P897 (under seal).



the participants of the debate that led to the unanimous adoption of UNSC Resolution 1004,<sup>4379</sup> which expressed grave concern at “the deterioration of [the] situation in and around the safe area of Srebrenica” and “the plight of the civilian population there”.<sup>4380</sup> The cable reported that the United States and Germany emphasised that the Bosnian Serb leadership in Pale was directly responsible for the “exodus of the Srebrenica population which came under the jurisdiction of the War Crimes Tribunal”.<sup>4381</sup> Germany reportedly further emphasised that the consequence of the offensive on Srebrenica was “ethnic cleansing”.<sup>4382</sup> The cable also reported that “[a] Muslim representative of the BiH said that by non-reacting, UN de facto supported ‘ethnic cleansing’ committed by the Serbs, this time in Srebrenica”.<sup>4383</sup>

1550. The Trial Chamber also received evidence that, on 12 July 1995, the FRY authorities, including Perišić, were informed by diplomatic cable of the Bosnian Serbs’ shelling of Potočari, where Dutch troops and refugees were located.<sup>4384</sup> They were further informed about the holding hostage of Dutch peacekeepers by the VRS and the fact that more than 25,000 refugees were heading towards Tuzla.<sup>4385</sup>

1551. On 12 July 1995, the FRY Embassy in London sent a cable to the FRY leadership, including Perišić, about the fall of Srebrenica, stating:

The Media in [Great Britain] are putting the events of Srebrenica into the limelight, stating specifically the Serbs of BiH [are] ignoring completely the warnings of UN and NATO. It has been pointed out especially about another ‘Humanitarian Disaster’, even though there are some rumours that the leadership of RS in its announcement pointed out that the civilians were not endangered.<sup>4386</sup>

1552. Similarly, on 13 July 1995, the FRY Embassy in Bonn sent a cable to the FRY leadership, including Perišić, concerning German reactions to the entry of Bosnian Serb troops in Srebrenica. The cable stated:

With a great intensity and publicity, German media informed the domestic public about the extension of the “Serb Aggression on civil population of Srebrenica” and about extremely negative consequences of further engagement of the International Community with regards to solving the crisis in Bosnia. Numerous comments in daily papers and on special state and private TV station broadcasts, the suffering of civilians had been shown as well as the helplessness of the Dutch blue helmets and the “Arrogant behaviour” of the chief of the Bosnian Serbs, Radovan Karadžić.<sup>4387</sup>

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<sup>4379</sup> *Ibid.*

<sup>4380</sup> Ex. P2501, UNSC Resolution 1004, 12 July 1995, p. 1.

<sup>4381</sup> Ex. P897 (under seal), p. 2.

<sup>4382</sup> *Ibid.*

<sup>4383</sup> Ex. P897 (under seal), p. 3.

<sup>4384</sup> Ex. P896 (under seal); Muhamed Sacirbey, T. 7488 (closed session).

<sup>4385</sup> *Ibid.*

<sup>4386</sup> Ex. P857 (under seal), p. 2.

<sup>4387</sup> Ex. P856 (under seal), p. 1.

1553. On 14 July 1995, Perišić was informed by diplomatic cable of concerns of the UN member states regarding the abuse and forced expulsion of civilians in Srebrenica.<sup>4388</sup> The cable explained that “since dramatic news of alleged abuse of Muslim population and their forced expulsion continue to arrive from the field, in addition to the detention of UNPROFOR members and attacks on the second ‘protected area of Žepa’, the UNSC was forced to react with a presidential statement, even though it adopted a resolution on the same issue two days ago”. The cable continued:

Information from the field of alleged abuse of civilians and prisoners from Srebrenica and their forced expulsion is of special concern for the UN. The Secretary General and other leaders warn that these are severe violations of humanitarian law and demand that they stop. One of the primary tasks of the UN and the humanitarian agencies will be to get involved in the situation as soon as possible to provide the threatened population with the necessary humanitarian help.<sup>4389</sup>

c. Meetings with Members of the VRS

1554. The Prosecution maintains that Perišić had access to Mladić and communicated with him while several crimes were occurring in Srebrenica.<sup>4390</sup> The Defence does not dispute that Perišić had direct communications with VRS officers, including Mladić. Instead, the Defence maintains that the Prosecution has failed to demonstrate that such communications contained any information about criminal behaviour by the VRS.<sup>4391</sup>

1555. Photographic evidence shows that, on 18 July 1995, at the time when the crimes were occurring in Srebrenica, Perišić attended a lunch meeting with, *inter alia*, Mladić and Gvero in Han Pijesak.<sup>4392</sup> Ned Krayishnik testified that the mood at lunch was cheerful and that the “liberation” of Srebrenica was discussed.<sup>4393</sup> According to him, there were no signs of disagreement between Perišić and Mladić.<sup>4394</sup> He further testified that he did not recall specific statements, but testified that this was the first occasion when he heard about the resolution of the “problems with

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<sup>4388</sup> Ex. P855 (under seal); Muhamed Sacirbey, T. 7493-7496 (closed session).

<sup>4389</sup> Ex. P855 (under seal), p. 2.

<sup>4390</sup> Prosecution Final Brief, paras 685-686.

<sup>4391</sup> Defence Final Brief, para. 823.

<sup>4392</sup> Ex. P2799, Lešić Photograph of Perišić with Mladić and Others in Crna Rijeka, 18 July 1995; Ex. P2800, Lešić Photograph of Perišić with Mladić and Others in Crna Rijeka, 18 July 1995; Ex. P2801, Lešić Photograph of Perišić with Mladić and Others in Crna Rijeka, 18 July 1995; Ex. P2802, Lešić Photograph of Perišić with Mladić and Others in Crna Rijeka, 18 July 1995; Ex. P2803, Lešić Photograph of Perišić with Mladić and Others in Crna Rijeka, 18 July 1995; Ex. P2804, Lešić Photograph of Perišić with Mladić and Others in Crna Rijeka, 18 July 1995; Ex. P2805, Lešić Photograph of Perišić with Mladić and Others in Crna Rijeka, 18 July 1995. *See also* Ex. P2705, Photographs of Perišić with Mladić and others, including General Milan Gvero, 18 July 1995.

<sup>4393</sup> Ned Krayishnik, T. 9579.

<sup>4394</sup> Ned Krayishnik, T. 9578-9579.

Srebrenica”.<sup>4395</sup> He further testified “soldiers were also talking about [the liberation of Srebrenica]”.<sup>4396</sup>

1556. The Trial Chamber also received evidence that, on 24 July 1995, Perišić met with Mladić and Slobodan Milošević, and that Milošević then lamented that “Srebrenica and Žepa have damaged us very greatly”.<sup>4397</sup>

d. Documentation by the International Community of Crimes in Srebrenica

1557. The Trial Chamber has also been presented with evidence that FRY authorities, albeit without mentioning Perišić specifically, were receiving contemporaneous information from the international community about crimes being committed in Srebrenica.

1558. On 9 July 1995, the UNSC was informed about a VRS attack on Srebrenica.<sup>4398</sup> On 13 July 1995, the UNSC and the UNGA were informed by the Permanent Mission of BiH to the UN that Serb forces were separating the Bosnian Muslims in Srebrenica, that a number of trucks with detained men were taken to unknown destinations and that there were substantial grounds to fear their execution.<sup>4399</sup> The Trial Chamber heard from Sacirbey that this letter would have been circulated to all member states, including the FRY and observer missions.<sup>4400</sup>

1559. On 14 July 1995, the UNSC discussed the expulsion of the civilian population from Srebrenica by the Bosnian Serbs, as well as the fate of approximately 4,000 Bosnian Muslim men and boys detained there.<sup>4401</sup> On the same day, the President of the UNSC issued the following statement:

The [UNSC] recalls its [R]esolution 1004 (1995). The Council is deeply concerned about the ongoing forced relocation of tens of thousands of civilians from the Srebrenica safe area to the Tuzla region by the Bosnian Serb party. Such a forced relocation is a clear violation of the human rights of the civilian population. It is especially concerned about reports of grave mistreatment and killing of innocent civilians. It is equally concerned about reports that up to 4,000 men and boys have been forcibly removed by the Bosnian Serb party from the Srebrenica safe area. [...] The [UNSC] again condemns the unacceptable practice of ‘ethnic cleansing’ and reaffirms that those who have committed or have ordered the commission of such acts will be held individually responsible in respect of such acts.<sup>4402</sup>

<sup>4395</sup> Ned Krayishnik, T. 9550-9553; Ex. P2806, Lešić Videotape of Mladić and others in Belgrade, Han Piljesik and Crna Rijeka, 16-18 July 1995, at 25 minutes and 45 seconds.

<sup>4396</sup> Ned Krayishnik, T. 9552.

<sup>4397</sup> Ex. P2783, Excerpts from Ratko Mladić’s Notebook, 24 July 1995, p. 229.

<sup>4398</sup> Muhamed Sacirbey, T. 7460; Ex. P2498, Letter of the Chargé d’Affaires of the Permanent Mission of BiH to the UN, to the President of the UNSC, 9 July 1995.

<sup>4399</sup> Ex. P2499, Letter of the Chargé d’Affaires of the Permanent Mission of BiH to the UN, to the President of the UNSC, 13 July 1995.

<sup>4400</sup> Muhamed Sacirbey, T. 7461-7462.

<sup>4401</sup> Ex. P2502, Record of the 3554<sup>th</sup> Meeting of the UNSC, 14 July 1995; Muhamed Sacirbey, T. 7491-7492.

<sup>4402</sup> Ex. P2502, Record of the 3554<sup>th</sup> Meeting of the UNSC, 14 July 1995.

1560. On 14 July 1995, the FRY's UN Mission in New York sent a cable to FRY leadership, although not to Perišić directly, about the President's statement. That cable stated as follows:

Today (Friday 14 July), at the request of the USA, the [UNSC] has adopted, without major problems, the presidential statement (hereby sent by fax), whereby concern was expressed over the expulsion of civilian population from Srebrenica by the Bosnian Serbs, as well as over the report on the killings and mistreatment of civilians. [...] The [UNSC] has condemned the unacceptable practice of "ethnic cleansing" and confirmed that those who engaged in or ordered it will individually be held accountable.<sup>4403</sup>

1561. On 22 July 1995, a VJ General Staff report stated that "Western intelligence services are intensively investigating what the VRS intends to do next in the Muslim enclaves Goražde and Bihać".<sup>4404</sup>

1562. On 25 July 1995, the UNSC condemned the Bosnian Serb offensive "in the strongest possible terms" and expressed particular concern "at the plight of the civilian population".<sup>4405</sup>

1563. The Trial Chamber is satisfied that official documents of the UNSC were passed on to FRY authorities. The Trial Chamber recalls its finding that Perišić was in regular contact with the FRY leadership and was generally informed of UNSC discussions. The Majority, Judge Moloto dissenting, therefore finds that Perišić was aware of reports and other documentations informing the FRY leadership of crimes committed by the VRS.<sup>4406</sup>

e. Indictments of the Tribunal

1564. While the conflict was ongoing, the Tribunal issued joint indictments against Radovan Karadžić and Ratko Mladić on 24 July 1995, and again on 14 November 1995, for, *inter alia*, crimes committed in Srebrenica.<sup>4407</sup> The Trial Chamber received evidence that the indictment of 24 July 1995, along with a copy of the arrest warrant, was officially transmitted to FRY authorities in Belgrade.<sup>4408</sup>

1565. On 26 July 1995, the *Politika*, a Belgrade daily newspaper, reported that the Tribunal had indicted Radovan Karadžić and Ratko Mladić.<sup>4409</sup> It reported that Antonio Cassese, the President of

<sup>4403</sup> Ex. P899 (under seal), p. 1.

<sup>4404</sup> Ex. P2507, Intelligence Report from General Staff to the Operational Centre of VJ, 22 July 1995, p. 1.

<sup>4405</sup> Ex. P2507, Statement of the UNSC President, 25 July 1995.

<sup>4406</sup> *See supra* section VII.3, paras 1475-1480, 1485, 1518-1521.

<sup>4407</sup> Ex. P1628, ICTY Indictment Against Radovan Karadžić and Ratko Mladić, 24 July 1995; Ex. P1629, ICTY Indictment Against Radovan Karadžić and Ratko Mladić, 14 November 1995.

<sup>4408</sup> Ex. P1630, ICTY Warrant of Arrest for Ratko Mladić, 25 July 1995 (to FRY); Ex. P1632, Letter to the FRY Accompanying ICTY Warrant of Arrest for Ratko Mladić, 26 July 1995.

<sup>4409</sup> Ex. P2833, *Politika* Article Regarding the Effect of Karadžić Indictment on Peace Negotiations, 26 July 1995; Ex. P2834, *Politika* Article on War Crimes Indictments of Karadžić, Mladić and Martić, 26 July 1995.

the Tribunal, had issued a statement declaring that the indicted individuals “will not be in a position to participate in peace talks”.<sup>4410</sup>

1566. Evidence presented to the Trial Chamber demonstrates that Perišić knew about the allegations against Mladić. Perišić was informed at the VJ Collegium on 30 October 1995 that “Serbs are again accused of execution of the Muslims”.<sup>4411</sup> At the VJ Collegium on 29 December 1995, Perišić acknowledged that Mladić could not serve as a liaison with IFOR because “he has been suspected of war crimes”.<sup>4412</sup> Finally, the Trial Chamber notes that, not only did Perišić know about the allegations, but that he played an active role in protecting Mladić. In an intercepted conversation on 9 December 1995, Perišić stated that “nobody will extradite [Mladić] to the Tribunal”.<sup>4413</sup>

f. Media Coverage of Crimes in Srebrenica

1567. The events of Srebrenica were extensively covered by international and Serbian media, making headlines all over the world.<sup>4414</sup>

1568. On 13 July 1995, Agence France-Presse reported on the “wholesale shipment of the enclave’s population out of the pocket personally organized by the Bosnian Serb Commander Ratko Mladić”.<sup>4415</sup> It further reported that the UNHCR called the removal of residents from Srebrenica “one of the most blatant examples of ethnically motivated forced displacement we have seen yet in war”.<sup>4416</sup>

1569. On 14 July 1995, a report from Agence France-Presse cited a local official from Tuzla stating that “Bosnian Serb forces are executing men they took prisoner after capturing the government enclave of Srebrenica”.<sup>4417</sup> It further reported another local official in charge of social policy and refugees as stating that Serbian soldiers had dragged refugees fleeing Srebrenica and

<sup>4410</sup> Ex. P2833, *Politika* Article Regarding the Effect of Karadžić Indictment on Peace Negotiations, 26 July 1995.

<sup>4411</sup> Ex. P2202, Transcript of the Collegium of the Chief of the VJ General Staff, Doc ID 0618-7763, 30 October 1995, p. 2.

<sup>4412</sup> Ex. P2891, Record of the Collegium of the VJ General Staff, 29 December 1995, pp 16-17.

<sup>4413</sup> Ex. P1464, Intercepted Conversation, 9 December 1995, p. 1.

<sup>4414</sup> *See e.g.* Carl Bildt, T. 14325-14326.

<sup>4415</sup> Ex. P1089, Adam Brown, "Evacuation of Srebrenica Refugees Continues - Serbs Holding Male Prisoners", Agence France-Presse, 13 July 1995.

<sup>4416</sup> *Ibid.*

<sup>4417</sup> Ex. P1092, Report Entitled "Evacuation of Srebrenica Civilians Continues; Aid Executing Men on the Spot", Agence France-Presse, 14 July 1995.

“executed them on the spot”.<sup>4418</sup> The official further stated that some men had been taken to the border village of Bratunac and that others were taken to a camp where they were killed.<sup>4419</sup>

1570. On 20 July 1995, the European edition of *Oslobodjenje* reported that, on 4 July 1995, two days before the start of the offensive in the area of Srebrenica, VJ 1<sup>st</sup> Army Commander General Dragoljub Ojdanić, a subordinate of Perišić, reportedly issued the following public statement: “The two Muslim enclaves of Srebrenica and Žepa are situated in the heart of Serb territory and it should not have been allowed to form them. It is impossible to remain this way. It has to be solved militarily”.<sup>4420</sup> The article expressly named Perišić and a number of his subordinates, and described both Ojdanić and Mladić as “war criminals”.<sup>4421</sup>

1571. The media in Belgrade also reported on the crimes which were taking place in Srebrenica.<sup>4422</sup>

1572. On 12 July 1995, *Borba* published an article concerning the fall of Srebrenica and reported that “representatives of humanitarian organizations said that Srebrenica was ‘completely empty’ and that thousands of Bosnian Muslims were fleeing Srebrenica ahead of Bosnian Serb attacks”.<sup>4423</sup> On 14 July 1995, *Borba* published another article entitled “Voluntary Ethnic Cleansing”, stating that the whereabouts of 7,000 people from Srebrenica were unknown, adding that this number included 3,000 ABiH soldiers, who were hiding in the surrounding woods and hills.<sup>4424</sup> On 20 July 1995, *Borba* reported that the UNHCR stated that “[t]he Bosnian Serbs are carrying out ethnic terror more systematically than ever before”.<sup>4425</sup> On 24 July 1995, *Borba* published an article entitled “Serb Behavior in Srebrenica Barbaric”, reporting DutchBat members’ allegations that they had witnessed Bosnian Serbs killing and torturing Muslims.<sup>4426</sup>

1573. On 21 July 1995, *Intervju*, a Belgrade-based weekly, published an article describing the gathering of “28,000 Muslims of all ages” at the Dutch base in Potočari.<sup>4427</sup> The article depicted the empty streets of Srebrenica, the looting of apartments, and the surrendering of Muslim men near

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<sup>4418</sup> *Ibid.*

<sup>4419</sup> *Ibid.*

<sup>4420</sup> Ex. P2869, Article in European Edition of *Oslobodjenje*, 20-23 July 1995, p. 2.

<sup>4421</sup> *Ibid.*

<sup>4422</sup> See Muhamed Sacirbey, T. 7186.

<sup>4423</sup> Ex. P1099, *Naša Borba* Article on NATO Intervention in Srebrenica, 12 July 1995, p. 2.

<sup>4424</sup> Ex. P1101, *Naša Borba* Article on Events in Srebrenica, 14 July 1995. See also Ex. P1098, *Naša Borba* Article on Srebrenica, 10 July 1995; Ex. P1099, *Naša Borba* Article on NATO Intervention in Srebrenica, 12 July 1995; Ex. P1100, *Naša Borba* Article on NATO Intervention in Srebrenica, 12 July 1995; Ex. P1102, *Naša Borba* Article, 20 July 1995; Ex. P1103, *Naša Borba* Article on Events in Srebrenica, 22 July 1995; Ex. P1105, *Politika Ekspres* Article on Events in Srebrenica, 12 July 1995.

<sup>4425</sup> Ex. P1102 *Naša Borba* Article, 20 July 1995.

<sup>4426</sup> Ex. P1104, *Naša Borba*/NY Times Article on Events in Srebrenica, 24 July 1995.

<sup>4427</sup> Ex. P2824, *Intervju* Article on Events in Srebrenica, 21 July 1995, p. 1.

Kravica.<sup>4428</sup> It described the participation of VRS officers in the take-over of Srebrenica, among them Krstić, Milovanović, Gvero, Tolimir and Ljubiša Borovčanin.<sup>4429</sup>

1574. On the same date, the Belgrade weekly *Nin* published an article entitled “Ghost Town”, in which it stated that “[a]lready a week has passed since the fall of Srebrenica and it is still not clear what happened to its citizens. The majority was reportedly loaded by Bosnian Serbs into buses and trucks and taken towards Tuzla, Kladanj and other locations in the territory controlled by the government in Sarajevo, but there is no reliable information on the whereabouts of thousands of others”.<sup>4430</sup> The article continued, stating that according to a UN source, “General Mladić called the commander of the Dutch ‘blue helmets’ and told him that hundreds of people had been killed in the villages of the Srebrenica municipality”.<sup>4431</sup> The article also reported that a piece on Srebrenica broadcast by Studio B aired images of several male bodies in a draining ditch and very briefly the camera showed what appeared to be a pile of bodies, three or four layers deep, in front of a depot, while a journalist commented that “many Muslim soldiers had been killed”.<sup>4432</sup>

1575. The Prosecution asserts that Perišić was provided with daily summaries of news/media reports relating to the events in Srebrenica and that he personally watched televised media coverage and read newspapers.<sup>4433</sup> At the same time, the Defence submits that no evidence was presented before the Trial Chamber to support the assertion that Perišić watched or read news from any international media source and that it cannot be inferred that information contained in open source materials or international news media reports was available to Perišić.<sup>4434</sup>

1576. The Trial Chamber heard from Gajić that the earliest information regarding the crimes committed in Srebrenica was gleaned by the VJ from media reports.<sup>4435</sup> He testified that he received the information through a foreign news agency report 10 to 15 days after its publication some time after 20 July 1995.<sup>4436</sup> However, the witness maintained that the VJ was not notified that any crimes occurred at Srebrenica.<sup>4437</sup> He only saw contradictory reports in the media.<sup>4438</sup> He admitted that he “did nothing” with this information because it “wasn’t a counter-intelligence issue”.<sup>4439</sup> He testified

<sup>4428</sup> Ex. P2824, *Intervju* Article on Events in Srebrenica, 21 July 1995, pp 6, 11-12.

<sup>4429</sup> Ex. P2824, *Intervju* Article on Events in Srebrenica, 21 July 1995, pp 3-5.

<sup>4430</sup> Ex. P1096, *Nin* Article on Srebrenica Aftermath, 21 July 1995, p. 7.

<sup>4431</sup> *Ibid.*

<sup>4432</sup> Ex. P1096, *Nin* Article on Srebrenica Aftermath, 21 July 1995, pp 7-8.

<sup>4433</sup> Prosecution Final Brief, para. 3.

<sup>4434</sup> Defence Final Brief, paras 829-830.

<sup>4435</sup> Branko Gajić, T. 10957.

<sup>4436</sup> Branko Gajić, T. 10966-1967.

<sup>4437</sup> Branko Gajić, T. 10953-10955, 10959-10963, 11020-11022.

<sup>4438</sup> Branko Gajić, T. 10956-10961, 10966-10967.

<sup>4439</sup> Branko Gajić, T. 10960-10962.

that other bodies would have been responsible for looking into these media reports, such as the judiciary and the VRS.<sup>4440</sup>

1577. The Prosecution asserts that it is “impossible that the VJ intelligence apparatus was ignorant of the crimes which were occurring until two weeks after the foreign media had reported them”.<sup>4441</sup> The Defence asserts that the Prosecution has failed to demonstrate that information from international news reports was provided to Perišić in intelligence or information reports.<sup>4442</sup>

1578. Gajić was not credible when he testified that the Security Administration of the VJ General Staff received information regarding crimes in Srebrenica only after 20 July 1995. The Majority recalls that the Intelligence and Security Administration monitored the situation in and around the area of Srebrenica as shown by the reports that were sent to the VJ General Staff between 7 and 14 July 1995.<sup>4443</sup> The evidence also shows that the VJ had a security interest in monitoring the situation in the Srebrenica area as it was close to the FRY border.<sup>4444</sup> In this regard, the Majority also notes that Gajić, when pressed by the Prosecution in cross-examination, conceded that the conflict in Srebrenica was near the FRY border and actually presented a security problem that could lead to an inflow of refugees.<sup>4445</sup> Gajić also testified that its security organs had an obligation to duly verify the authenticity of data and intelligence received from a number of different sources.<sup>4446</sup> The Majority is therefore satisfied that the only reasonable inference available from the evidence is that the VJ General Staff through its intelligence and security organs must have received information regarding crimes committed in Srebrenica well before 20 July 1995. Furthermore, the evidence discussed above shows that the media reported information about certain crimes allegedly occurring in Srebrenica, especially the forcible displacement of Bosnian Muslims, as early as 13 July 1995.<sup>4447</sup> The Majority recalls that the VJ General Staff and Perišić himself monitored the media’s coverage of the war in the BiH.<sup>4448</sup> Based on these considerations, the Majority therefore finds that Perišić was aware of allegations of crimes as early as 13 July 1995.

(c) Conclusion

1579. The Majority, Judge Moloto dissenting, is satisfied that Perišić, while serving as Chief of the VJ General Staff, was aware of the VRS’s discriminatory intent and criminal behaviour towards

<sup>4440</sup> Branko Gajić, T. 10961-10963.

<sup>4441</sup> Prosecution Final Brief, para. 682.

<sup>4442</sup> Defence Final Brief, paras 829-830.

<sup>4443</sup> *See supra* paras 1534-1539.

<sup>4444</sup> Miodrag Simić, T. 10094-10095.

<sup>4445</sup> Branko Gajić, T. 10961-10962.

<sup>4446</sup> Branko Gajić, T. 10803.

<sup>4447</sup> *See supra* paras 1568-1578.

<sup>4448</sup> *See supra* paras 1404-1405, 1515-1516.



Bosnian Muslims, as shown, *inter alia*, by the events in Sarajevo and Srebrenica between 1993 and 1995. The Majority therefore finds beyond a reasonable doubt that Perišić knew that individual crimes committed by the VRS before the attack on Srebrenica would probably be followed by more crimes committed by the VRS after the take-over of the enclave in July 1995. The Majority is also satisfied that Perišić had contemporaneous knowledge of allegations that the VRS was committing crimes in Srebrenica.

## VII. PERIŠIĆ'S CRIMINAL RESPONSIBILITY FOR AIDING AND ABETTING CRIMES UNDER ARTICLE 7(1)

### A. Elements of Aiding and Abetting

1580. Momčilo Perišić is indicted under Article 7(1) of the Statute of the Tribunal for aiding and abetting crimes committed by the VRS in Sarajevo and Srebrenica.<sup>4449</sup> In order for Perišić to be held responsible for aiding and abetting, the Trial Chamber must be satisfied that Perišić provided practical assistance, encouragement, or moral support to the principal perpetrator of the crime, which had a substantial effect on the perpetration of the crime.<sup>4450</sup> An alleged aider and abettor is always accessory to a crime perpetrated by another person, the principal.<sup>4451</sup> For an accused to be liable for aiding and abetting, the underlying crime must have been committed by the principal perpetrator.<sup>4452</sup> Furthermore, the Trial Chamber must be satisfied that Perišić knew that his acts assisted the commission of the crime by the principal perpetrator<sup>4453</sup> and that he was aware of the “essential elements” of the crime, including the state of mind of the principal perpetrator.<sup>4454</sup> However, it is not necessary that he shared the *mens rea* required for the crime.<sup>4455</sup>

1581. The Trial Chamber will first analyse the objective elements and discuss the mental element separately.

### B. Findings on Objective Elements of Aiding and Abetting

#### 1. Submissions of the Parties

1582. The Prosecution argues that the following had a substantial effect of the commission of crimes by the VRS in Sarajevo and Srebrenica: Perišić's logistic assistance, personnel assistance, deployment of VJ troops to the Sarajevo war theatre and the creation of an environment of impunity.<sup>4456</sup> The Prosecution asserts that “[w]ithout this assistance in men and materiel, the VRS

<sup>4449</sup> Indictment, paras 40-46, 55-62.

<sup>4450</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Karera* Appeal Judgement, para. 321; *Blagojević and Jokić* Appeal Judgement, paras 127, 188, quoting *Furundžija* Trial Judgement, para. 249; *Blaškić* Appeal Judgement, para. 45; *Simić* Appeal Judgement, para. 85. See also *Orić* Appeal Judgement, para. 43. For a thorough analysis of the *actus reus* of aiding and abetting, see *Furundžija* Trial Judgement, paras 192-235.

<sup>4451</sup> *Tadić* Appeal Judgement, para. 229.

<sup>4452</sup> *Milutinović et al.* Trial Judgement, para. 92.

<sup>4453</sup> *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, para. 86; *Blaškić* Appeal Judgement, paras 45-46; *Seromba* Appeal Judgement, para. 56; *Ntagerura et al.* Appeal Judgement, para. 370; *Vasiljević* Appeal Judgement, para. 102.

<sup>4454</sup> *Blagojević and Jokić* Appeal Judgement, para. 221. See also *Orić* Appeal Judgement, para. 43. It is not required that the accused knew the precise crime that was intended and committed by the principal, *Blaškić* Appeal Judgement, para. 50.

<sup>4455</sup> *Blagojević and Jokić* Appeal Judgement, para. 221. See also *Blaškić* Appeal Judgement, para. 45.

<sup>4456</sup> Prosecution Final Brief, paras 60-81, 461-562.

would not have been a functioning army, would have been unable to prosecute the war in BiH at such length and with such ferocity, and would have been unable to commit the crimes tragically characteristic of that war”.<sup>4457</sup>

1583. The Defence argues that none of the methods of alleged assistance presented by the Prosecution, whether individually or collectively, establish Perišić’s liability under Article 7(1) of the Statute<sup>4458</sup> and that the Prosecution has failed to establish a nexus between Perišić and any crimes perpetrated by the VRS.<sup>4459</sup>

1584. The Defence also argues that the relevant question is not whether Perišić provided “a substantial amount” of weaponry and other logistical support, but whether such assistance had “a substantial effect” on the perpetration of the crimes,<sup>4460</sup> which the evidence does not establish.<sup>4461</sup> In the Defence’s view, finding Perišić guilty of aiding and abetting the charged crimes would amount to “the indirect criminalisation of the waging of war”.<sup>4462</sup>

1585. Finally, the Defence argues that for *ex post facto* assistance to amount to aiding and abetting, the Prosecution must prove that a prior agreement existed between the accused and the perpetrator at the time of the planning, preparation or execution of the crime.<sup>4463</sup> It concludes that no such agreement concerning crimes existed between Perišić and the VRS.<sup>4464</sup>

## 2. Preliminary Remarks

1586. With respect to the Prosecution argument of a “creation of an environment of impunity”, the Trial Chamber notes that the Prosecution formulates this aspect of Perišić’s alleged responsibility as a direct consequence of his “complete failure to prevent the crimes and to punish his *subordinates* for committing them”.<sup>4465</sup> The Defence argues that any argument in this vein should only be considered within the ambit of Article 7(3) liability, and any effort by the Prosecution to do otherwise would be in an effort to circumvent the stringent requirement of Article 7(3) liability.<sup>4466</sup> The Trial Chamber finds that this aspect of the Prosecution’s theory can only be discussed once and if a superior-subordinate relationship between Perišić and the principal perpetrators is established. As will be detailed later in this Judgement, the Trial Chamber did not find that a superior-

<sup>4457</sup> Prosecution Final Brief, para. 61. *See also* Prosecution Final Brief, paras 4-8, 73.

<sup>4458</sup> Defence Final Brief, paras 605, 1047.

<sup>4459</sup> Defence Final Brief, paras 800-802, 1081-1082.

<sup>4460</sup> Defence Final Brief, para. 52. *See also* Defence Closing Arguments, T. 14785.

<sup>4461</sup> *See* Defence Final Brief, paras 800-802, 1081-1082.

<sup>4462</sup> Defence Closing Arguments, T. 14786.

<sup>4463</sup> Defence Final Brief, paras 49, 1083-1084, citing *Blagojević* Trial Judgement, para. 731.

<sup>4464</sup> Defence Final Brief, paras 796, 1083.

<sup>4465</sup> Prosecution Final Brief, paras 461, 831-834 (emphasis added).

<sup>4466</sup> Defence Final Brief, paras 64-65.

subordinate relationship existed between Perišić and the VRS, including its officers serving in the 30<sup>th</sup> PC.<sup>4467</sup> In the absence of Perišić's material ability to prevent or punish the perpetrators of the crimes, the Trial Chamber will not enter any finding as to whether an environment of impunity was created and what effect it had on the commission of the crimes.

1587. The following analysis and findings are made by the Majority of the Trial Chamber, Judge Moloto dissenting.

### 3. The VRS's War Strategy Encompassed the Commission of Crimes

1588. Momčilo Perišić stands charged with aiding and abetting war crimes and crimes against humanity committed by VRS members against civilians and/or persons not taking active part in hostilities in Sarajevo and Srebrenica. Perišić is not charged with helping the VRS wage war *per se*, which is not a crime under the Statute. The Majority, however, finds that under the VRS's strategy there was no clear distinction between military warfare against BiH forces and crimes against civilians and/or persons not taking active part in hostilities. To the contrary, these crimes were inextricably linked to the war strategy and objectives of the VRS leadership. They were not perpetrated by rogue soldiers acting independently.

1589. The Majority recalls that Perišić was put on notice of the "strategic objectives" of the Bosnian Serb leadership.<sup>4468</sup> One of the six strategic objectives was a partition of Sarajevo into Serbian and Muslim sectors and establishment of a separate state authority for each sector.<sup>4469</sup> The Bosnian Serb leaders viewed the siege of Sarajevo as instrumental to the implementation of this objective.<sup>4470</sup>

1590. The systematic and widespread sniping and shelling of civilians in Sarajevo by the VRS over a period of three years demonstrates that the VRS's leading officers relied on criminal acts to further the siege. As observed by Michael Williams, a senior UNPROFOR official, the VRS's siege of Sarajevo "was conducted with complete disregard of the Geneva [C]onventions and of international humanitarian law and deliberately not only made no distinction between civilian and military, but targeted the civil[ian] population in preference to military targets".<sup>4471</sup> Such attacks

<sup>4467</sup> See *infra* paras 1770-1779.

<sup>4468</sup> Ex. P2933, Excerpt from Ratko Mladić's Notebook, 13 December 1993, p. 1.

<sup>4469</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, pp 13-14; Ex. P334, Excerpt of the RS's Official Gazette Reporting the "Strategic Goals", 26 November 1993. See also *supra* paras 184, 305.

<sup>4470</sup> See *supra* para. 305.

<sup>4471</sup> Ex. P2371, Witness Statement of Michael Charles Williams, 21-22 March 2000, p. 9.

were designed to intimidate the population of Sarajevo and break its morale and spirit, as well as to destabilise BiH as a country.<sup>4472</sup>

1591. The Majority also recalls that the third strategic objective was related to Srebrenica and aimed at establishing a corridor in the Drina River valley and eliminating the Drina River as a border between the Serbian states.<sup>4473</sup> At the military level, this goal was implemented through the plan of “plunging the Bosnian Muslim population into a humanitarian crisis and ultimately eliminating the enclave”.<sup>4474</sup> The Majority is satisfied that the implementation of this plan involved criminal acts. The Majority recalls in this regard that the attack of Srebrenica involved the removal of the Bosnian Muslim civilian population and was followed by the organised mass execution and burial of thousands of Bosnian Muslim civilians and/or persons not taking active part in hostilities, as well as the commission of other abuses on a very wide scale.<sup>4475</sup>

#### 4. Logistical Assistance

##### (a) Submissions

1592. The Prosecution submits that Perišić orchestrated the VJ’s provision of extensive logistical assistance to the VRS, which had a substantial effect on the crimes perpetrated by the VRS in Sarajevo and Srebrenica.<sup>4476</sup> It advances that logistical assistance was “substantial and took many forms: weapons and ammunition, repairs and maintenance, training, medical support, communications support, fuel and lubricants, air bombs and rocket engines for the manufacture of modified air bombs, and other miscellaneous assistance”.<sup>4477</sup> The Prosecution contends that certain shells and bullets recovered from crime scenes in Sarajevo and Srebrenica originated from the logistical assistance provided by Perišić.<sup>4478</sup>

1593. The Defence acknowledges that Perišić and the VJ gave assistance to the VRS following the SDC’s orders,<sup>4479</sup> although it argues that there is no relationship between any assistance provided by Perišić and the crimes committed by the VRS.<sup>4480</sup> It adds that there is no evidence of a link between Perišić and any ammunition retrieved from the alleged crime scenes.<sup>4481</sup> Moreover, it claims that it

<sup>4472</sup> Ex. P2371, Witness Statement of Michael Charles Williams, 21-22 March 2000, pp 7-11.

<sup>4473</sup> Ex. P188, Minutes of the 16<sup>th</sup> Session of the Assembly of the Serbian People in BiH, 12 May 1992, p. 13.

<sup>4474</sup> *See supra* para. 607.

<sup>4475</sup> *See supra* section V.C.

<sup>4476</sup> Prosecution Final Brief, paras 461, 481, 554. *See also* Prosecution Final Brief, para. 6.

<sup>4477</sup> Prosecution Final Brief, para. 240.

<sup>4478</sup> Prosecution Final Brief, para. 79. *See also supra* section VI.F.

<sup>4479</sup> Defence Final Brief, paras 607, 780.

<sup>4480</sup> Defence Closing Arguments, T. 14786-14787.

<sup>4481</sup> Defence Final Brief, paras 801-802, 1081. *See also* Defence Final Brief, paras 1049-1080.

is not possible to accurately determine what quantities of weaponry the VRS obtained from the VJ as opposed to other sources.<sup>4482</sup>

(b) Discussion

1594. The Majority recalls its finding that Perišić oversaw a system providing comprehensive military assistance to the VRS. Such support included provision of weapons and ammunition, technical experts, training, medical support, fuel and operational support enabling the *Pretis* factory to produce weaponry. In particular, the Majority notes that part of this assistance was given to VRS units involved in perpetrating the charged crimes: the Drina Corps, Krajina Corps and SRK.<sup>4483</sup>

1595. The Majority recalls that although the VJ was providing logistical assistance to the VRS even before Perišić became Chief of the VJ General Staff, he helped to efficiently continue this policy. Perišić recurrently urged the SDC to continue providing the VRS with extensive logistical and technical assistance free of charge, and oversaw this process in practice.<sup>4484</sup> By these actions, Perišić thus provided practical assistance to the VRS.

1596. The Majority will now turn to analyse what effect such assistance had on the commission of the crimes by the VRS.

1597. The Majority recalls its finding that the VRS's material reserves were significantly depleted as the war progressed.<sup>4485</sup> During the war, RS described its material and financial situation as "catastrophic",<sup>4486</sup> "alarming",<sup>4487</sup> "extremely poor"<sup>4488</sup> and "grave".<sup>4489</sup> The evidence shows that the VRS was significantly dependent on the military support from the FRY and regularly requested assistance from Perišić and the VJ,<sup>4490</sup> sometimes pressingly.<sup>4491</sup> The VRS's dependence on VJ assistance was exacerbated by the fact that the great bulk of military supplies was given free of charge by the VJ, and that the VRS was otherwise frequently unable to pay whenever payment was demanded.<sup>4492</sup>

<sup>4482</sup> Defence Final Brief, paras 647, 742-743; Defence Closing Arguments, T. 14784.

<sup>4483</sup> See *supra* para. 1237 and sections VI.C.2.(b)-(c), VI.C.3, VI.C.4.(c), VI.C.5-6, 8.

<sup>4484</sup> See generally *supra* section VI.B-C.

<sup>4485</sup> See *supra* paras 1182-1197.

<sup>4486</sup> Ex. P1251, Report on VRS Financial Situation, November 1993, p. 3.

<sup>4487</sup> Ex. P2918, VRS Main Staff Commander Memo Addressed to the Government of the RS, 1 November 1993, p. 3; Ex. P1251, Report on VRS Financial Situation, November 1993, p. 10.

<sup>4488</sup> Ex. P1534, Work Report of the RS MOD for the Period of August 1994 – November 1995, November 1995, p. 18.

<sup>4489</sup> Ex. P2766, Cable from Karadžić to Perišić, 15 May 1994.

<sup>4490</sup> See *supra* paras 943-947.

<sup>4491</sup> See *supra* paras 1184, 1188-1191, 1193, 1197.

<sup>4492</sup> See e.g. Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, pp 38-39. See also *supra* paras 1116-1134.

1598. The highest authorities in the VRS were clearly aware that their war depended on the assistance from the VJ. Karadžić admitted that “nothing would happen without Serbia. We do not have those resources and we would not be able to fight”.<sup>4493</sup> Mladić too reckoned that “we would not be able to live” if the FRY suspended its assistance.<sup>4494</sup> At the end of the war, Mladić addressed a letter to Milošević, copying Perišić, to express his gratitude for the “invaluable” assistance that the VRS had received from FRY authorities.<sup>4495</sup> Mladić acknowledged that:

It would be difficult to imagine the course of events if it had not been for that assistance. It was comprehensive and basically timely. We would like to emphasize that it had always come at the right moment and was precious when we needed it most. This is well known, especially among the [VRS] which will remain forever grateful.<sup>4496</sup>

1599. The Majority also notes that Perišić himself admitted that the VRS and SVK obtained their logistics “mostly from the [FRY]”.<sup>4497</sup> He clearly notified the SDC that the VRS could not have waged war if military assistance had been withheld.<sup>4498</sup> Referring to the FRY’s support to RS and RSK, Perišić boasted that “[t]hanks to this assistance the Serbian people in these republics was [sic] able to survive and to defend its [sic] centuries-old territory”.<sup>4499</sup> Slobodan Milošević echoed these convictions while speaking of the FRY’s support to RS: “[t]hey know very well that they cannot survive without this country”.<sup>4500</sup> Milošević remarked that “[e]verything that has been made there was made thanks to Serbia and the army”, a statement with which Perišić concurred.<sup>4501</sup> A similar view as to dependence of the VRS on the support of the FRY was shared by several witnesses who served in top positions with UNPROFOR at that time.<sup>4502</sup>

1600. While this evidence refers to general assistance provided by the FRY, the Majority is satisfied that the object of these statements encompassed logistical assistance from the VJ. In this context, the Majority recalls its finding that the quantities of weaponry provided to the VRS under Perišić’s authority were very important in comparison to other sources of supply.<sup>4503</sup> The VRS Main

<sup>4493</sup> Ex. P2822, Minutes of 40<sup>th</sup> Session of the RS National Assembly, 1 and 11 May 1994, p. 57.

<sup>4494</sup> Ex. P1282, Intercepted Conversation, undated, p. 6.

<sup>4495</sup> Ex. P2710, Cable from Mladić to President Milošević and the Chief of the VJ General Staff, 17 December 1995, pp 3-4.

<sup>4496</sup> Ex. P2710, Cable from Mladić to President Milošević and the Chief of the VJ General Staff, 17 December 1995, p. 3.

<sup>4497</sup> Ex. P2879, Video “JNA – srpska verzija sloma” Serbian Version of the Breakup, p. 27.

<sup>4498</sup> See Ex. P791, Stenographic Transcript of the 17<sup>th</sup> Session of the SDC, 10 January 1994, p. 4; Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC, 7 February 1994, p. 53; Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 38; Ex. P2783, Excerpt from Ratko Mladić’s Notebook, 1995, p. 4. See also *supra* paras 964-965, 968, 971.

<sup>4499</sup> Ex. P2743, Memo from the Chief of VJ General Staff, 11 August 1995, p. 2.

<sup>4500</sup> Ex. P778, Stenographic Transcript of the 25<sup>th</sup> Session of the SDC, 30 August 1994, p. 47.

<sup>4501</sup> Ex. P1476, Intercepted Conversation, 7 October 1996, pp 4-5.

<sup>4502</sup> See MP-433, T. 2104-2105, 2142-2144 (closed session); Ex. P2349, Transcript of Rupert Smith from *Prosecutor v. S. Milošević*, 9 October 2003, T. 27296; Michael Williams, T. 6464; Ex. P2372, Transcript of Michael Williams Testimony from *Prosecutor v. S. Milošević*, 24 June 2003, T. 22893-22894.

<sup>4503</sup> See *supra* paras 1233-1237.

Staff itself admitted that VJ military aid was “extremely important” for its objectives,<sup>4504</sup> and identified the need for VJ support in its strategic plans.<sup>4505</sup> Perišić also explained that, rather than retain material reserves at full capacity, he ensured that the VJ gave the VRS “all we had always and I am not sorry for that”.<sup>4506</sup>

1601. The Majority notes the evidence that the VRS also obtained a measure of assistance from sources other than Perišić and the VJ General Staff.<sup>4507</sup> However, the Majority underlines that the legal standard does not require that Perišić be the exclusive source of assistance. The fact that the VRS obtained weaponry from other sources, including its own reserves, besides the VJ General Staff, negates neither Perišić’s actions nor the element of substantial assistance.

1602. In conclusion, the Majority finds that the VRS depended heavily on FRY and VJ assistance in order to function as an army and to wage war. As shown below, this dependence was not limited to logistical assistance but also encompassed all other forms of assistance provided by the VJ including personnel.<sup>4508</sup> The Majority recalls that the crimes charged in the Indictment were an integral part of the VRS’s war strategy.<sup>4509</sup> Hence, the evidence leads the Majority to the only reasonable conclusion that by providing vital logistical and technical assistance to the VRS during the war, including to the specific units that perpetrated the crimes, Perišić facilitated the commission of those crimes.

## 5. Personnel Assistance

### (a) Submissions

1603. The Prosecution submits that Perišić provided practical assistance and moral support through the provision of personnel to the VRS and that the highest command structure of the VRS were VJ officers.<sup>4510</sup> These officers included the “architects and executioners” of the VRS campaign in BiH and were responsible for the crimes committed in Sarajevo and Srebrenica described in the Indictment.<sup>4511</sup>

<sup>4504</sup> Ex. P1211, Correspondence Between the VRS Main Staff and the RS Prime Minister Regarding the Construction of a Material Gift for the VJ, 15 January 1995, p. 1.

<sup>4505</sup> Ex. P1555, Extract from the Directive for Use of the VRS, December 1993, p. 12; Ex. P2158, Document Issued by Ratko Mladić Regarding Logistical Support, undated, pp 1-2. Mladić refers to the 608<sup>th</sup> Logistics Base in Ex. P2158, which two witnesses identified as a VJ base, *see* Miodrag Simić, T. 10155; Mladen Mihajlović, T. 3886.

<sup>4506</sup> Ex. P2203, Transcript of the Collegium of the Chief of the VJ General Staff, 6 November 1995, p. 3.

<sup>4507</sup> *See supra* section VI.C.9.

<sup>4508</sup> *See infra* paras 1607-1620.

<sup>4509</sup> *See supra* para. 1588-1591.

<sup>4510</sup> Prosecution Final Brief, paras 62, 461.

<sup>4511</sup> Prosecution Final Brief, para. 62.



1604. Particularly, the Prosecution argues that Perišić provided the group of essential senior VJ officers, members of the 30<sup>th</sup> PC, responsible for the commission of crimes in Sarajevo: Ratko Mladić, Stanislav Galić, Dragomir Milošević and Čedo Sladoje.<sup>4512</sup> He also provided the VRS with the officers, also members of the 30<sup>th</sup> PC, who “committed, planned, instigated, ordered, or aided the commission”<sup>4513</sup> of the crimes charged for Srebrenica, including Ratko Mladić, Radivoje Miletić, Milan Gvero, Ljubiša Beara, Radislav Krstić, Vujadin Popović, Vidoje Blagojević, Vinko Pandurević, Dragan Jokić, Dragan Obrenović, Drago Nikolić, Zdravko Tolimir, Milorad Pelemiš, Radoslav Janković and Svetozar Kosorić.<sup>4514</sup>

1605. The Defence argues that the Prosecution failed to prove that the provision of officers to the VRS during Perišić’s tenure was substantial or significant.<sup>4515</sup> It responds that all but three individuals holding key positions in the VRS already held those positions before Perišić’s appointment as Chief of the VJ General Staff.<sup>4516</sup>

1606. The Defence argues that the number of officers who received salaries and benefits from the FRY constituted a small portion of the VRS’s military personnel<sup>4517</sup> and was in constant decline.<sup>4518</sup> It is the Defence’s position that the Prosecution failed to prove that the payment of salaries or verification of VRS promotions in the VJ had a substantial effect on the commission of crimes.<sup>4519</sup> It further notes that due to inflation salaries were often worthless and that they were even suspended for a period of five months; yet no members of the VRS left their posts.<sup>4520</sup> Thus, the Defence claims that any argument that payment of salaries had an impact on the commission of crimes is unsustainable.<sup>4521</sup>

(b) Discussion

1607. The Majority recalls that all of the military personnel serving in the VRS through the 30<sup>th</sup> PC remained members of the VJ.<sup>4522</sup> In addition to the payment of their salaries, these personnel continued to enjoy all of the rights and benefits as any other VJ member, including compensation for service under difficult conditions, housing benefits and/or a separation allowance, medical

<sup>4512</sup> Prosecution Final Brief, paras 463-480.

<sup>4513</sup> Prosecution Final Brief, para. 503.

<sup>4514</sup> Prosecution Final Brief, paras 503-553.

<sup>4515</sup> See Defence Final Brief, para. 333.

<sup>4516</sup> Defence Final Brief, paras 331-333.

<sup>4517</sup> Defence Final Brief, para. 363.

<sup>4518</sup> Defence Final Brief, paras 326-329, 333.

<sup>4519</sup> See Defence Final Brief, paras 337, 413, 426-430, 604.

<sup>4520</sup> See Defence Final Brief, para. 364. See also Defence Final Brief, paras 366-368.

<sup>4521</sup> Defence Final Brief, para. 368.

<sup>4522</sup> See *supra* paras 832-840. See also *supra* paras 793, 795.

insurance and treatment for themselves and their families, as well as accelerated pension plan. Once retired, members of the 30<sup>th</sup> PC received their pensions from the FRY.<sup>4523</sup>

1608. Members of the 30<sup>th</sup> PC included the top officers in the VRS Main Staff, namely: Ratko Mladić (Commander), Manojlo Milovanović (Chief of Staff and Deputy Commander), Milan Gvero (Assistant Commander), Đorđe Đukić (Assistant Commander), Zdravko Tolimir (Assistant Commander), Ljubiša Beara (Chief of Security) and Radivoje Miletić (Chief of Administration for Operations and Training).<sup>4524</sup> In addition, the Majority found that members of the 30<sup>th</sup> PC also held key positions in the corps responsible for the crimes committed in Sarajevo and Srebrenica, including: Stanislav Galić and Dragomir Milošević (Commanders of the SRK);<sup>4525</sup> Milenko Živanović and Radislav Krstić (Commanders of the Drina Corps);<sup>4526</sup> Vujadin Popović (Assistant Commander for Security in the Drina Corps);<sup>4527</sup> Vinko Pandurević (Commander of the Zvornik Brigade) and Dragan Obrenović (Chief of Staff of the Zvornik Brigade).<sup>4528</sup>

1609. The Majority acknowledges that the majority of these men started serving in the VRS before Perišić's appointment as Chief of the VJ General Staff and before the creation of the PCs.<sup>4529</sup> Yet, it was when Perišić became Chief of Staff of the VJ General Staff and the PCs were created, that they became members of the 30<sup>th</sup> PC, effective as of 10 November 1993 (*i.e.* date of Lilić's order on the creation of the PCs), thereby legally acquiring their status of VJ members – with all the corresponding benefits – even though they served in the VRS.<sup>4530</sup> The Majority recalls its earlier finding that Perišić carefully devised and implemented the plan to create the PCs.<sup>4531</sup> Therefore, while it is true that Perišić did not technically “provide” the VRS with its highest ranking officers, he nonetheless created the conditions that enabled them to continue serving in the VRS without impediments while enjoying all the rights conferred to VJ members.

1610. In addition to sustaining these key officers, Perišić sent other VJ military personnel to the VRS on an ongoing basis, including specific individuals at the request of the VRS Main Staff.<sup>4532</sup> The Majority recalls that the number of 30<sup>th</sup> PC members active in the VRS fluctuated throughout the years, but the flow and rotation of personnel continued without interruption.<sup>4533</sup> The Majority

<sup>4523</sup> See *supra* section VI.A .8.(b)-(f).

<sup>4524</sup> See *supra* paras 273, 795, 878.

<sup>4525</sup> See *supra* paras 291, 795, 878.

<sup>4526</sup> See *supra* para. 284, 795, 878.

<sup>4527</sup> See *supra* paras 285, 795, 878.

<sup>4528</sup> See Ex. P1731, VJ Personnel File of Vinko Pandurević, Doc ID 0422-8585, pp 10-11. See also *supra* paras 287, 795, 878.

<sup>4529</sup> See *supra* section IV.E; paras 789, 795, 799.

<sup>4530</sup> See *supra* paras 777, 785, 787, 789.

<sup>4531</sup> See *supra* paras 777, 787.

<sup>4532</sup> See *supra* para. 790.

<sup>4533</sup> See *supra* para. 793.

further recalls that VJ military personnel did not have a choice as to whether or not they would be transferred to the VRS or the SVK through the PCs. Perišić intended the deployment to these armies to be compulsory and implemented a system, whereby any military personnel who refused or were reticent to go to the VRS and SVK were forced to do so by threat of early retirement or termination of service.<sup>4534</sup>

1611. The Majority finds that by these actions, Perišić provided practical assistance to the VRS. The Majority will now turn to analyse the effect of such assistance on the commission of the crimes.

1612. The Majority notes that from the beginning of the war Mladić had to deal with numerous commanding officers leaving their positions without his authorisation and without handing over their duties, damaging both the combat readiness of the VRS and the combat morale of the soldiers.<sup>4535</sup> The establishment of the PCs principally aimed to address this issue.<sup>4536</sup> In this context, Perišić's assistance in terms of personnel was vital to help the VRS function. A letter addressed to Perišić from Mladić in 1995, illustrates the importance of this assistance:

*Due to great problems with the recruitment for command positions in the units, especially the key command positions (battalion commanders, division commanders, company commanders), I propose that you authorise the admission of 292 professional commanders [...] replacing the 292 contract soldiers whose contracts have been terminated.*<sup>4537</sup>

1613. The Majority is satisfied that Perišić not only provided the VRS with personnel who were to be placed in positions of different level of command, but also sustained the officers already serving in the VRS before the establishment of the 30<sup>th</sup> PC, who either committed or had effective control over those who committed the crimes in Sarajevo or Srebrenica.<sup>4538</sup> The Majority finds that by these actions, Perišić created the conditions for Mladić, Galić, Milošević, Gvero, Krstić, Tolimir and Popović, amongst others in the VRS, to wage a war that encompassed systematic criminal actions without impediments. By doing so, he facilitated the commission of the crimes in Sarajevo and Srebrenica.

1614. The Majority is also satisfied that Perišić contributed to the commission of the crimes by promoting and paying the salaries of these 30<sup>th</sup> PC members.

<sup>4534</sup> See *supra* paras 803-809.

<sup>4535</sup> Ex. P1529, Letter of Ratko Mladić to the Chief of the VJ General Staff, 31 March 1993. See also *supra* para. 762.

<sup>4536</sup> See *supra* paras 763-764.

<sup>4537</sup> Ex. P2725, VRS Proposal for Authorisation to Admit Professional Contract Officers into the VRS, 12 June 1995, p. 1 (emphasis added).

<sup>4538</sup> See *supra* paras 550-555, 562, 727, 759.

1615. The Majority recalls its findings that Perišić had a key role in the verification of promotions and that he directly participated in the determination of the funds within the federal budget to be allocated to the VJ General Staff for the payment of the salaries of VJ military personnel, including 30<sup>th</sup> PC members.<sup>4539</sup>

1616. The Majority finds that, in the context of the PCs, the verification and recognition of the new rank within the VJ was essential for the PCs members and their families to enjoy the commensurate rights and benefits in the VJ. A higher rank carried a higher salary and also affected the calculation of the pensions and all the benefits previously described.<sup>4540</sup> The importance of the verification process is strictly interwoven with the role and purpose of the PCs. Against this backdrop, the Majority finds that Perišić's verification of the promotions of 30<sup>th</sup> PC members was vital for this mechanism to function and that he thereby provided practical assistance, encouragement and moral support to the commission of the crimes.

1617. With respect to the payment of salaries, the Majority recalls that grave financial problems within RS caused serious difficulties with the payment of salaries for VRS personnel.<sup>4541</sup> RS actually warned FRY authorities that "unless you pay our non-commissioned officers they will all leave the front".<sup>4542</sup> Perišić himself commented that the payment of these salaries was of "great help" to the VRS.<sup>4543</sup> Several witnesses testified that when the payment of salaries to members of the 30<sup>th</sup> PC was suspended for approximately six months in August 1994, circumstances became very difficult, especially for these members' families.<sup>4544</sup> Stamenko Nikolić stressed that while the military personnel itself was not "really facing the same risk in terms of survival and subsistence", the very "livelihood" of the families was at risk.<sup>4545</sup> Mladić also stated that the suspension of salaries caused "an enormous existential crisis" for the families of the military personnel, whose attention was unnecessarily drawn away from combat tasks.<sup>4546</sup> He also reported that there had been

<sup>4539</sup> See *supra* paras 866, 880

<sup>4540</sup> See *supra* paras 851-854, 881-889, 905-910.

<sup>4541</sup> See Ex. P2918, VRS Main Staff Commander Memo Addressed to the Government of the RS, 1 November 1993, p. 2, noting that the VRS was two months late in paying personnel salaries due to its lack of funds; Ex. D415, RS MOD Report to VRS Main Staff, 25 November 1993, p. 1, because the RS was "not able any more to pay regularly the salaries of the Army personnel in money", it made arrangements to pay personnel with foodstuffs and personal hygiene items instead; Ex. P318, Announcement of the Sarajevo Romanija Corps, 5 May 1994, RS MOD provided notice of delays in paying VRS personnel salaries due to lack of funds.

<sup>4542</sup> Ex. P784, Stenographic Transcript of the 22<sup>nd</sup> Session of the SDC, 11 July 1994, p. 50.

<sup>4543</sup> Ex. P776, Stenographic Transcript of the 21<sup>st</sup> Session of the SDC, 7 June 1994, p. 46.

<sup>4544</sup> See *supra* para. 867. See also Stamenko Nikolić, T. 10557-10559, 10668; Petar Škrbić, T. 11771-11772.

<sup>4545</sup> Stamenko Nikolić, T. 10668. See also Petar Škrbić, T. 11771; Stojan Malčić, T. 11321-11322.

<sup>4546</sup> Ex. P2817, Letter from VRS Main Staff Sector for Organisation, Mobilization and Personnel, 4 November 1994, p. 1.

alarming warnings from the units, but considering the critical combat situation, no requests for transfer back to the VJ would be considered or granted, except in cases of emergency.<sup>4547</sup>

1618. Contrary to what is suggested by the Defence, the Majority finds that the evidence clearly shows that though meagre, especially in times of high inflation, the salaries were of great support to 30<sup>th</sup> PC members. Similarly, the Majority finds that other benefits, such as housing, pensions and medical insurance – provided to both soldiers and their families – were extremely important to the members of the 30<sup>th</sup> PC. Knowing that their families were looked after and that they could enjoy all of the benefits attached to their ranks enabled these men to carry out their combat tasks without impediment. In addition, the Majority notes that during the suspension of the salary payments, none of the 30<sup>th</sup> PC members left their position in the VRS not so much because the payment of salaries was of little consequence to them, but rather because the VRS denied the requests for transfer back to the VJ.<sup>4548</sup>

1619. The Defence submits that because only a small proportion of the VRS military personnel received its salary from the FRY, the assistance cannot be considered to have had a substantial effect on the commission of the crimes. The Majority finds it must assess in *qualitative* rather than *quantitative* terms whether the payment of the salaries and benefits these officers received from the FRY and the VJ as members of the 30<sup>th</sup> PC facilitated the commission of the crimes. The Majority finds that where these individuals held key positions, including positions of command in the VRS, as well as in the Corps and units responsible for the crimes charged in the Indictments as in the current case, then the contribution is at the very least significant. Considering that the majority of the 30<sup>th</sup> PC members held positions of command,<sup>4549</sup> the Majority is satisfied that the payment of salaries and benefits was vital to the functioning of the very core of the VRS. The Majority finds that this type of assistance contributed to the commission of the crimes.

## 6. Other Forms of Assistance

1620. The Majority recalls the involvement of the VJ SUC in Pancir operation in the Vogošća area between December 1993 and January 1994.<sup>4550</sup> The Majority recalls that the SUC was directly subordinated to Perišić and that he ordered its deployment to Vogošća to assist the SRK in action carried out to capture Mount Žuč and to hold the confrontation lines against the ABiH. Although

<sup>4547</sup> Ex. P2817, Letter from VRS Main Staff Sector for Organisation, Mobilization and Personnel, 4 November 1994, p. 2. *See also* Petar Škrbić, T. 11774, testifying that in that period, the requests for transfer back to the VJ increased, from 5-10 a week to about 20 a week, but were usually denied, unless they regarded some serious illness, wound or family difficulties.

<sup>4548</sup> Ex. P2817, Letter from VRS Main Staff Sector for Organisation, Mobilization and Personnel, 4 November 1994, p. 2. *See supra* para. 817.

<sup>4549</sup> *See supra* paras 1608-1609.

<sup>4550</sup> *See supra* section VI.G.3.

the operation was not successful,<sup>4551</sup> the Majority finds that Perišić's actions show that he intended to and in fact did provide assistance to Mladić and the VRS war-effort in the Sarajevo campaign, at a time when he already knew of the VRS criminal intent in the implementation of its war strategy.

## 7. Conclusion

1621. The Majority finds that Perišić repeatedly exercised his authority to assist the VRS in waging a war that encompassed systematic criminal actions against Bosnian Muslim civilians as a military strategy and objective. Perišić's actions substantially facilitated the commission of these crimes because the VRS heavily depended on the VJ's support to function as an army and conduct its operations, including besieging Sarajevo and taking over Srebrenica. The Majority is also satisfied that all of Perišić's actions described above were voluntary.

1622. As found earlier, Perišić urged the FRY SDC to continue its policy of assisting the VRS. He notably oversaw the provision of wide-ranging logistical and technical assistance to the VRS. Without the regular supply of considerable quantities of ammunition and other weaponry, as well as fuel, technical expertise, repair services and personnel training, the VRS would have been hampered in conducting its operations in Sarajevo and Srebrenica.

1623. In addition, the Majority found that the military personnel that Perišić provided for and sustained through the 30<sup>th</sup> PC included the officers holding positions of command and authority in the VRS Main Staff, as well as well-trained commanding officers of the lower units. The payment of salaries to the VRS's top officers, including Mladić, Dragomir Milošević, Galić, Popović, Gvero, Tolimir, and other principal perpetrators of the crimes charged in Srebrenica and Sarajevo was instrumental in helping the VRS plan and carry out its operations in Sarajevo and Srebrenica. By creating the PCs – a mechanism through which he ensured that these military personnel continued receiving their salaries and enjoying all their benefits in the VJ – Perišić allowed them to carry out their operations in the VRS with limited concern for their basic material needs and those of their families. Perišić sustained the very life line of the VRS and created the conditions for it to implement a war strategy that encompassed the commission of crimes against civilians.

1624. The Majority recognises that the evidence does not establish that the specific weapons used in committing the charged crimes stemmed from the logistical assistance process overseen by Perišić. However, the Majority recalls that the acts of the aider and abettor need not have been "specifically directed" to assist the crimes.<sup>4552</sup> The element of substantial assistance for aiding and

<sup>4551</sup> See *supra* paras 1329-1330.

<sup>4552</sup> See *supra* paras 126. See also *Mrkšić and Šljivančanin* Appeal Judgement, para. 159; *Blagojević and Jokić* Appeal Judgement, paras 192, 195.

abetting does not require that an accused provided the specific weapon used by the perpetrator, as the element may be established by the numerous other forms of practical assistance described above, which substantially facilitated the perpetrators' crimes. Moreover, any suggestion that assisting the VRS and advising the SDC was part of Perišić's "routine duties" could not be construed as exculpatory because the evidence establishes that this conduct substantially contributed to the commission of the crimes.<sup>4553</sup> By the same token, the fact that other FRY officials, such as members of the SDC or the MOD, also played a role in assisting the VRS does not negate Perišić's actions.

1625. The Majority has considered the Defence's *ex post facto* argument on the application of aiding and abetting under the facts of the present case,<sup>4554</sup> but finds that only a fraction of the assistance provided by Perišić fits that description. The Majority is satisfied that the overwhelming majority of Perišić's actions in support of the VRS facilitated the commission of future crimes.

1626. The Majority also recalls that there is neither a requirement of a cause-effect relationship between Perišić's conduct as an aider and abettor and the commission of the crimes,<sup>4555</sup> nor a requirement that his actions served as a condition precedent to the commission of the crimes,<sup>4556</sup> nor a requirement that his actions have been the cause *sine qua non* of the crimes.<sup>4557</sup>

1627. In sum, the Majority finds beyond a reasonable doubt that Perišić's logistical assistance and personnel assistance, individually and cumulatively, had a substantial effect on the crimes perpetrated by the VRS in Sarajevo and Srebrenica, as charged in the Indictment.

### **C. Findings on the Mental Elements of Aiding and Abetting**

1628. The following analysis and findings are made by the Majority of the Trial Chamber, Judge Moloto dissenting.

#### **1. Preliminary Remarks**

1629. The Majority recalls that to establish the required mental element for aiding and abetting, it must be proved beyond a reasonable doubt that Perišić knew that his actions provided practical

<sup>4553</sup> See *Blagojević and Jokić* Appeal Judgement, paras 182, 185-189.

<sup>4554</sup> Defence Final Brief, paras 49, 796-798, 1083-1084, citing *Blagojević* Trial Judgement, para. 731.

<sup>4555</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48.

<sup>4556</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Blagojević and Jokić* Appeal Judgement, paras 127, 134; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48.

<sup>4557</sup> *Milutinović et al.* Trial Judgement, para. 92.

assistance to the crimes and that he was aware of the essential elements of the crimes, including the mental state of the principal perpetrators.<sup>4558</sup>

1630. The Majority recalls its finding that the VRS committed the crimes of murder and attacks on civilians for Counts 2 and 4 as a violation of the laws or customs of war, as well as murder and inhumane acts as crimes against humanity for Counts 1 and 3. The Trial Chamber also found that the VRS and/or MUP forces committed the crimes of murder as a violation of the laws or customs of war (Count 10) and murder, inhumane acts, persecutions and exterminations as crimes against humanity (Counts 9, 11, 12 and 13).

1631. The Majority recalls its finding that from the early stages of the war, Perišić was provided with information, from a variety of sources, of the VRS's criminal behaviour and discriminatory intent.<sup>4559</sup> This information related to acts of violence against Bosnian Muslims perpetrated in the BiH theatre of war and made Perišić aware of the VRS's propensity to commit crimes.<sup>4560</sup> With this state of mind, Perišić provided substantial assistance to the VRS in terms of logistic and personnel and this assistance had a substantial effect on the crimes.<sup>4561</sup>

## 2. Sarajevo

1632. The Majority is satisfied that the general propensity to commit crimes in conjunction with specific information on crimes committed in Sarajevo made Perišić aware that other similar crimes would probably occur, including killing and wounding of civilians and/or persons not taking active part in the hostilities. Notwithstanding this knowledge, Perišić continued to provide significant assistance to the VRS until the end of the siege.

1633. The Majority is also satisfied that Perišić was aware of the essential elements of these crimes, including the mental state of the perpetrators. At the outset, the Majority recalls that Perišić knew that one of the strategic objectives of the Bosnian Serb leadership involved the partition of Sarajevo. Through international reports and cables as well as his intelligence and security organs and media coverage, Perišić soon became aware of the VRS's campaign of sniping and shelling against the civilian population. The Defence argues that at the time of the Indictment it was reasonable to believe that there was no such campaign.<sup>4562</sup> The Majority does not dispute that there were specific instances of sniping and shelling, notably the Markale I incident, where Perišić received conflicting information on the alleged perpetrators. That being noted, extensive evidence

<sup>4558</sup> See *supra* paras 129-131.

<sup>4559</sup> See *supra* paras 1456, 1483-1486.

<sup>4560</sup> See *supra* paras 1457-1486.

<sup>4561</sup> See *supra* paras 1594-1602, 1607-1619, 1621-1627.

<sup>4562</sup> See *supra* paras 536-549.



demonstrates that Perišić was put on notice of the general existence of a campaign of sniping and shelling of civilians at the time of his tenure as Chief of the VJ General Staff. The systematic and frequent coverage of crimes committed during the siege of Sarajevo in international reports and media spanning over a period of three years leads the Majority to find that the only reasonable conclusion is that Perišić knew of such a campaign.

1634. The Defence also argues that the UN Commission on Human Rights reports and the Mazowiecki reports were “replete with unsourced hearsay and unattributed conclusions and assumptions” and therefore it would “be entirely reasonable for the VJ, VJ intelligence organs, and Mr. Perišić to discount the report[s] in [their] entirety”.<sup>4563</sup> Furthermore, it is the Defence’s position that the information dispensed by the international and local news media “was unreliable and biased against the Bosnian Serbs”<sup>4564</sup> with the consequence that the Serbs in general (and in particular military commanders) distrusted the news reporting.<sup>4565</sup>

1635. The Majority is satisfied that the international community as well as international and Serbian media, consistently and for a considerable period of time, documented and reported allegations of crimes committed by the VRS. This information alerted Perišić to the high likelihood that the VRS was committing crimes. The Majority finds that Perišić could not have reasonably discounted this information simply because he considered it biased against the Serbs. The fact that information was, in some instances, biased or one-sided does not undermine the finding that Perišić had notice of the VRS’s crimes.

1636. In conclusion, the Majority, Judge Moloto dissenting, finds beyond a reasonable doubt that Perišić knew that his conduct assisted in the commission of crimes in Sarajevo. The mental element of aiding and abetting is therefore established in relation to Counts 1 to 4 of the Indictment.

### 3. Srebrenica

1637. The Majority recalls its finding that Perišić knew of the escalating tensions and the build-up of the eventual attack on Srebrenica by the VRS.<sup>4566</sup> Since he was alerted to the VRS’s propensity to commit crimes, the Majority is satisfied that Perišić also knew that it was very probable that the VRS would forcibly transfer Bosnian Muslims and commit some acts of mistreatment and killings with discriminatory intent once Srebrenica had fallen under their control. Through international documents, including reports, UNSC’s resolutions and diplomatic cables as well as daily reports

<sup>4563</sup> Defence Final Brief, para. 844.

<sup>4564</sup> Defence Final Brief, para. 831.

<sup>4565</sup> Defence Final Brief, paras 831-838.

<sup>4566</sup> See *supra* paras 1530-1531, 1541.

from his Intelligence organs and media coverage, Perišić also soon became aware of certain crimes perpetrated by the VRS in Srebrenica.<sup>4567</sup> Notwithstanding such knowledge, Perišić continued to provide substantial assistance to the VRS both prior to and during the period crimes were committed in Srebrenica.

1638. The Majority is therefore satisfied beyond reasonable doubt that Perišić knew that his actions provided practical assistance to the crimes of murder, inhumane acts and persecutions and that he was aware of the essential elements of these crimes, including the mental state of the principal perpetrators.

1639. The Trial Chamber will now turn to the question of whether Perišić knew that his assistance to the VRS would assist the commission of the crime of extermination (Count 13). In order to establish that Perišić aided and abetted the crime of extermination, the Trial Chamber must be satisfied that he had the requisite knowledge when he provided practical assistance to the crimes, that the principal perpetrators intended to kill on a large scale.

1640. The Trial Chamber recalls in this regard that, well before July 1995, a variety of sources had put Perišić on notice of the VRS's propensity to commit crimes. The catalogue of such crimes committed in the past by the VRS contained extremely serious ones, including murder, forcible displacements and other inhumane acts as part of a campaign of ethnic cleansing. The Trial Chamber notes, however, that none of the information provided to Perišić on the VRS's criminal conduct alerted him to the fact that the VRS intended to commit a crime on the scale of the one that occurred in Srebrenica in July 1995.

1641. In this regard, the Trial Chamber notes that an internal report of 30 April 1993, which was submitted to the President of the UNSC by the UN Mission in BiH, stated that the failure to reach an agreement between the Bosnian Serbs and the ABiH Commander in the area of Srebrenica, would "most probably" have led to the massacre of 25,000 people.<sup>4568</sup> Similarly, in the wake of a VRS offensive on Gorazde, a letter by the permanent representative of BiH to the UNSC in June 1993 stated that "[w]e again, on the basis of past experience, fear the massacre of a civilian

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<sup>4567</sup> See *supra* paras 1546-1553, 1557-1563, 1567-1578, 1579. In relation to the Defence argument on unreliability of those reports and the alleged media bias against the Bosnian Serbs (see Defence Final Brief, paras 830-838), see *supra* paras 1634-1635.

<sup>4568</sup> Ex. P2462, Report of the UNSC Mission Established Pursuant to Resolution 819, 30 April 1993, paras 12, 14, 17.

population”.<sup>4569</sup> The Trial Chamber recalls, however, that there is no evidence that Perišić was privy to this information.

1642. The Trial Chamber also received conflicting evidence as to whether the massacre of civilians in Srebrenica was subjectively seen as foreseeable at that time.

1643. Witness Pyers Tucker, who worked as the personal staff officer to the Commander of UNPROFOR for BiH, General Phillipe Morillon,<sup>4570</sup> testified that based on his past experience and knowledge, it was to be expected that the Serb activities in Srebrenica would lead to the civilian population either being removed or killed.<sup>4571</sup> In fact, in his 20 March 1993 report which he sent to the UNPROFOR BiH Command, he assessed the situation in Srebrenica as follows:

If free passage (with transport) [cannot] be arranged for the refugees in the Srebrenica pocket within the next 7 to 14 days, indications are that the Serbs will carry out a *genocidal “cleansing”* of the entire enclave, resulting in the potential death of up to 80,000 human beings. [...] [The Serbs] are unlikely to stop this offensive until the enclave is cleared one way or another.<sup>4572</sup>

1644. Similarly, witness Muhamed Sacirbey, the Permanent Ambassador of BiH to the United Nations between 1992 and 2000, when asked about his contemporary view as to what may happen in the event of an attack on Srebrenica, testified:

Starting with the Drina River valley, places like Visoko, Višegrad, Foča, Bijeljina, going into, particularly, Prijedor where we believe many more thousands of people were murdered, this was all more or less done at the same military and political leadership and that continued through much of the war, of course, with the greater intensity during the beginning of the war. But it was from our perspective, that is the perspective of the mission of Bosnia and Herzegovina, and from my conversations with President Izetbegović and other Bosnian leaders, it was a very real possibility that [these] individuals, not only would be expelled, but, in fact, could be massacred.<sup>4573</sup>

1645. On the other hand, Carl Bildt, who served as the EU co-Chairman of the International Conference on the Former Yugoslavia, testified that it was foreseeable that ethnic cleansing would occur in Srebrenica if it was taken over by the VRS.<sup>4574</sup> He nonetheless remarked that the scale of the Srebrenica killings was not foreseeable.<sup>4575</sup>

1646. This evidence reflecting conflicting views does not lead to the only reasonable conclusion that the outright extermination of Srebrenica inhabitants was foreseeable at the time.

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<sup>4569</sup> Ex. P2469, Letter of the Permanent Representative of BiH to the UN, to the President of the UNSC, 30 May 1993, p. 2.

<sup>4570</sup> Pyers Tucker, T. 9088-9089.

<sup>4571</sup> Pyers Tucker, T. 9204.

<sup>4572</sup> Ex. P2694, BH Command on Srebrenica Evacuation, 20 March 1993, p. 3 (emphasis added).

<sup>4573</sup> Muhamed Sacirbey, T. 7457-7458.

<sup>4574</sup> Carl Bildt, T. 14321.

<sup>4575</sup> Carl Bildt, T. 14322-14323.

1647. Based on the aforementioned evidence, the Trial Chamber therefore cannot find beyond reasonable doubt that Perišić knew - at the time when he provided practical assistance to the VRS - that the systematic killing of thousands of Bosnian Muslims would probably be committed. Hence, it is not established that Perišić knew that his assistance to the VRS would assist the commission of the crime of extermination (Count 13).

1648. In sum, the Majority finds beyond a reasonable doubt that Perišić knew that his conduct assisted in the commission of crimes in Srebrenica. The mental element of aiding and abetting is therefore established in relation to the crimes of murder, inhumane acts and persecutions (Counts 9 through 12). The mental element of aiding and abetting has not been established in relation to extermination (Count 13).

#### **D. Conclusion**

1649. For all of these reasons, the Majority, Judge Moloto dissenting, finds that it has been established beyond a reasonable doubt that Perišić is responsible for aiding and abetting, under Article 7(1) of the Statute, for the following crimes: Count 1 (Murder, a crime against humanity), Count 2 (Murder, a violation of the laws and customs of war), Count 3 (Inhumane Acts (injuring and wounding civilians), a crime against humanity), Count 4 (Attacks on Civilians, a violation of the laws and customs of war), Count 9 (Murder, a crime against humanity), Count 10 (Murder, a violation of the laws and customs of war), Count 11 (Inhumane Acts (forcible transfer, injuring and wounding civilians), a crime against humanity) and Count 12 (Persecution, a crime against humanity).

1650. The Trial Chamber finds that it has not been established beyond a reasonable doubt that Perišić is responsible for aiding and abetting, under Article 7(1) of the Statute, for Count 13 (Extermination, as a crime against humanity).

## VIII. PERIŠIĆ'S CRIMINAL RESPONSIBILITY UNDER ARTICLE 7(3)

1651. Momčilo Perišić is indicted under Article 7(3) of the Statute for failing to prevent or punish his subordinates responsible for crimes committed by shelling Zagreb on 2 and 3 May 1995.<sup>4576</sup> Subsequently, the Prosecution clarified that it did not charge Perišić with his failure to prevent these crimes but only with his failure to punish perpetrators thereof.<sup>4577</sup>

1652. Perišić is also indicted under Article 7(3) of the Statute for failing to prevent or punish his subordinates responsible for the crimes committed in Sarajevo and Srebrenica.<sup>4578</sup>

1653. The Trial Chamber recalls that, in order for Perišić to be held responsible for failing to prevent and/or punish the perpetrators of the crimes in question, the Trial Chamber must be satisfied that a superior-subordinate relationship existed between Perišić and the perpetrators of the crimes; that Perišić knew or had reason to know that the crimes were about to be, or had been, committed; and finally, that he failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrators thereof.<sup>4579</sup>

### A. Superior-Subordinate Relationship between Perišić and the Perpetrators of the Crimes

1654. The first step of the applicable legal test to establish whether Perišić bears criminal responsibility pursuant to Article 7(3) of the Statute for these crimes, is a determination whether a superior-subordinate relationship existed between Perišić and the perpetrators at the time of the commission of the crimes. The Trial Chamber recalls that the existence of a superior-subordinate relationship depends on two factors: i) whether at the time of the commission of the crimes the perpetrators were subordinates of the superior; and ii) whether the latter exercised effective control over them.<sup>4580</sup>

1655. The Prosecution argues that a superior-subordinate relationship existed between Perišić and the military officers who committed the alleged crimes. It submits that although the latter served in the SVK or in the VRS,<sup>4581</sup> they were VJ officers.<sup>4582</sup> It further submits that the VJ, SVK, and VRS in reality functioned as one army in which Perišić, as the highest ranking officer in the VJ,<sup>4583</sup> concurrently retained the material ability to prevent and punish criminal conduct of officers serving

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<sup>4576</sup> Indictment, paras 34, 54.

<sup>4577</sup> See Prosecution Closing Arguments, T. 14637, 14920.

<sup>4578</sup> Indictment, paras 34, 46, 62.

<sup>4579</sup> See *supra* para. 140.

<sup>4580</sup> See *supra* para. 142.

<sup>4581</sup> Prosecution Final Brief, paras 702-703.

<sup>4582</sup> See Prosecution Final Brief, paras 702-708.

<sup>4583</sup> See Prosecution Final Brief, paras 709-711.

in the PCs with that of the commanders of the VRS and SVK, who contemporaneously maintained operational control over the same subordinates through the existence of a parallel chain of command.<sup>4584</sup>

1656. The Defence submits that there was no superior-subordinate relationship because the VJ, VRS, and the SVK constituted three separate entities with individual chains of command.<sup>4585</sup> It argues that Perišić did not have *de jure* authority, as no formal hierarchal relationship existed between Perišić and the alleged perpetrators of the crimes charged in the Indictment.<sup>4586</sup> The Defence submits that the fact that some members of the SVK or VRS had their status regulated by the PCs does not make them members of the VJ during that time.<sup>4587</sup> The Defence points out that each army was separately established by the constitutions of their respective countries and asserts that each operated in a distinct manner under the principle of the unity of command.<sup>4588</sup>

1. Whether Members of the 30<sup>th</sup> and the 40<sup>th</sup> PCs were Subordinates of Perišić

1657. The Trial Chamber will examine in this section whether the perpetrators of the crimes charged in the Indictment were *de jure* or *de facto* subordinated to Perišić.

(a) Whether the Principal Perpetrators were Members of the 30<sup>th</sup> and 40<sup>th</sup> PCs

1658. The Trial Chamber recalls its finding that Milan Čeleketić, in his capacity as Chief of the SVK Main Staff, carried out Milan Martić's order to shell Zagreb with Orkan rockets on 2 and 3 May 1995.<sup>4589</sup> Čeleketić's order in turn was executed by the SVK crew of the Orkan rocket system.<sup>4590</sup> The Trial Chamber also recalls its finding that this conduct constituted murder and

<sup>4584</sup> See Prosecution Final Brief, para. 9. See e.g. Prosecution Closing Arguments, T. 14751 (discussing the notion of one unified army and the notion of a parallel chain of command), T. 14754-14757 (partially private session) (discussing a parallel chain of command between Perišić and the SVK). See also Prosecution Final Brief, para. 695 (discussing the distinction between the concepts of singleness of command and effective control).

<sup>4585</sup> See Defence Final Brief, paras 147-148 (stating that “[n]o army can function on a principle of parallel command relationships. Singleness of command is a fundamental principle, which means that there is one commander, one decision, and one responsibility”). See also Defence Final Brief, para. 985 (stating that “[t]he evidence establishes that the SVK functioned as an independent army with clearly defined principles of internal organization and a unique chain of command”); para. 1110 (incorporating all arguments on the superior-subordinate relationship with respect to Srebrenica); Defence Closing Arguments, T. 14821 (stating that “[a]ppointment to a duty in any army establishes relationships within the service involved and that is a relationship of subordination and superiority. One becomes part of a single chain of command [...]”).

<sup>4586</sup> See Defence Final Brief, paras 856-861.

<sup>4587</sup> See e.g. Defence Final Brief, paras 251-254, 262-266, 850, 852, 984.

<sup>4588</sup> See Defence Final Brief, paras 146-148. See also Defence Final Brief, paras 852, 856-864, 987 (arguing that no formal hierarchy between Perišić and the alleged perpetrators of the crimes existed); Defence Closing Arguments, T. 14865 (concluding that “[i]f they are outside the VJ, then at the time when the crimes were committed, Perišić was not their superior”).

<sup>4589</sup> See *supra* para. 585.

<sup>4590</sup> *Ibid.*

attacks on civilians as a violation of the laws or customs of war (Counts 6 and 8), and murder and inhumane acts as a crime against humanity (Counts 5 and 7).<sup>4591</sup>

1659. Milan Čeleketić served in the SVK from 1993 until 5 October 1995, when the FRY SDC decided to terminate his professional military service.<sup>4592</sup> The evidence establishes that he was a member of the 40<sup>th</sup> PC as of its establishment on 10 November 1993.<sup>4593</sup> His initial position in the SVK was 18<sup>th</sup> Corps Commander.<sup>4594</sup> On 22 February 1994, he was appointed Chief of the SVK Main Staff, a position that he held until 18 May 1995.<sup>4595</sup>

1660. The evidence further shows that members of the 40<sup>th</sup> PC operated the Orkan rocket system.<sup>4596</sup>

1661. The Trial Chamber recalls that key VRS officers, including Ratko Mladić, Stanislav Galić and Dragomir Milošević were involved in the commission of the crimes in Sarajevo by devising and implementing a campaign of sniping and shelling on civilians, which was an integral part of the siege of Sarajevo. The Trial Chamber found that the crimes committed by VRS members, under the effective control of these VRS officers, constituted murder and attacks on civilians as a violation of the laws or customs of war (Counts 2 and 4), and murder and inhumane acts as a crime against humanity (Counts 1 and 3).<sup>4597</sup> The Trial Chamber found that these key officers and their subordinates committed the charged crimes.

1662. The Trial Chamber also recalls that the key VRS officers involved in the commission, planning, ordering, instigating, or aiding and abetting of the crimes in Srebrenica are Ratko Mladić, Radivoje Miletić, Milan Gvero, Ljubiša Beara, Radislav Krstić, Vujadin Popović, Vidoje Blagojević, Vinko Pandurević, Dragan Obrenović, Drago Nikolić, and Dragan Jokić. The Trial Chamber found that the conduct of VRS and/or MUP forces, under the effective control of the aforementioned key officers, constituted murder as a violation of the laws or customs of war (Count 10) and murder, inhumane acts, persecutions and exterminations as crimes against humanity

<sup>4591</sup> See *supra* paras 594, 596.

<sup>4592</sup> Ex. P766, Minutes from the 45<sup>th</sup> Session of the SDC held on 5 October 1995. See *infra* para. 1680.

<sup>4593</sup> Ex. P1895, Order by VJ General Staff Personnel Administration, 15 February 1994, p. 39; Ex. P1911, VJ Personnel File of Milan Čeleketić, Doc ID 0611-7831, p. 10.

<sup>4594</sup> Ex. P1895, Order by VJ General Staff Personnel Administration, 15 February 1994, p. 38.

<sup>4595</sup> Patrick Treanor, T. 1026-1027, 1370; Mile Novaković, T. 13003; Ex. P171/P1972 RSK Decree on Appointment of Milan Čeleketić, 22 February 1994; Ex. P1973, Report on Milan Čeleketić's Taking On Duty, 22 February 1994; Ex. P1975, Report on Milan Čeleketić Handing Over Duty as SVK Commander to Mile Mrkšić, 18 May 1995; MP-80, T. 8616 (closed session). See also Rade Orlić, T. 5728, 5758; Jožef Poje, T. 3087.

<sup>4596</sup> MP-80, T. 8395 (closed session). See also *supra* para. 1248.

<sup>4597</sup> See *supra* paras 559, 562.

(Counts 9, 11, 12 and 13).<sup>4598</sup> The Trial Chamber found that these key officers and their subordinates committed the charged crimes.

1663. The following VJ officers found to be responsible for the commission of crimes in Sarajevo and Srebrenica were serving in the 30<sup>th</sup> PC at the relevant time: Ratko Mladić,<sup>4599</sup> Stanislav Galić,<sup>4600</sup> Dragomir Milošević,<sup>4601</sup> Radoje Miletić,<sup>4602</sup> Milan Gvero,<sup>4603</sup> Zdravko Tolimir,<sup>4604</sup> Ljubiša Beara,<sup>4605</sup> Radislav Krstić,<sup>4606</sup> Vujadin Popović,<sup>4607</sup> Vidoje Blagojević,<sup>4608</sup> Vinko Pandurević,<sup>4609</sup> Dragan Obrenović,<sup>4610</sup> Drago Nikolić<sup>4611</sup> and Dragan Jokić.<sup>4612</sup>

1664. As to Čedo Sladoje, the Trial Chamber finds that the evidence does not establish that he was a member of the 30<sup>th</sup> PC at the time of commission of the crimes.<sup>4613</sup> It only shows that Sladoje was a member of the 30<sup>th</sup> PC at one point and that he was serving there in 2001.<sup>4614</sup>

<sup>4598</sup> See *supra* paras 740, 746, 754, 758.

<sup>4599</sup> Ex. P1902, Decree of the FRY President, 16 June 1994; Ex. P1905, Decree of the FRY President, 16 June 2001; Ex. P1919, Decision of VP 3001, Belgrade, 11 October 2000; Ex. P1923, Decision of the Military Post 3001 Belgrade, 24 February 2000; Ex. P1924, Decision of the Military Post 3001 Belgrade, 3 March 2000.

<sup>4600</sup> In the 30<sup>th</sup> PC until 31 October 1994, Ex. P1889, Decision by Military Post 3001, undated; Ex. P1879, Decision by Military Post 3001, 9 July 2001; Ex. P1774, Request by Stanislav Galić, 10 April 2000.

<sup>4601</sup> Ex. P822, Judgement of the 2nd Municipal Court, Belgrade, 9 July 2001; Ex. P871, Belgrade Decision Rejecting Claim of Dragomir Milošević for Family Separation Allowance, 5 August 1997; Ex. P1753, Performance Assessment of D. Milošević, 30 October 1995.

<sup>4602</sup> Ex. P1574, Various Documents Concerning VJ Payments to Radivoje Miletić, 1992-2001, Doc ID 0622-3406; Ex. P2128, Order by VJ General Staff Personnel Administration, 7 February 1994, p. 6; Ex. P1726, Decision by Military Post 3001, 9 May 2001. See also Ex. P1729, VJ Personnel File of Radivoje Miletić, Doc ID 0422-2366, p. 3.

<sup>4603</sup> Ex. P1899, VJ Personnel File of Milan Gvero, Doc ID 0422-3303, p. 15; Ex. P1900, Decree of the FRY President, 14 June 1995.

<sup>4604</sup> Ex. P2128, Order by VJ General Staff Personnel Administration, 7 February 1994, p. 4; Ex. P1787, Excerpt from VJ Personnel File of Zdravko Tolimir, Doc ID 0422-2463, p. 2; Branko Gajić. T. 10902-10903.

<sup>4605</sup> Ex. P1876, Decision by Military Post 3001, 17 May 2001; Ex. P1920, VJ Personnel File of Ljubiša Beara, see e.g. Doc IDs 0603-0574; 0603-0581; 0603-0656; 0603-0657; 0603-0666; 0603-0671; Ex. P1952, Excerpts from VJ Personnel File of Ljubiša Beara.

<sup>4606</sup> Ex. P1893, VJ Personnel File of Radislav Krstić, see e.g. Doc IDs 0422-8341; 0422-8441, p. 3; Ex. P1894, Order by VJ General Staff Personnel Administration, 26 September 1994; Ex. P1995, Excerpt from VJ Personnel File of Radislav Krstić; Ex. P2114, Order by VJ General Staff Personnel Administration, 26 September 1994, pp 2-3.

<sup>4607</sup> Ex. P1934, VJ Personnel File of Vujadin Popović, see e.g. Doc IDs 0422-8609; 0422-8656, p. 2; 0422-8702. See also Ex. P2079, Military Post 3001 Decision, 28 November 2001.

<sup>4608</sup> Ex. P1878, Decision by Military Post 3001, 19 June 2001; Ex. P2129, Order by VJ General Staff Personnel Administration, 9 February 1994, p. 37. See also Ex. P1073, Supreme Military Court Judgement Annuling the Decision of the Military Post 3001 Belgrade, 29 May 2001, p. 2.

<sup>4609</sup> Ex. P1877, Decision by Military Post 3001, September 2001; Ex. P1732, Order by VJ General Staff Personnel Administration, 7 June 1994; Ex. P1731, VJ Personnel File of Vinko Pandurević, Doc ID 0422-8525, p. 10.

<sup>4610</sup> Ex. P1897, VJ Personnel File of Dragan Obrenović, Doc ID 0611-8718, p. 3; Ex. P2129, Order by VJ General Staff Personnel Administration, 9 February 1994, p. 35. See also Ex. P1584, MOD Payslip of Dragan Obrenović for 1995, 16 January 1995; Ex. P1585, MOD Payslip of Dragan Obrenović for 1994, 25 January 1995.

<sup>4611</sup> Ex. P1655, VJ Personnel File of Drago Nikolić, Doc IDs 0422-8713; 0422-8779; Ex. P1658, Performance Assessment of Drago Nikolić, 10 June 1997; Ex. P2129, Order by VJ General Staff Personnel Administration, 9 February 1994, pp 17-18. See also Ex. P1668, VJ Documents Relating to the Pension Procedures in Regard to Drago Nikolić.

<sup>4612</sup> Ex. P2129, Order by VJ General Staff Personnel Administration, 9 February 1994, pp 37-38; Ex. P1815, Order by VJ General Staff Personnel Administration, 6 October 1995, pp 29-30.

<sup>4613</sup> See Prosecution Final Brief, para. 480; Defence Closing Arguments, T. 14847.



(b) Whether the 30<sup>th</sup> and 40<sup>th</sup> PC Members were VJ Members

1665. The Trial Chamber recalls its finding that the members of the 30<sup>th</sup> and 40<sup>th</sup> PCs remained *de jure* members of the VJ while serving in the VRS and SVK.<sup>4615</sup>

1666. The Trial Chamber is mindful of the Defence's assertion that membership of the PCs did not equate to membership of the VJ<sup>4616</sup> and the distinction it draws between service status and status rights.<sup>4617</sup> The Trial Chamber notes that the crux of the Defence's argument is that while PC members were entitled to certain rights enjoyed by VJ personnel, they left the chain of command of the VJ and entered the one of the VRS or SVK. In the Trial Chamber's view, this point essentially goes to the ultimate issue of whether – besides their formal status - the PC members were under the command and effective control of Perišić. The existence of such relationship is examined in the following section of the Judgement.

(c) Conclusion

1667. The Trial Chamber recalls that Perišić, as Chief of the VJ General Staff during the Indictment period, was the highest military officer in the VJ, subordinated only to the FRY President, as Supreme Commander, and the SDC.<sup>4618</sup> The Trial Chamber is satisfied that Perišić, by virtue of his position as Chief of the VJ General Staff was *de jure* superior of the VJ military personnel serving in the 40<sup>th</sup> PC, including Milan Čeleketić as well as of the officers serving in the 30<sup>th</sup> PC, including Ratko Mladić, Radoje Miletić, Milan Gvero, Zdravko Tolimir Ljubiša Beara, Radislav Krstić, Stanislav Galić, Dragomir Milošević, Vujadin Popović, Vidoje Blagojević, Vinko Pandurević, Dragan Jokić, Dragan Obrenović and Drago Nikolić.

1668. Having established that the perpetrators of the crimes were *de jure* subordinates of Perišić, the Trial Chamber will move to analyse whether Perišić exercised effective control over them, *i.e.* whether Perišić had the “material ability” to prevent the crimes charged in the Indictment and/or punish the perpetrators thereof.

2. Effective Control

1669. The Trial Chamber recalls that the indicators of effective control are more a matter of evidence than of law and are “limited to showing that the accused had the power to prevent, punish

<sup>4614</sup> Ex. P738, List of Professional Soldiers from the 30<sup>th</sup> PC, undated, p. 2; Ex. P1905, Decree of the FRY President, 16 June 2001, p. 2; Bretton Randall, T. 4154-4155.

<sup>4615</sup> See *supra* para. 840.

<sup>4616</sup> Defence Final Brief, paras 262-267.

<sup>4617</sup> Defence Final Brief, paras 251-256.

<sup>4618</sup> See *supra* paras 205-206.

or initiate measures leading to proceedings against the alleged perpetrators where appropriate”.<sup>4619</sup> Further, the Trial Chamber notes that cooperation in itself and/or the mere ability to exercise influence over subordinates is not sufficient to establish effective control.<sup>4620</sup>

1670. In support of its position that Perišić exercised effective control over members of the 30<sup>th</sup> and 40<sup>th</sup> PCs, the Prosecution submits that he had the ability to either sanction or initiate disciplinary investigations against them.<sup>4621</sup> Other indicators of effective control identified by the Prosecution include Perišić’s ability to control salaries,<sup>4622</sup> promotions,<sup>4623</sup> the ability to terminate their employment within the VJ<sup>4624</sup> and his ability to transfer and appoint them to various posts in the SVK and the VRS.<sup>4625</sup>

1671. The Defence rejects the Prosecution’s contention. It submits that the evidence does not support the conclusion that Perišić had the ability to make the final determination with respect to the 30<sup>th</sup> and the 40<sup>th</sup> PCs members’ salaries and employment decisions related to promotion, transfer or termination.<sup>4626</sup> Finally, the Defence stresses the principle that having some influence over behaviour does not amount to effective control.<sup>4627</sup>

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<sup>4619</sup> See *supra* para. 148.

<sup>4620</sup> See *supra* para. 147.

<sup>4621</sup> See Prosecution Final Brief, paras 736-746, 751-756; Prosecution Closing Arguments, T. 14740-14742.

<sup>4622</sup> See Prosecution Final Brief, para. 795 (stating that “[i]t is not disputed that members of the Personnel Centers received their salaries and benefits (health, pension, housing and the like) from the FRY/VJ”); Prosecution Closing Arguments, T. 14729 (stating that one indicator that General Perišić possessed effective control is that “the salaries and benefits for persons in the [PCs] were paid by the Federal Republic of Yugoslavia”).

<sup>4623</sup> Prosecution Final Brief, paras 758-760; Prosecution Closing Arguments, T. 14730-14734 (stating that Perišić had the ability to exceptionally promote members of the VRS and the SVK); T. 14735 (stating that “Perišić was in fact a critical figure in the promotions process”).

<sup>4624</sup> Prosecution Final Brief, paras 761-764; Prosecution Closing Arguments, T. 14747 (arguing that “General Perišić had the authority to terminate members of the VJ who were serving in the personnels [sic] and he did so”).

<sup>4625</sup> See *e.g.* Prosecution Final Brief, paras 778-786. See also Prosecution Final Brief, para. 785 (stating that “Perišić’s authority to transfer and appoint VJ Members to the VRS/SVK, and his exercise of it, was the indispensable lifeline that sustained the vitality and viability of the VRS/SVK [...] Because of the consequences of disobeying order were understood by VJ Members, they complied with order transferring them from the VJ to the VRS/SVK and back”); Prosecution Closing Arguments, T. 14736-14737 (discussing Perišić’s authority to issue transfer orders).

<sup>4626</sup> See *e.g.* Defence Closing Arguments, T. 14832 (rejecting the prosecution’s argument the Perišić had effective control over the SVK or the VRS in part because he controlled the appointment process by stating that “...all appointments to certain positions in the VRS and the SVK were done exclusively within those chains of command without any involvement by anyone from the Yugoslav Army or by General Perišić himself”); T. 14833 (rejecting the idea the Perišić had effective control in the form of the ability to force the members of the VJ to serve in the VRS or RSK and stating that “[s]o there is no evidence, either direct or indirect, that would lead beyond a reasonable doubt to the conclusion that any individual was retired as a direct consequence of their refusal to be assigned to the VRS”). See also Defence Closing Arguments, T. 14835-14840 (arguing that the prosecution failed to provide sufficient evidence to show that General Perišić had a direct influence over the promotions of officers serving in the VRS or SVK); Defence Final Brief, paras 855, 989-996 (stating that disciplinary and employment status decisions were made by the SVK commanders).

<sup>4627</sup> Defence Final Brief, paras 887-888. See also Defence Closing Arguments, T. 14859-14860.

(a) Indicators of Effective Control

1672. The Trial Chamber has identified a number of indicators that it considers relevant, in the circumstances of this specific case, to determine whether effective control existed. These indicators are listed below:

1. Whether Perišić had the ability to discipline and to punish the 30<sup>th</sup> and the 40<sup>th</sup> PC members;
2. Whether Perišić had the authority to issue binding orders to the 30<sup>th</sup> and the 40<sup>th</sup> PC members, including both transfer/appointment orders and command orders;
3. Whether Perišić was involved in the payment of salaries and provision of other benefits for the 30<sup>th</sup> and the 40<sup>th</sup> PC members;
4. Whether Perišić had the capacity to promote members of the 30<sup>th</sup> and the 40<sup>th</sup> PC members;
5. Whether Perišić had the authority to terminate the professional military service of the 30<sup>th</sup> and the 40<sup>th</sup> PC members;
6. Whether the SVK and the VRS depended on VJ logistical support;
7. Whether the SVK and VRS reported to the VJ General Staff.

1673. In addition to these indicators, the Trial Chamber is guided by the Appeals Chamber's holding that the possession of *de jure* authority, without more, provides only some evidence of such effective control and that the burden of proving beyond reasonable doubt that the accused had effective control over his subordinates rests with the Prosecution.<sup>4628</sup> The Trial Chamber will now analyse each of those indicators in turn.

(i) Whether Perišić had the Ability to Discipline and to Punish the PC Membersa. The 40<sup>th</sup> PC

1674. As discussed earlier in the Judgement, the Law on the VJ provided that a senior officer holding a rank equivalent to regiment commander or higher could initiate an investigation for a disciplinary violation.<sup>4629</sup> Depending on the result of the investigation, he could "stay the proceedings, pronounce a disciplinary sentence or forward the case to the competent officer who would file charges against the violator before the military disciplinary court".<sup>4630</sup> Had he been

<sup>4628</sup> *Orić* Appeal Judgement, para. 92.

<sup>4629</sup> *See supra* para. 257.

<sup>4630</sup> *See supra* para. 259.

aware that a subordinate committed a serious violation of discipline, he could also use his discretion to temporarily remove the offender from duty.<sup>4631</sup>

1675. The evidence below shows that there were instances where the VJ General Staff was involved in disciplinary proceedings against VJ members serving in the 40<sup>th</sup> PC for their conduct while holding posts in the SVK.

1676. On 26 September 1995, the Commander of the SVK 11<sup>th</sup> Corps, Dušan Lončar informed Perišić that three officers deserted the SVK and proposed that “the cessation of professional military service be approved and that the persons in question be prevented from having their status resolved within the [VJ]”.<sup>4632</sup> The handwritten note on this document shows that Perišić ordered to “investigate this and file criminal reports [...] if they do not report to the unit by 1<sup>st</sup> October”.<sup>4633</sup> According to Starčević, this action was generally within the competence of the Chief of the VJ General Staff.<sup>4634</sup>

1677. As shown below, after the fall of the RSK in August 1995, the VJ considered initiating disciplinary proceedings against several high-ranking VJ officers who served in the SVK through the 40<sup>th</sup> PC for their responsibility in the fall of the RSK.

1678. Rade Rašeta testified that the VJ could initiate disciplinary proceedings for conduct of a VJ soldier while serving in the SVK through the 40<sup>th</sup> PC only after the soldier returned to join a unit of the VJ.<sup>4635</sup>

1679. At its 43<sup>rd</sup> Session, held on 29 August 1995, the SDC discussed the withdrawal of the SVK from the RSK territory and decided to open an investigation against officers of the 40<sup>th</sup> PC by issuing the following order:

Disciplinary or criminal proceedings shall be initiated against professional members of the 40<sup>th</sup> [PC] for whom there are grounds to believe that they have committed a violation of discipline or a criminal offence.

All officers of the 40<sup>th</sup> [PC] shall write statements on events in the area of responsibility of their unit during the Croatian aggression against the [RSK]. The statements are to be delivered to the Office of the Chief of the VJ General Staff no later than 15 September 1995.<sup>4636</sup>

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<sup>4631</sup> See *supra* paras 936-937.

<sup>4632</sup> Ex. P2416, Report of the 11<sup>th</sup> Corps Command to Perišić about unauthorised absence of soldiers of the SVK, 26 September 1995, p. 2.

<sup>4633</sup> Ex. P2416, Report of the 11<sup>th</sup> Corps Command to Perišić about unauthorised absence of soldiers of the SVK, 26 September 1995, p. 1; Miodrag Starčević, T. 6825-6827.

<sup>4634</sup> Miodrag Starčević, T. 6826-6827.

<sup>4635</sup> Rade Rašeta, T. 5924.

<sup>4636</sup> Ex. P708, Minutes from the 43<sup>rd</sup> Session of SDC held on 29 August 1995.

1680. On 5 October 1995, the SDC decided to terminate the professional military service, retroactively - as of 31 December 1994 - of four generals of the 40<sup>th</sup> PC: Mile Mrkšić, Mile Novaković, Milan Čeleketić and Mirko Bjelanović.<sup>4637</sup> This decision was the result of a process aimed at establishing responsibility for the fall of the RSK.

1681. On 17 October 1995, Perišić informed the generals of the SDC decision terminating their professional military service in the VJ and of “[the] possibility that a court would look into [their] responsibility”.<sup>4638</sup> Mile Novaković testified that around that time he also received both the Presidential decree terminating his service and the VJ decision executing it.<sup>4639</sup> When he received the VJ decision and the Presidential decree, Novaković backdated their delivery note to 25 December 1994.<sup>4640</sup> As a result, Novaković’s service in the 40<sup>th</sup> PC between January and August 1995 was not taken into account when calculating his VJ pension.<sup>4641</sup>

1682. Mile Novaković testified that a full-fledged disciplinary and/or criminal proceeding against the four generals would have amounted to a “trial against the [VJ] primarily”.<sup>4642</sup> This is why this option was eventually discarded in favour of a discrete approach.

1683. During a session of the Collegium on 6 November 1995, Perišić discussed his dilemma between terminating the service of those four SVK generals and prosecuting them:

[H]ere we have a dilemma [...] [P]ursuant to [the SDC decision pensioning off the four generals] we have to carry on so vertically [...] And now, how could we prosecute them [...] We have in fact two solutions. The first one is to be lenient [...] to go for [...] pensioning off [...]. Another solution would be to prosecute selectively as [...] all after all depends how we will decide regarding Bulat. If we prosecute Bulat then he will be chased out, and then you have to do that with Mile Mrkšić, and Mile Mrkšić as a pensioner then, and Bulat as an active officer [...].<sup>4643</sup>

1684. The following evidence suggests that Perišić followed the SDC decision opting for the first solution—to terminate their service. Perišić provided the following rationale for the decision to terminate their service instead of prosecuting them:

As I wrote to the [SDC] that all four of them should be prosecuted [they] said ‘yes’, and ‘is it in your interest that that would not be made public’, ‘yes’, and now if we pension them off and then

<sup>4637</sup> Ex. P766, Minutes from the 45<sup>th</sup> Session of the SDC held on 5 October 1995.

<sup>4638</sup> Mile Novaković, T. 13305-13306, 13321-13322, 13330-13331, 13337.

<sup>4639</sup> Mile Novaković, T. 13339-13344; Ex. P1912, Decree of the FRY President, 22 December 1994; Ex. P1913, Decision of Military Post 1790 Belgrade, December 1994. *See also* Ex. P1909, Decision of Military Post 1790 Belgrade, 30 December 1994; Ex. P1915, VJ Personnel File of Mirko Bjelanović, Doc ID 0611-9285; Ex. P1916, VJ Personnel File of Mile Mrkšić, Doc ID 0422-2981.

<sup>4640</sup> Mile Novaković, T. 13339-13344.

<sup>4641</sup> Mile Novaković, T. 13341-13343.

<sup>4642</sup> Mile Novaković, T. 13330. *See also* MP-80, T. 8285-8287 (closed session).

<sup>4643</sup> Ex. P2203, Transcript of the Collegium of the Chief of the VJ General Staff, 6 November 1995, Doc ID 0618-6912, pp 4-5. *See also* Ex. P2204, Transcript of the Collegium of the Chief of the VJ General Staff, 18 September 1995, Doc ID 0618-7245; Ex. P2210, Transcript of the Collegium of the Chief of the VJ General Staff, 9 October 1995, Doc ID. 0611-3288, p. 5.

prosecute them there are different sanctions than if we do not pension them off and prosecute them. And they said, as it was necessary to calm things down, and not to make public, then they made a Solomonic decision to pension off all four of them and they pensioned them off.<sup>4644</sup>

During the same meeting he also ordered to:

[F]inish the investigation procedure for all in order to establish if elements for criminal or disciplinary responsibility exist. [...] Parallel with that prepare all for pensioning off according to age, and according to early pension if they wish so. Further, assign all, with remark, when the time for criminal responsibility comes, that is why investigation procedure is being led, [...] also for those who were pensioned off criminal responsibility also for them, if they remain in the army in regard to criminal responsibility monitor those for whom there is certain criminal responsibility and so on, and grade them with an extraordinary grade, negative one naturally, to create the conditions to expel them from the army.[...] [T]hat is only so that we could bring those men into relation with those who have been pensioned off, and who according to me are the ones who are to blame the most for the entire situation.<sup>4645</sup>

1685. In accordance with this decision not to initiate criminal proceedings against VJ officers serving in the SVK, the case against Čedomir Bulat was also not taken to the military court.

1686. On 15 February 1994, Bulat was transferred and appointed to the 40<sup>th</sup> PC by an order from the VJ General Staff Personnel Administration.<sup>4646</sup> He became Commander of the 21<sup>st</sup> Corps of the SVK.<sup>4647</sup> The VJ General Staff carried out a disciplinary inquiry against Bulat because he surrendered his Corps to the Croatian Army during Operation Storm.<sup>4648</sup> The VJ committee investigating the matter proposed to institute “proceedings against him, inculcate him and punish him”.<sup>4649</sup> After the abovementioned discussion within the VJ General Staff about the convenience of a disciplinary action,<sup>4650</sup> eventually no disciplinary sanction was imposed on Bulat.<sup>4651</sup>

1687. On 9 November 1995, Perišić gave the following order to his subordinates in the VJ General Staff:

Assistant Chiefs of General Staff of the [VJ] will study official assessments, statements and other material (information) regarding all the officers of the 40<sup>th</sup> [PC] that fall within their responsibility and based on that they will propose:

<sup>4644</sup> Ex. P2203, Transcript of the Collegium of the Chief of the VJ General Staff, 6 November 1995, Doc ID 0618-6912, p. 5.

<sup>4645</sup> Ex. P2203, Transcript of the Collegium of the Chief of the VJ General Staff, 6 November 1995, Doc ID 0618-6912, p. 10. *See also* Ex. P2213, Transcript of the Collegium of the Chief of the VJ General Staff, 6 November 1995, pp 6-7.

<sup>4646</sup> Ex. P1895, Order by VJ General Staff Personnel Administration, 15 February 1994, p. 11; Miodrag Starčević, T. 6755-6756.

<sup>4647</sup> *Ibid.*

<sup>4648</sup> Mile Novaković, T. 13333-13335. *See also* Ex. P2202, Transcript of the Collegium of the Chief of the VJ General Staff, 30 October 1995, Doc ID 0618-7763, p. 1.

<sup>4649</sup> Ex. P2202, Transcript of the Collegium of the Chief of the VJ General Staff, 30 October 1995, Doc ID 0618-7763, p. 1.

<sup>4650</sup> Ex. P2202, Transcript of the Collegium of the Chief of the VJ General Staff, 30 October 1995, Doc ID 0618-7763, p. 1; Mile Novaković, T. 13333-13335; Ex. P2203, Transcript of the Collegium of the Chief of the VJ General Staff, 6 November 1995, Doc ID 0618-6912, p. 5 *et seq.*

<sup>4651</sup> Mile Novaković, T. 13334-13336.

[...] For officers for whom reasonable suspicion that they had committed a violation of discipline or a crime has been established, disciplinary investigation will be initiated through authorised officers, and it will be completed by 20 November 1995.

Assistant Chiefs of General Staff of the [VJ] will study all cases under disciplinary investigation and based on assessment of level of responsibility, they will propose for every one of these officers either to regulate their status in service or to terminate their professional military service in accordance with the Law. They will submit their proposals to the Personnel Administration of the General Staff of the [VJ] latest by 30 November 1995.<sup>4652</sup>

1688. The VJ General Staff initiated some disciplinary inquiries against the 40<sup>th</sup> PC members. The final outcome, however, was in accordance with the policy aimed at avoiding public attention. On 4 December 1995, at the VJ Collegium meeting, the following was reported:

Disciplinary investigations have been initiated for officers from the 40<sup>th</sup> [PC], according to the orders. 9 officers have come under investigation so far [...] Those cases have been received by the Personnel Administration and, in line with an earlier decision, will not be processed further, although those are people who are indeed guilty, regardless that some of them were officers on high positions, like Čedomir Bulat. We have, for instance, a non-commissioned officer who received orders to recover a tank with his recovery vehicle and, instead of doing that, he abandoned the recovery vehicle and the tank and ran away; he came to this area now and it would be right to prosecute him, but the situation is such that I am not sure whether it could be done now.<sup>4653</sup>

However, at the same time, the criminal action against the VJ officers serving in the RSK was not excluded:

[About] resolving of status issues in RSK [...]. We all have said, institute investigation proceedings. If you have done it, there are no elements of criminal responsibility, but disciplinary responsibility, then we solve his status issue by evaluating his pass for military service or dismissing him from the VJ. If he has conditions for retirement, pension him off. However, if there are elements of criminal responsibility, then press criminal charges and institute proceedings, like we said last time.<sup>4654</sup>

1689. The case of Laza Babić is an example of this process. Laza Babić was a 40<sup>th</sup> PC member<sup>4655</sup> serving as Commander of the SVK 18<sup>th</sup> Corps between 22 March 1994 and 2 May 1995.<sup>4656</sup> Based on Perišić's order of 9 November 1995 mentioned above, the VJ General Staff initiated a disciplinary investigation against Babić for charging commission at checkpoints for transportation

<sup>4652</sup> Ex. P2413, Order of Perišić to the Assistant Chiefs of General Staff of the VJ, 9 November 1995 (emphasis in original). See also Stamenko Nikolić, T. 10719-10720. According to Starčević, the order is consistent with the competencies and authorities of General Perišić as Chief of the VJ General Staff, Miodrag Starčević, T. 6808-6809; Ex. P2197, Transcript of the Collegium of the Chief of the VJ General Staff, 28 October 1995, Doc ID 0618-7712, p. 2.

<sup>4653</sup> Ex. P2207, Transcript of the Collegium of the Chief of the VJ General Staff, 4 December 1995, Doc ID 0618-6816, p. 2.

<sup>4654</sup> Ex. P2207, Transcript of the Collegium of the Chief of the VJ General Staff, 4 December 1995, Doc ID 0618-6827, p. 2.

<sup>4655</sup> Ex. P1884, VJ Personnel File of Lazo Babić, Doc ID 0611-7051, p. 2.

<sup>4656</sup> Ex. P2414, Decision of Kovačević to initiate a disciplinary investigation against Babić, officer of the SVK, 11 December 1995, p. 1.

of goods in the RSK.<sup>4657</sup> On 19 December 1995, Perišić terminated Babić's professional military service. The reason stated in the order was that Babić became "permanently unfit to serve in the Army".<sup>4658</sup>

b. The 30<sup>th</sup> PC

1690. The following cases show how the VJ General Staff intervened in disciplinary proceedings initiated by the VRS against 30<sup>th</sup> PC members.

1691. Zoran Antić was assigned to the 30<sup>th</sup> PC by an order of the Chief of the Personnel Administration of the VJ General Staff of 15 February 1994.<sup>4659</sup> He was then serving in Banja Luka.<sup>4660</sup> On 13 March 1995, he deserted his VRS unit,<sup>4661</sup> and the VRS military disciplinary court initiated disciplinary proceedings against him *in absentia*. On 23 September 1995, the VRS military disciplinary court pronounced a sentence of "loss of service status as an active serviceman".<sup>4662</sup>

1692. Based on that judgment, the Commander of the VRS unit in Banja Luka recommended to the VJ General Staff to terminate Antić's military service pursuant to Article 107 of the Law on the VJ.<sup>4663</sup> On 5 February 1996, the Chief of the Personnel Administration of the VJ General Staff issued a decision adopting that recommendation.<sup>4664</sup>

1693. Prosecution witness Miodrag Starčević testified that decisions of both VRS and the VJ were needed since Antić was a VJ soldier and the disciplinary sanction issued by the VRS organ could not alone serve as grounds for termination of his military service in the VJ.<sup>4665</sup> Defence witness Stamenko Nikolić also testified that since Antić was a VJ member transferred to the 30<sup>th</sup> PC, the decision on termination of his service had to be taken by the VJ since it affected his status-related

<sup>4657</sup> Ex. P2415, Response to a request for information according a disciplinary investigation against Babić, 22 December 1995. *See also* Ex. P2414, Decision of Kovačević to initiate a disciplinary investigation against Babić, officer of the SVK, 11 December 1995.

<sup>4658</sup> Ex. P1884, VJ Personnel File of Lazo Babić, Doc ID 0611-7160, p. 1.

<sup>4659</sup> Ex. P2592, Record of Active Military Service, undated, p. 2.

<sup>4660</sup> Ex. P2417, Judgement of the Military Disciplinary Court relating to Zoran Antić, 23 September 1995, p. 5.

<sup>4661</sup> This conduct also constituted a criminal offence, Ex. P2417, Judgement of the Military Disciplinary Court relating to Zoran Antić, 23 September 1995, p. 6; Ex. P2420, Judgement of the Military Disciplinary Court relating to Nedeljko Vujić, 20 September 1995, p. 7.

<sup>4662</sup> Ex. P2417, Judgement of the Military Disciplinary Court relating to Zoran Antić, 23 September 1995, p. 3; Miodrag Starčević, T. 6830-6831.

<sup>4663</sup> Ex. P2418, Recommendation of the 30<sup>th</sup> PC to End the Professional Military Service of Zoran Antić, 1996; Ex. P2419, Order of the Chief of Personnel Administration of the General Staff of the VJ Ending the Professional Military Service of Zoran Antić, 5 February 1996; Ex. P2593, Order to Terminate the Professional Military Service of Zoran Antić, 11 January 1996; Ex. P2594, Decision of Military Post 3001 (Belgrade) Concerning the Suspending of the Salary of Zoran Antić, 16 January 1996. *See also* Stamenko Nikolić, T. 10684-10686, 10780-10781; Miodrag Starčević, T. 6838-6840.

<sup>4664</sup> Stamenko Nikolić, T. 10780-10781.

<sup>4665</sup> Miodrag Starčević, T. 6833-6834, 6839-6840.



rights.<sup>4666</sup> However, at the same time, he also agreed with the proposition that the VJ “had to do what the VRS said in this particular circumstance”.<sup>4667</sup>

1694. The following example is submitted by the Prosecution as proving that the VJ was not automatically bound by disciplinary sanctions imposed by the VRS.<sup>4668</sup>

1695. Nedeljko Vujić was a VJ officer who was sent temporarily to serve in the VRS.<sup>4669</sup> Serving in the VRS unit in Banja Luka from March 1993, he deserted on 20 May 1993 and joined his former VJ unit.<sup>4670</sup> On 20 September 1995, he was sentenced *in absentia* by the VRS military disciplinary court for “loss of service status as an active serviceman”.<sup>4671</sup> This judgement was forwarded to the VJ unit where Vujić was serving - with an annotation that he could appeal it to the “Higher Military Disciplinary Court at the General Staff of the 30<sup>th</sup> PC” and “the Higher Military Disciplinary Court at the VJ General Staff” “due to the fact that [he was] on duty and [a member] of the [VJ]”.<sup>4672</sup> The commander of this VJ unit transmitted this judgement to the Personnel Administration of the VJ General Staff<sup>4673</sup> with the recommendation to disregard the VRS judgement. In his view, Vujić and other soldiers sanctioned in the judgement were now “reintegrated in the VJ units”, and they were therefore under the jurisdiction of the VJ disciplinary military courts.<sup>4674</sup>

1696. Vujić continued serving in the VJ and was relieved from professional military duty only in 2005 when he acquired 30 years of pensionable service.<sup>4675</sup>

1697. The Trial Chamber notes that the judgement of the VRS military disciplinary court of 20 September 1995 against Vujić was not enforced in the VJ. This suggests that the VJ was not automatically bound by disciplinary sanctions imposed by the VRS. At the same time, the Trial Chamber notes that Vujić deserted the VRS before the 30<sup>th</sup> PC was created and served in the VJ units ever since. As a consequence, he could not have been a 30<sup>th</sup> PC member. His case does not

<sup>4666</sup> Stamenko Nikolić, T. 10686.

<sup>4667</sup> *Ibid.*

<sup>4668</sup> See Prosecution Final Brief, paras 741-743.

<sup>4669</sup> Ex. P2421, Letter of Veličković (commander of the RV and PVO) to the VJ General Staff Relating to the Judgement to Nedeljko Vujić, 29 January 1996, p. 1.

<sup>4670</sup> Ex. P2420, Judgement of the Military Disciplinary Court relating to Nedeljko Vujić, 20 September 1995, p. 1. See also Miodrag Starčević, T. 7014.

<sup>4671</sup> Ex. P2420, Judgement of the Military Disciplinary Court relating to Nedeljko Vujić, 20 September 1995, p. 3.

<sup>4672</sup> Ex. P2597, Notice of a Judgement Concerning *inter alia* Nedeljko Vujić Addressed to the 30<sup>th</sup> PC, 15 January 1996.

<sup>4673</sup> Ex. P2421, Letter of Veličković (commander of the RV and PVO) to the VJ General Staff Relating to the Judgement to Nedeljko Vujić, 29 January 1996.

<sup>4674</sup> Ex. P2420, Judgement of the Military Disciplinary Court relating to Nedeljko Vujić, 20 September 1995; Ex. P2421, Letter of Veličković (commander of the RV and PVO) to the VJ General Staff Relating to the Judgement to Nedeljko Vujić, 29 January 1996; Stamenko Nikolić, T. 10686-10690.

support the argument that the VJ was not bound by disciplinary sanctions imposed by the VRS on 30<sup>th</sup> PC members.

1698. The ability of VJ to exercise its jurisdiction over disciplinary proceedings in relation to 30<sup>th</sup> PC members also emerged from a case concerning Vinko Pandurević. Although the litigation took place in 1998-1999, it can still serve as an additional illustration in this matter.

1699. Momir Talić, a senior VRS officer, sent a letter to the VJ General Staff “authorising” a disciplinary investigation against Pandurević for conduct when he was a 30<sup>th</sup> PC member.<sup>4676</sup> The letter refers to information that Talić obtained “on the conduct of [Pandurević] regarding his housing status” which led to “reasonable grounds to suspect that he violated military discipline under [...]the Law on the VJ”.<sup>4677</sup> At that time, Pandurević attended classes at the National School of Defence in Belgrade.<sup>4678</sup> The investigation was conducted by officers nominated by the National School of Defence.<sup>4679</sup> Based on their report, the VJ General Staff instituted disciplinary action against Pandurević.<sup>4680</sup> The VJ Military Disciplinary Prosecutor issued an indictment before the Military Disciplinary Court at the VJ General Staff,<sup>4681</sup> which ultimately issued a judgement dismissing the charges.<sup>4682</sup>

1700. The Trial Chamber finds that the VJ General Staff could in certain circumstances initiate disciplinary proceedings against members of the 30<sup>th</sup> PC, for offences committed while serving in the VRS. The start of such proceedings was, however, conditioned on a decision of the VRS, who, as the abovementioned examples show, would either pass the relevant judgement of the VRS military disciplinary court to the VJ or, at least on one occasion, authorise the VJ to carry out the investigation directly. The role of the VJ in this process seems to be auxiliary to that of the VRS, limited to the enforcement of the status-related sanctions imposed by the VRS while maintaining the discretion to do so or not. The Trial Chamber also notes that the record does not contain any evidence concerning disciplinary and/or criminal proceedings initiated by the VJ against members of the 30<sup>th</sup> PC *ex officio*.

<sup>4675</sup> Ex. P2422, Order of Marjanović (commander of the RV and PVO) on cessation of the military service of Nedeljko Vujić, 12 October 2005.

<sup>4676</sup> Ex. P1927, Information of the VRS Main Staff to the VJ General Staff on Vinko Pandurević, 20 July 1998. The authorization was given pursuant to Article 180 of the Law on the VJ.

<sup>4677</sup> Ex. P1927, Information of the VRS Main Staff to the VJ General Staff on Vinko Pandurević, 20 July 1998.

<sup>4678</sup> Ex. P1928, Decision of the National Defence School Administration on Vinko Pandurević, 21 July 1998.

<sup>4679</sup> *Ibid.*

<sup>4680</sup> Ex. P1929, Decision of Military Post 2102 Belgrade on Vinko Pandurević, 7 August 1998.

<sup>4681</sup> Ex. P1930, Indictment of the VJ Military Disciplinary Prosecutor against Vinko Pandurević, 19 March 1999.

<sup>4682</sup> Ex. P1931, Record of the Trial against Vinko Pandurević before the VJ Military Disciplinary Court, 14 October 1999; Ex. P1932, Judgement against Vinko Pandurević of the VJ Military Disciplinary Court, 14 October 1999.

(ii) Whether Perišić had the Authority to Issue Binding Orders to the 40<sup>th</sup> PC Membersa. “Naredba” and “Naredenje”

1701. The Trial Chamber has been presented with the evidence distinguishing between two different types of orders issued in the VJ: “*naredba*” and “*naredenje*”. Both could be issued in writing or orally.<sup>4683</sup>

1702. *Naredba* was an administrative order that defined the responsibilities, duties and rights of individuals.<sup>4684</sup> According to Starčević, it should be viewed as a regulation that was adopted within an administrative procedure.<sup>4685</sup> Examples of *naredba* are orders transferring and assigning VJ members from one post to another.<sup>4686</sup> Such orders could be appealed, although in some cases compliance was required pending appeal.<sup>4687</sup> *Naredba*, as an administrative act could be issued by a superior officer but in some cases also by authorised civilians serving in the MOD.<sup>4688</sup>

1703. The term *naredenje* (command) was used in the context of issuing operational orders within the chain of command.<sup>4689</sup> As a matter of principle, *naredenje* could not be suspended pending appeal and had to be implemented immediately,<sup>4690</sup> unless the compliance with the order would imply the commission of a criminal act.<sup>4691</sup> Complaints could be submitted afterwards.<sup>4692</sup>

1704. The Prosecution argues that Perišić issued both *naredenje* and *naredba* to members of the VRS and SVK.<sup>4693</sup> It submits that these “orders were obeyed by his subordinates serving in the [PCs]”.<sup>4694</sup> It posits that evidence of Perišić issuing command orders (*naredenje*) is “less plentiful”. It argues that there was little need for Perišić to issue command orders (*naredenje*) as the military commands of the VRS and SVK comprised of VJ officers with objectives aligned with those of Milošević, the SDC and Perišić. It points out that the dynamic changed considerably in 1995 when

<sup>4683</sup> See Miodrag Starčević, T. 6806. See e.g. Ex. P2412, Report of Slobodan Perić to Perišić about Officers in SVK, 20 June 1995, p. 1.

<sup>4684</sup> Miodrag Starčević, T. 5462.

<sup>4685</sup> *Ibid.*

<sup>4686</sup> See Miodrag Starčević, T. 5470, 5476; Ex. P1895, Order by VJ General Staff Personnel Administration, 15 February 1994; Ex. P1896, Minutes from a Meeting Concerning the Transfer of a Soldier to the VRS, 11 September 1994. See *supra* paras 789-790.

<sup>4687</sup> Miodrag Starčević, T. 5464. One of such exceptions was a category of transfer and appointment orders, Ex. P197, Law on the VJ, 18 May 1994, Article 154.

<sup>4688</sup> Miodrag Starčević, T. 5463.

<sup>4689</sup> Miodrag Starčević, T. 5462-5463.

<sup>4690</sup> Miodrag Starčević, T. 5463.

<sup>4691</sup> Miodrag Starčević, T. 5464.

<sup>4692</sup> Miodrag Starčević, T. 5463.

<sup>4693</sup> Prosecution Final Brief, para. 772.

<sup>4694</sup> *Ibid.*

the SVK risked defeat. The looming disaster compelled Perišić to take more robust actions by *inter alia* issuing command orders (*naredenje*) to the 40<sup>th</sup> PC members.<sup>4695</sup>

1705. The Defence submits that Perišić could not issue binding orders to the VJ soldiers serving in the 30<sup>th</sup> and 40<sup>th</sup> PCs<sup>4696</sup> since their relationship with the VJ chain of command terminated when they received orders on assignment to duties in VRS or SVK.<sup>4697</sup> It concludes that such officers remained outside the VJ hierarchy until the moment they returned to the VJ and were appointed to a particular duty in the VJ.<sup>4698</sup>

i. Naredba

1706. The Trial Chamber recalls that a VJ member could be transferred to the 30<sup>th</sup> or the 40<sup>th</sup> PC by an order of Perišić. Such orders were issued and compliance was required by the VJ. These transfer orders were enforced through a system of unofficial pressure and threat of termination of military service. As a consequence, most of such transfer orders were obeyed.<sup>4699</sup>

1707. Perišić also could - and in fact did - issue orders transferring VJ personnel serving in the 30<sup>th</sup> and the 40<sup>th</sup> PC back to the VJ.<sup>4700</sup> Such orders were obeyed.<sup>4701</sup> On the other hand, the Trial Chamber recalls that the evidence shows instances where these transfer orders were preceded by the agreement of the SVK or the VRS.<sup>4702</sup>

ii. Naredenje

1708. The Trial Chamber recalls that according to the relevant laws, both the SVK and the VRS were formed on the basis of the principle of unity or singleness of command with clearly defined *de jure* chain of command.<sup>4703</sup>

1709. The parties do not contest the fact that VJ members serving in the 30<sup>th</sup> and the 40<sup>th</sup> PCs were duty-bound and indeed did follow orders of their superiors in the SVK and the VRS; the point of contention is, however, whether such VJ personnel, simultaneously remained in the parallel chain of command – namely that of the VJ.<sup>4704</sup> Specifically whether Perišić could issue command orders

<sup>4695</sup> Prosecution Final Brief, para. 794.

<sup>4696</sup> See Defence Final Brief, paras 849, 853, 857, 859, 987.

<sup>4697</sup> Defence Final Brief, para. 301.

<sup>4698</sup> Defence Final Brief, para. 301. See also paras 262-263, 859.

<sup>4699</sup> See *supra* paras 803-809.

<sup>4700</sup> See *supra* section VI.A.7.

<sup>4701</sup> *Ibid.*

<sup>4702</sup> *Ibid.*

<sup>4703</sup> See *supra* paras 265, 296.

<sup>4704</sup> See e.g. Defence Final Brief, paras 154-162, 262-263, 284, 857-858; Prosecution Closing Arguments, T. 14751-14754 (partially private session).

(*naredenje*) to the members of the 30<sup>th</sup> and the 40<sup>th</sup> PCs and if so, whether such orders were considered binding and obeyed.

b. Ability of Perišić to Issue Command Orders (*naredenje*) to the 40<sup>th</sup> PC members

i. Before the Shelling of Zagreb in May 1995

1710. Before the shelling of Zagreb, Perišić issued at least two command orders, analysed below, to the officers serving in the SVK through the 40<sup>th</sup> PC – Ex. P1925 and Ex. P1800. In one of those orders, Perišić referred to the authority of Slobodan Milošević. At the same time, the record shows some instances where Perišić instead of ordering – pleaded for compliance – *e.g.* using the expression “please” in the official documents.

1711. The Prosecution relies on Ex. P1925 to demonstrate that Perišić could issue orders (*naredenje*) to the 40<sup>th</sup> PC members.<sup>4705</sup> The document shows that on 24 March 1995, Perišić ordered (*naredenje*) the formation of a Coordinating Staff “in order to extend the most effective assistance to the Main Staff and to the [40<sup>th</sup> PC] units, for successful resistance to any possible aggression”. Among its members were officers of the VJ General Staff as well as two VJ officers serving in the 40<sup>th</sup> PC.<sup>4706</sup> Although Starčević did not remember seeing this order, he agreed with the Prosecution that this order was a “proper exercise of command over these [40<sup>th</sup> PC officers]”.<sup>4707</sup> The witness noted though that this order was partly “confusing” as one of the members of the Coordinating Staff was a retired officer from the association of veterans over whom Perišić should not have any command.<sup>4708</sup> The Trial Chamber also notes that one of the recipients of this order was an officer of the RSK MOD. In its closing arguments, the Prosecution submits that this order was obeyed without directing the Chamber to any specific evidence.<sup>4709</sup> The Trial Chamber, however, notes that there is no evidence supporting this assertion.

1712. At least on one occasion, on 7 December 1994, Perišić issued an order (*naredenje*) to the SVK that was acknowledged as such by the SVK and carried out – Exhibit P1800. This order was to the President of the RSK and the Commander of the SVK Main Staff and explicitly stated that it was issued, “on authority of the President of the Republic of Serbia, Slobodan Milošević”. It held:

On the order of the President of the Republic of Serbia, Mr. Slobodan Milošević, urgently facilitate the passage of UNPROFOR humanitarian aid in Western Bosnia (with forces in Bihać pocket), for two reasons:

<sup>4705</sup> Prosecution Final Brief, para. 773; Prosecution Closing Arguments, T. 14756.

<sup>4706</sup> Ex. Order of Momčilo Perišić to Form a Coordinating Staff, 24 March 1995.

<sup>4707</sup> Miodrag Starčević, T. 6760, 6762-6763.

<sup>4708</sup> Miodrag Starčević, T. 6762.

<sup>4709</sup> See Prosecution Closing Arguments, T. 14740.

Because you, Mr. Martić, promised this to Mr. Yasushi Akashi

Because the decision on UNPROFOR's withdrawal from Western Bosnia is at stake.

Inform UNPROFOR (Mr. Akashi) in writing that you will perform this task you assumed immediately this evening (7 December 1994) and then do it.

Submit a report on completed task to the President of the Republic of Serbia, Slobodan Milošević, through the [Chief of General Staff of the VJ], tomorrow (8 December 1994), by 0800 hours.<sup>4710</sup>

The order was carried out, but the response given on the same day by the Commander of the SVK Main Staff was addressed to Slobodan Milošević, not to Perišić: "Mr. President. As regards to your order sent by telegram [...] we inform you that we carried out your order".<sup>4711</sup>

1713. One witness described a similar instance to the one presented above where Perišić passed Milošević's order to Čeleketić.<sup>4712</sup>

1714. According to one witness, Perišić, in his own capacity, did not issue command orders to Čeleketić.<sup>4713</sup> The witness testified that the latter was indeed duty bound to obey Perišić's orders which related to promotion, transfer and retirement but in all other respects he was within the chain of command of the SVK.<sup>4714</sup>

1715. Further evidence shows that communication between the VJ and the SVK was at times taking the form of requests or suggestions rather than orders.

1716. As an example, on 19 January 1994, Perišić sent the following document to the Commander of the SVK Main Staff. The Trial Chamber notes that the document does not look like an order - instead uses the courtesy expression "please" before addressing a request: "A work team is dispatched [...] in order to implement the agreement you made with Lt Col Gen Mladić, which relates to dismantling 4 barrels of the 262mm "Orkan" [launcher]. *Please* enable the work group to carry out the task".<sup>4715</sup>

<sup>4710</sup> Ex. P1800, Letter signed by Perišić to RSK President and SVK Commander, 7 December 1994 (emphasis in original). *See also* MP-80, T. 8803-8804 (closed session).

<sup>4711</sup> Ex. P2857, SVK Main Staff Commander Čeleketić Communication to Perišić and Milošević, 7 December 1994; Milošević's influence over the SVK could be also seen in the evidence showing that the SVK Main Staff received a "task" to set up the allied forces of Fikret Abdić that were supposed to fight the ABiH 5<sup>th</sup> Corps in Western Bosnia, MP-80, T. 8402 (closed session). This task was given by Slobodan Milošević to Milan Martić who in turn ordered the SVK to act accordingly, MP-80, T. 8404-8406 (closed session). *See also* MP-80, T. 8457 (closed session).

<sup>4712</sup> MP-80, T. 8454 (closed session).

<sup>4713</sup> *Ibid.*

<sup>4714</sup> MP-80, T. 8449-8450, 8787, 8852-8854 (closed session). *But see also* MP-80, T. 8489 (closed session).

<sup>4715</sup> Ex. P1138, Correspondence Between Chief of the VJ General Staff and the SVK Main Staff, 19 January 1994 (emphasis added).

1717. Similarly, on 11 May 1994, the following communication was sent to the SVK Main Staff: “For the next coordination /meeting/ on 19.05.1994, *please* bring the exact disposition of yours and enemy forces [...]”.<sup>4716</sup>

1718. According to Miodrag Starčević, using the word “please” in an official military document allows for the inference that there is no relation of superior-subordinate between the sender and the recipient.<sup>4717</sup> In another instance, the VJ used the more ambiguous expression “is required” instead of the usual “order”. Accordingly, on 11 August 1994, the Acting Deputy Chief of the VJ General Staff sent the following communication to the SVK Main Staff:

In order to prevent these planned intentions, the following *is required*:

Enhance operative work and the coordination of the tasks pertaining to the security and counter-intelligence security of the installations

The 11<sup>th</sup> Corps of the [SVK] is to secure the bridges over the Danube River in their territory and establish full cooperation and coordination with the Novi Sad Corps in performing this task.<sup>4718</sup>

1719. The Trial Chamber also recalls the evidence on the monthly coordination meetings held in Belgrade.<sup>4719</sup> In the words of one witness “[...] it wasn't along the classical military lines that [the Chief of the VJ General Staff] would assign tasks and take decisions, because there were [...] no such relations of authority between [the SVK and the VJ]”.<sup>4720</sup>

1720. Rade Orlić who served as Chief of the Intelligence Departments of the SVK Main Staff between June and December 1994 testified that he never received an order from the VJ while serving in the SVK.<sup>4721</sup> Similarly, Rade Rašeta, who served in the Security Department of the SVK Main Staff, also testified that once he was assigned to the SVK, his role in the chain of command in the VJ ended.<sup>4722</sup>

ii. 1-3 May 1995

1721. After the SVK had started shelling various targets in Croatia on 1 May 1995,<sup>4723</sup> the following conversation took place between Perišić and Milošević:

[Milošević]: That is what you should say to Čeleketić, that he should be prepared to discontinue the hostilities instead of firing. And what is he going to do afterwards?

<sup>4716</sup> Ex. P2177, Letter from VJ General Staff to SVK Main Staff, 11 May 1994 (emphasis added).

<sup>4717</sup> See Miodrag Starčević, T. 7027.

<sup>4718</sup> Ex. P1621, Report of the VJ General Staff to the SVK Main Staff, 11 August 1994 (emphasis added).

<sup>4719</sup> See *supra* paras 943-944, 1406-1410.

<sup>4720</sup> MP-80, T. 8338-8339 (closed session).

<sup>4721</sup> Rade Orlić, T. 5740, 5762-5763.

<sup>4722</sup> Rade Rašeta, T. 5969.

<sup>4723</sup> See *supra* para. 566.

[Perišić]: Well, what is he going to do? Now, well...nothing.

[Milošević]: We are going to arrest him if he happens to start doing it, word of honour!<sup>4724</sup>

1722. In the following conversation taking place the same day, on 1 May 1995,<sup>4725</sup> Perišić acknowledged that Čeleketić was following orders from a person whom, based on the evidence of the events, the Trial Chamber identifies as Milan Martić;<sup>4726</sup> at the same time, Perišić refers to the fact that he intervened with Čeleketić to forbid any “retaliation”:

[Milošević]: It would be good, if you could do it, to see with Čeleketić that they really should not behave like hysterical women, but like serious men.

[Perišić]: [...] he was following orders of that one, you know [...]

[Milošević]: They should not make any retaliation, forbid them strictly.

[Perišić]: Fine. I did already. Otherwise, who knows what they do by now if we hadn't intervened these days.<sup>4727</sup>

1723. On the same day, Perišić also left the following message for Slobodan Milošević referring to his previous conversation with Dušan Lončar – the Commander of the SVK 11<sup>th</sup> Corps the SVK serving through the 40<sup>th</sup> PC:<sup>4728</sup>

Perišić contacted Lončar, explained to him how to behave in the negotiations and he accepted it. And the second thing, Eastern Slavonia Corps received the order to send one battalion to Western Slavonia, I told Lončar not to send without our approval, which he accepted.<sup>4729</sup>

1724. Further Perišić reported to Milošević “Lončar completely understands the things and accepts to do as we say”.<sup>4730</sup>

<sup>4724</sup> Ex. P1274, Intercepted Conversation, 1 May 1995, p. 2. The Trial Chamber notes that in the conversation with Šarinić, Milošević stated that he can replace neither Martić nor Čeleketić, Ex. P1325, Intercepted Conversation, undated. However, in a conversation with Perišić, Milošević bragged that he will tell Martić that he should resign, Ex. P1329, Intercepted Conversation, undated, p. 8; Ex. P1301, Intercepted Conversation, 1 May 1995, p. 3, where Milošević states the following to Mikelić: “Please do call back so I know what action to take via Perišić. They will have to respect the actions I take via Perišić”.

<sup>4725</sup> The Trial Chamber notes that Ex. P1276 and P1303 talk about the start of the Operation “Flash” at 5.30 “this morning”, Ex. P1276, Intercepted Conversation, undated, pp 3-4; Ex. P1303, Intercepted Conversation, undated, p. 2.

<sup>4726</sup> See *supra* section V.B.

<sup>4727</sup> Ex. P1276, Intercepted Conversation, undated, pp 1-2 (emphasis in original omitted); See also Ex. P1303, Intercepted Conversation, undated, p. 1; Ex. P1280, Intercepted Conversation, undated, p. 2 (where Perišić reports to Milošević that he “told Lončar not to go [...] because if he does he is involving us directly”) (emphasis in original omitted); Ex. P1299, Intercepted Conversation, 1 May 1995, p. 3.

<sup>4728</sup> For Lončar’s status as a 40<sup>th</sup> PC member - see Ex. P1681, VJ Personnel File of Dušan Lončar, Doc ID 0611-4844.

<sup>4729</sup> Ex. P1303, Intercepted Conversation, undated, pp 3-4. See also Ex. P1309, Intercepted Conversation, undated, p. 4; Ex. P1316, Intercepted Conversation, undated, p. 2; Ex. P1340, Intercepted Conversation, undated, p. 2.

<sup>4730</sup> Ex. P1373, Intercepted Conversation, undated, p. 2. See also Ex. P1357, Intercepted Conversation, undated, p. 2 (where Lončar states “I will call [Perišić] again, so let him consult that guy, I will get an order from [Perišić] again and if he says no, that means that there is no need to send anything from here”.); Ex. P1379, Intercepted Conversation, undated, p. 3 (where Perišić communicates to Milošević: “I insisted on important things again,



1725. On 2 May 1995, Perišić, referring to shelling of Zagreb, reported to Milošević that he told Čeleketić and Martić “not to do it anymore”, threatening them with dismissal.<sup>4731</sup> In particular, during one conversation on 2 May 1995 at 11:35 hours, Perišić and Milošević had the following exchange:

[Perišić]: I also received information that they shelled /Zagreb/

[Milošević]: And who did you receive the information from?

[Perišić]: From my guys who are there you know. [...]

[Milošević]: Did you tell Čeleketić that he mustn't do that?

[Perišić]: Well, I did tell Čeleketić, but it seems that he and Martić did it without our knowledge. They shelled Karlovac, Sisak, and now as you see, also Zagreb.<sup>4732</sup>

1726. On 3 May 1995,<sup>4733</sup> Perišić discussed Čeleketić's personality with Milošević:

[Milošević]: [...] Can't you tell him not to listen to Martić anymore please! [...]

[Perišić]: Mister President, you remember when I said that he was not even for a brigade level and you remember, well, how Martić brushed away rapidly all those real soldiers, real fighters, and he brought only some obedient men loyal to him, who, at any rate, do whatever he tells them to do. Well Čeleketić is the symbol of all of that. And he doesn't think with his own head, but the way [Martić] tells him to [...]

[Perišić]: I thought and I think now, listen, to send Mile Mrkšić, but until he accepts him, you know? And then he will kill him there, or they will kill each other, and then the tension is even greater.

[Milošević]: Until we replace those two there is not going to be peace there at all.<sup>4734</sup>

1727. On 3 May 1995, the RSK Prime Minister, Mikelić pleaded with Milošević to stop the shelling:

[Mikelić]: But President, please stop those impossible ones through Perišić, Martić [...] gave an order to Čeleketić to shoot.

[Milošević]: Čeleketić has to be stopped, order Čeleketić to stop the fire.

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and [Čeleketić] said that he would work on it to the utmost, and that Lončar has promised me indeed, you know? I was thinking to call Lončar tomorrow and start shaking it up a bit, elaborate some things, so that he would not make up something”).

<sup>4731</sup> Ex. P1314, Intercepted Conversation, undated. *See* MP-80, T. 8444-8445, 8488-8489, 8776, 8788, 8791-8792 (closed session); Ex. P1284, Intercepted Conversation, undated, p. 2 (where Perišić is recorded as saying “[...] I can't bring [Martić] to his senses, and I fear that he's the main person”). (emphasis in original omitted). *See also* Ex. P1320, Intercepted Conversation, undated; Ex. P1381, Intercepted Conversation, undated, pp 2-3; Ex. P1389, Intercepted Conversation, undated.

<sup>4732</sup> Ex. P1297, Intercepted Conversation, 2 May 1995, p. 1. *See also* Ex. P1286, Intercepted Conversation, undated (showing that Perišić also knew that the Orkan rocket system was used in the attack); Ex. P1389, Intercepted Conversation, 3 May 1995 (where Milošević informed Perišić of the shelling of 3 May 1995).

<sup>4733</sup> The Trial Chamber notes that Ex. P1286, Intercepted Conversation, 1 May 1995, p. 2, refers to the shelling of Children Hospital in Zagreb on 3 May 1995.

<sup>4734</sup> Ex. P1286, Intercepted Conversation, undated, p. 3 (emphasis in original omitted).

[Mikelić]: I've just told him, this very moment I told him to stop.

[Milošević]: Is he going to obey? [...]

[Milošević]: Tell Martić the agreement has been reached and he shouldn't go on doing stupid things.

[Mikelić]: All right, but you also tell that through Perišić, you know how to do it.

[Milošević]: I've already told him to try to establish the connection and to tell this one he must, must stop it.<sup>4735</sup>

1728. On 3 May 1995, Perišić reported to Milošević: "Yes, actions stopped. [...] [F]irst I forced him to stop and he stopped".<sup>4736</sup>

### iii. After the Shelling of Zagreb in May 1995

1729. The evidence presented below suggests that in mid-May 1995 Čeleketić was replaced by Mrkšić.<sup>4737</sup>

1730. During the meeting held in Belgrade around 10 May 1995, attended by *inter alia* Martić, Milošević and Perišić, at a certain point Perišić, brought in Mrkšić and introduced him as the new SVK Commander.<sup>4738</sup> According to one witness, Mrkšić on that occasion said, unprompted, that he will carry out all the duties and orders of Milošević.<sup>4739</sup> In an intercepted conversation, Milošević told Perišić to notify Mrkšić that he had nothing to worry about his verification by the RSK Assembly.<sup>4740</sup> The Assembly of the RSK subsequently verified Mrkšić as the Commander of the SVK.<sup>4741</sup> One witness testified that Mrkšić, when he took over from Čeleketić, was in direct contact with the VJ General Staff and that he was receiving direct orders from Belgrade, "in other words from Perišić".<sup>4742</sup> During an intercepted conversation with Perišić, Milošević told him to "request contact with Mrkšić only, and [Mrkšić] should not take any orders from Martić", to which Perišić responded: "[Mrkšić] hasn't been taking any for a long time".<sup>4743</sup>

<sup>4735</sup> Ex. P1321, Intercepted Conversation, undated, pp 2-3.

<sup>4736</sup> Ex. P1286, Intercepted Conversation, undated, p. 5 (emphasis in original omitted). *See also* Ex. P1401, Intercepted Conversation, undated, p. 3 (where Milošević instruct Perišić: "[c]all Čeleketić and tell him that he must not under any circumstances, even though this one orders him to shell Zagreb").

<sup>4737</sup> *See also supra* para. 297.

<sup>4738</sup> MP-80, T. 8471, 8473, 8616 (closed session). *See also* Ex. P1451, Intelligence Note, 6 July 1995 (describing General Mrkšić going to Belgrade to meet Slobodan Milošević regarding the election of a new RSK Defence Minister).

<sup>4739</sup> MP-80, T. 8473, 8728-8729 (closed session).

<sup>4740</sup> MP-80, T. 8483 (closed session); Ex. P1340, Intercepted Conversation, undated.

<sup>4741</sup> MP-80, T. 8482-8485, 8729-8730 (closed session). *See also* Ex. P1916, VJ Personnel File of Mile Mrkšić, Doc ID 0422-2977.

<sup>4742</sup> MP-80, T. 8481, 8457 (closed session). *See also* Ex. P1340, Intercepted Conversation, undated, pp 3-4.

<sup>4743</sup> Ex. P1340, Intercepted Conversation, undated, p. 3; MP-80, T. 8474-8479 (closed session). *See also* Ex. P1344, Intercepted Conversation, 19 May 1995, pp 1-2 (where Milošević told Perišić to contact Lončar and pass him the

1731. On 20 June 1995, Colonel Slobodan Perić, commander of the 18<sup>th</sup> SVK Corps, reported back to Perišić, stating that: “Based on your *oral order* [*naredenje*], I am submitting to you the list of officers who participated and those who did not participate in combat operations [...] in the territory of Western Slavonia”.<sup>4744</sup> In a document sent by Perišić’s Chef de Cabinet to the command of the SVK 11<sup>th</sup> Corps on 1 November 1995 the expression “you are requested to send a brief report” was used.<sup>4745</sup> The response read: “In response to your letter [...] we hereby send you a report”.<sup>4746</sup>

1732. A letter from Perišić to the Commander of the SVK Main Staff, dated 18 July 1995 used words such as “please” and “kindly”.<sup>4747</sup> Starčević commented that this document does not indicate any form of hierarchy because if it was an order there would be no politeness.<sup>4748</sup>

1733. After the fall of the RSK in August 1995, the only part of the SVK that was still operational was the 11<sup>th</sup> Corps under the command of Lončar. On 9 July 1995, Perišić was reported as ordering Lončar to prepare the list of the VJ soldiers born in Croatia to be sent to the SVK.<sup>4749</sup>

1734. In an intercepted conversation on 6 August 1995, Perišić gave an order to be conveyed to Lončar: “arrest all scaremongers and all others who are harmful to the morale of the men of the 11<sup>th</sup> Corps. If necessary – execute by firing squad. Blue Nine orders it”.<sup>4750</sup> The Trial Chamber heard the testimony explaining that the code-name “Blue Nine” (Plavi 9) was used by Perišić.<sup>4751</sup> One witness testified that after the fall of the RSK, the 11<sup>th</sup> Corps was *de facto* part of the VJ and that its commander, Lončar, took orders from Perišić.<sup>4752</sup>

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following: “[t]herefore [Lončar] should go to that Assembly /session/ and to tell them that he will no [sic] follow [Martić’s] adventurous and stupid orders, that is not pursuant to the Constitution and that he has commander of the Main Staff, with whom he is in communication with. And [Martić], what he wants to determine, he can do that when he calls the Defence Council session and than when the Council brings a decision”).

<sup>4744</sup> Miodrag Starčević, T. 6765-6766 (emphasis added); Ex. P2412, Report of Slobodan Perić to Perišić about Officers in SVK, 20 June 1995, p. 1 (emphasis added).

<sup>4745</sup> Ex. P2707, Documents Relating to Office of the VJ letter to the 11<sup>th</sup> Corps Command, November 1995, Doc ID 0647-6992. *See also* Siniša Borović, T. 14028.

<sup>4746</sup> Ex. P2707, Documents Relating to Office of the VJ letter to the 11<sup>th</sup> Corps Command, November 1995, Doc ID 0647-6994, p. 1.

<sup>4747</sup> Miodrag Starčević, T. 7027; Ex. D125, Correspondence from General Perišić to the SVK Main Staff, 18 July 1995.

<sup>4748</sup> Miodrag Starčević, T. 7027. *See also* Ex. P1617, Request of the VJ General Staff to the VRS and SVK Main Staffs to Provide Reports, 6 February 1993 (sent to the SVK Main Staff by the VJ General Staff asking for information and using the phrase “please”); Mile Novaković, T. 13107.

<sup>4749</sup> Ex. P2146, IHV Intelligence Administration Report, 11 July 1995; Ex. P1456, Intelligence Note, 10 July 1995. *See also* Siniša Borović, T. 14092; Vladimir Rodić, T. 14220-14221 (testifying about Perišić touring the units of the SVK 11<sup>th</sup> Corps in autumn 1995).

<sup>4750</sup> Ex. P1461, Intercepted Conversation, 6 August 1995.

<sup>4751</sup> Ex. P2286, Intercepted Communication, 2 May 1995. *See also* MP-80, T. 8465-8467 (closed session).

<sup>4752</sup> MP-80, T. 8456 (closed session). *See also* Ex. P1777, VJ Personnel File of Mile Novaković, Doc ID 0611-7672; the order of Mrkšić issued “[w]ith the objective of carrying out the order of [Perišić]”. The Trial Chamber,

c. Ability of Perišić to Issue Command Orders (*naredenje*) to the 30<sup>th</sup> PC members

1735. The Prosecution generally asserts that Perišić issued *naredenje* to the members of the 30<sup>th</sup> PC, but does not refer to any specific evidence supporting this conclusion.<sup>4753</sup>

1736. The Trial Chamber notes that the record does not show any instance of *naredenje* issued by Perišić to the members of the 30<sup>th</sup> PC.

1737. On 11 April 1994, Perišić issued a written warning to the VRS Main Staff in order to prevent further escalation of conflict in BiH.<sup>4754</sup> Starčević testified that:

I don't believe that any legal measures could have been taken should someone fail to adhere to the warning, but in view of the fact that a warning is in a way a question of good services or an advice, perhaps there could be some influence on the quality of the relationship between the person who is issuing the warning [...] and the side that does not adhere to the warning.<sup>4755</sup>

1738. The Trial Chamber also recalls the evidence concerning relations between Perišić and Mladić, including the instances where Perišić tried to influence Mladić to accept the Contact Group peace plan and to release French pilots held hostage by the VRS.<sup>4756</sup> On both these occasions Perišić tried to persuade Mladić into compliance rather than give him an order.<sup>4757</sup> The Trial Chamber recalls that the evidence demonstrates that Perišić was repeatedly unsuccessful in his attempts to “persuade” Mladić to stop the war and to support a peace plan.<sup>4758</sup> The Trial Chamber recalls that when the SDC, despite its previous unsuccessful attempts, decided to continue pressuring Mladić, and other members of the RS leadership, to endorse a peace plan, Perišić stated that “at least we can invite them, and we can try to persuade those people in front of this audience”.<sup>4759</sup> The Trial Chamber also recalls that Perišić served as a sort of mediator by organising a series of meetings between international representatives and Mladić, and other members of the RS leadership, to obtain the release of the French pilots.<sup>4760</sup>

(iii) Whether Perišić was Involved in the Payment of Salaries and Provision of Other Benefits for the 40<sup>th</sup> and the 30<sup>th</sup> PC Members

1739. The Trial Chamber recalls that Perišić was directly involved in determining the funds needed for the payment of salaries for military personnel, including members of the 30<sup>th</sup> and the

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however, notes that according to Starčević, Mrkšić referred to *naredba* issued by Perišić, Miodrag Starčević, T. 6760.

<sup>4753</sup> Prosecution Final Brief, paras 768, 772, 794.

<sup>4754</sup> Ex. P1827, Warning to VRS Main Staff, 11 April 1994.

<sup>4755</sup> Miodrag Starčević, T. 6770.

<sup>4756</sup> *See supra* paras 1365-1369, 1378-1384.

<sup>4757</sup> *Ibid.*

<sup>4758</sup> *See supra* paras 1365-1369.

<sup>4759</sup> *See supra* para. 1367.

40<sup>th</sup> PCs. The payment of the salaries was made by the Accounting Centre of the MOD with the funds that were allocated to the VJ in the national defence budget. The PCs, or the Personnel Administration of the VJ General Staff, provided the Accounting Centre of the MOD with all of the records and information necessary to calculate the salaries of the members of the 30<sup>th</sup> and 40<sup>th</sup> PCs.<sup>4761</sup>

1740. The Trial Chamber recalls that in addition to a salary, members of the PCs received “special payments” for service at the time of their retirement.<sup>4762</sup> The PCs, as part of the Personnel Administration of the VJ General Staff, also decided on the recognition of pensionable years of service and on the provision of pensions.<sup>4763</sup> The housing needs of soldiers serving in the 30<sup>th</sup> and the 40<sup>th</sup> PCs were addressed either by the issuance of a housing certificate or by the provision of a family separation allowance.<sup>4764</sup> The PCs members were also entitled to medical insurance in the FRY and were treated in VJ medical facilities located in the territory of the FRY.<sup>4765</sup> Like other VJ officers, they also enjoyed various other benefits such as compensation for service under difficult conditions and education benefits.<sup>4766</sup>

1741. The Trial Chamber recalls that Milan Čeleketić received a salary like normal members of the VJ.<sup>4767</sup> Moreover, after he submitted a demand for recognition of his years of service in the SVK as double for the purpose of calculating his pension, the VJ General Staff Personnel Administration issued a decision recognising his claim pursuant to the Law on the VJ.<sup>4768</sup>

1742. The Trial Chamber recalls that it was also presented with evidence in relation to the payment of salaries to, *inter alia*, Ratko Mladić, Manojlo Milovanović, Radislav Krstić, Milenko Živanović, Vujadin Popović, Dragan Obrenović, Đorđe Đukić, Bogdan Sladojević, Radivoje Miletić, Milan Gvero, Zdravko Tolimir, Stanislav Galić and Dragomir Milošević.<sup>4769</sup>

(iv) Whether Perišić had the Capacity to Promote Members of the 30<sup>th</sup> and the 40<sup>th</sup> PCs

1743. The Trial Chamber recalls that, as a general rule, promotions of officers serving in the 30<sup>th</sup> and 40<sup>th</sup> PCs were first granted in the SVK and the VRS, respectively, in accordance with the laws of the RSK or RS. The SVK/VRS Main Staff would then send a list of promotions to the VJ

<sup>4760</sup> See *supra* paras 1378-1384.

<sup>4761</sup> See *supra* para. 880.

<sup>4762</sup> See *supra* para. 879.

<sup>4763</sup> See *supra* para. 889.

<sup>4764</sup> See *supra* para. 891.

<sup>4765</sup> See *supra* paras 897, 904.

<sup>4766</sup> See *supra* para. 905.

<sup>4767</sup> See *supra* para. 878.

<sup>4768</sup> See *supra* para. 887.

<sup>4769</sup> See *supra* para. 878.

General Staff with a request that they be verified. Such verification and corresponding promotion in the VJ allowed the PC members to enjoy the benefits and rights attached to the new rank, most importantly a commensurate salary.<sup>4770</sup>

1744. The Trial Chamber also recalls that the verifications and promotions within the VJ were made according to the Law on the VJ. As a consequence, Perišić retained the authority to promote members of the PCs up to and including the rank of Colonel and had the power of proposal to the FRY President for exceptional promotion to the rank of General. The Trial Chamber also found that such verifications were not merely a rubber stamping of decisions made by the SVK or the VRS and Perišić decided whether a promotion in the VJ was merited based on his own assessment of character and performance of the members of the PCs proposed for promotion verification.<sup>4771</sup>

1745. More specifically, the Trial Chamber recalls that Milan Čeleketić was exceptionally promoted by the SVK from the rank of Colonel to the rank of Major-General in February 1994 and again to the rank of Lieutenant General in 1995. The discussions concerning the “verification” of his promotions held during the SDC sessions of 16 March 1994 and on 13 June 1995 clearly show that Perišić exerted a significant authority in this process. It is worth noting that regarding the 1994 promotion Perišić suggested to wait until they could see how Čeleketić would perform in the new position. Accordingly, Čeleketić’s promotion was not verified until June 1994. The further promotion of Milan Čeleketić in 1995 was not supported by Perišić, who considered him “guilty” for the situation in the RSK, and indeed was not verified.<sup>4772</sup>

1746. As an illustration of the procedure in the VRS, the Trial Chamber recalls that on 23 June 1994, Vinko Pandurević and Dragan Obrenović, members of the 30<sup>th</sup> PC, were extraordinarily promoted to the ranks of Infantry Lieutenant Colonel and Major, respectively, by an order of Mladić. These promotions were then verified in the VJ by order of Perišić on 16 June 1995. The VJ Personnel file of Pandurević further indicates that he was also extraordinarily promoted to the rank of Colonel on 31 December 1995 by an order of Perišić.<sup>4773</sup> Similarly, the FRY SDC, on Perišić’s proposal,<sup>4774</sup> verified promotions of Radivoje Miletić,<sup>4775</sup> Milan Gvero<sup>4776</sup> and Zdravko

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<sup>4770</sup> See *supra* para. 866.

<sup>4771</sup> *Ibid.*

<sup>4772</sup> See *supra* para. 861.

<sup>4773</sup> See *supra* para. 846.

<sup>4774</sup> Ex. P786, Stenographic Transcript of the 37<sup>th</sup> Session of the SDC, 7 June 1995, p. 32.

<sup>4775</sup> Ex. P1729, VJ Personnel File of Radivoje Miletić, Doc ID 0422-2358; Ex. P1900, Decree of the FRY President, 14 June 1995.

<sup>4776</sup> Ex. P1899, VJ Personnel File of Milan Gvero, Doc ID 0422-3207; Ex. P1900, Decree of the FRY President, 14 June 1995.

Tolimir.<sup>4777</sup> The Trial Chamber also notes that some promotions were not verified by the VJ - including that of Galić of 1994.<sup>4778</sup>

1747. The Trial Chamber recalls that there were also instances in which the promotion in the VJ *preceded* the promotion in the VRS. For example, Ratko Mladić was exceptionally promoted to the rank of Colonel General by a FRY Presidential decree of 16 June 1995, whereas the RS Presidential decree followed on 28 June 1995.<sup>4779</sup>

(v) Whether Perišić had the Authority to Terminate the Professional Military Service of the 40<sup>th</sup> PC Members

1748. The Prosecution highlights Perišić's "selective application" of the law empowering him to terminate VJ officers when their conduct did not serve the interests of the FRY and argues that such conduct demonstrated that Perišić had the material ability to punish his subordinates in the PCs.<sup>4780</sup> The Prosecution also argues that President Lilić relied on Article 107 of the Law on the VJ selectively to retroactively terminate the professional military service of 40<sup>th</sup> PC members, including Čeleketić, Novaković, Bjelanović and Mrkšić.<sup>4781</sup>

1749. The Trial Chamber recalls that, pursuant to the Law on the VJ, the FRY President and Perišić possessed the authority to terminate the professional military service of personnel assigned to the 30<sup>th</sup> and 40<sup>th</sup> PCs and that they, in fact, exercised this authority.<sup>4782</sup> The Trial Chamber notes in this regard that the legal provisions enumerating grounds for issuing decisions terminating military service gave a certain amount of discretion to both Perišić and the FRY President.<sup>4783</sup> The Trial Chamber recalls that such discretion was used in several cases to pursue broader political goals: to ensure that VJ personnel would accept transfers to the PCs and as a means of disciplining members of the VJ as seen on the previously discussed examples of Čeleketić or Novaković.<sup>4784</sup>

<sup>4777</sup> Ex. P1786, Excerpt from VJ Personnel File of Zdravko Tolimir; Ex. P1900, Decree of the FRY President, 14 June 1995.

<sup>4778</sup> See *supra* paras 848-849.

<sup>4779</sup> See *supra* para. 850.

<sup>4780</sup> Prosecution Final Brief, para. 764.

<sup>4781</sup> Prosecution Final Brief, para. 763. See Ex. P1908, Decree of the FRY President, 22 December 1994 (terminating the professional military service of Milan Čeleketić); Ex. P1912/P1777, Doc ID 0611-7664, Decree of the FRY President, 22 December 1994 (terminating the professional military service of Mile Novaković); Ex. P1915, VJ Personnel File of Mirko Bjelanović, Doc ID 0611-9285 (Decree of the FRY President terminating the professional military service of Mirko Bjelanović), 22 December 1994; Ex. P1916, VJ Personnel File of Mile Mrkšić, Doc ID 0422-2982 (Decree of the FRY President terminating the professional military service of Mile Mrkšić, 22 December 1994).

<sup>4782</sup> See *supra* paras 916, 924-927.

<sup>4783</sup> See *supra* paras 918, 924.

<sup>4784</sup> See *supra* paras 803-809, 1680-1684.

(vi) Whether the SVK and the VRS Depended on the VJ Logistical Support

1750. The Trial Chamber recalls that the SVK came to depend on the supply and continuity of logistical and technical support (including the maintenance of the Orkan rocket system) from the VJ during Perišić's tenure. This fact had an effect on the everyday work of the 40<sup>th</sup> PC members serving in the SVK, as the success of their operations to a large extent depended on the logistical and technical support supervised by Perišić.<sup>4785</sup>

1751. The Trial Chamber also recalls that the VRS was highly dependent on the VJ logistical and technical support. Without the regular supply of considerable quantities of ammunition and other weaponry, as well as fuel, technical expertise, repair services and personnel training, the VRS would have been hampered in conducting its operations in Sarajevo and Srebrenica.<sup>4786</sup> The Trial Chamber recalls its finding that Perišić oversaw this system.<sup>4787</sup>

(vii) Whether the SVK and VRS Reported to the VJ General Staff

1752. The Trial Chamber recalls that there were multiple channels through which information flowed from SVK and the VRS to the VJ General Staff. Through the system of regular reports, monthly meetings in Belgrade, various other *ad hoc* instances of reporting and exchanges of information, during his tenure as Chief of General Staff, Perišić was well-informed of all important aspects on the functioning of the SVK and VRS, as well as their activities.<sup>4788</sup>

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<sup>4785</sup> See *supra* para. 1263.

<sup>4786</sup> See *supra* para. 1622.

<sup>4787</sup> See *supra* paras 1007, 1622.

<sup>4788</sup> See *supra* para. 1436.



## B. Findings on Superior-Subordinate Relationship

### 1. Preliminary Remarks

1753. The Trial Chamber recalls its finding that the VRS and the SVK depended heavily on FRY and VJ assistance in order to function as an army and wage war. This dependence encompassed different forms of assistance including logistics, personnel as well as support in communications.<sup>4789</sup> Without the regular flow of logistical assistance and personnel support, the VRS and SVK would have been hampered in conducting their offensive operations.<sup>4790</sup> The Trial Chamber also recalls that the payment of salaries and other benefits was vital to the functioning of the very core of these armies.<sup>4791</sup> This high degree of dependence on the VJ does not *per se* imply, without further evidence, that Perišić exercised effective control over members of those armies who committed the crimes charged in the Indictment. Yet, the Trial Chamber is of the view that this dependence demonstrates at least *the potential* for exercising control on the part of Perišić. The salient question before the Trial Chamber is whether Perišić turned the potential for control inherent in that dependence into *effective* control.

1754. In reviewing the evidence relevant for establishing effective control, the Trial Chamber is mindful that Perišić and the FRY leadership tried to keep their intervention in the conflict as well as their links with the SVK and VRS secret in order to avoid criticism or sanctions from the international community.<sup>4792</sup> In this regard, the Trial Chamber paid special attention to the Appeals Chamber warning that:

Undue emphasis upon the ostensible structures and overt declarations of the belligerents, as opposed to a nuanced analysis of the reality of their relationship, may tacitly suggest to groups who are in *de facto* control of military forces that responsibility for the acts of such forces can be evaded merely by resort to a superficial restructuring of such forces or by a facile declaration that the reconstituted forces are henceforth independent of their erstwhile sponsors.<sup>4793</sup>

### 2. Whether Perišić Exercised Effective Control over the SVK and VRS

1755. The VJ, the SVK and the VRS operated in an atmosphere of unity and acted towards a common goal. The Trial Chamber finds particularly revealing in this regard the statements of Perišić and various SVK and VRS officials, including Commanders of the Main Staffs of the VRS

<sup>4789</sup> See *supra* paras 793-796, 1263, 1358, 1622.

<sup>4790</sup> See *supra* paras 1263, 1622.

<sup>4791</sup> See *supra* paras 1619, 1623.

<sup>4792</sup> See *supra* paras 780-787, 1002-1006.

<sup>4793</sup> *Tadić* Appeal Judgement, para. 154.

and SVK, Mladić and Čeleketić, in which they admitted that they considered the SVK, VRS and the VJ to be a single army.<sup>4794</sup> For example, Perišić stated:

Almost no decision in the [RSK], although it had its political leadership, nor in [RS], was made without an agreement of the state leadership of the [FRY] at the time. Analogously, the Army also had close ties, and there were several reasons for that. Firstly, because that was one single army, secondly because it had its members in all those areas, and thirdly because it had equipment which was getting its logistics support mostly from the [FRY].<sup>4795</sup>

However, the Trial Chamber notes that the colloquial meaning of the term “single army” does not necessarily equate to the meaning that the term has in the context of legal concept of a superior-subordinate relationship.

(a) SVK

1756. The following analysis and findings are made by the Majority of the Trial Chamber, Judge Moloto dissenting.

1757. As a first step of an inquiry into whether Perišić exercised effective control over the perpetrators of the crimes charged, the Majority notes that Perišić was the *de jure* superior of the 40<sup>th</sup> PC members who held all the key commanding positions in the SVK. This status meant that he had *de jure* power to issue orders to the 40<sup>th</sup> PC members, appoint them to specific posts, discipline them and finally, with exception of the officers holding ranks higher than colonel, dismiss them from the army.<sup>4796</sup> The *Orić* Appeal Judgement, however, underscored that “the possession of *de jure* authority, without more, provides only some evidence of such effective control” and that the burden of proving beyond reasonable doubt that the accused had effective control over his subordinates rests with the Prosecution.<sup>4797</sup> In the present case, the evidence shows that Perišić could use and indeed used his *de jure* powers vis-à-vis VJ soldiers serving in the SVK.

1758. The notion of effective control should be understood “in the sense of a material power to prevent or punish”.<sup>4798</sup> In this context, the actions taken by Perišić to initiate disciplinary proceedings against key military officers serving in the SVK through the 40<sup>th</sup> PC are particularly relevant in showing effective control.<sup>4799</sup> The evidence clearly shows that Perišić *could* initiate disciplinary and/or criminal proceedings against these key SVK officers. It was only due to the

<sup>4794</sup> See Ex. P2879, Video “JNA – *Srpska Verzija Sloma*” Serbian Version of the Breakup, p. 27; Ex. P1731, VJ Personnel File of Vinko Pandurević, Doc ID 0422-8585, p. 2; Ex. P2941, Excerpt from Ratko Mladić’s Notebook, 13 October 1994, p. 2; Ex. P1054, Operations Report on the Aggression Against the RSK and the SVK Activities between 4 August and 10 August 1995, 26 August 1995, p. 28.

<sup>4795</sup> Ex. P2879, Video “JNA – *Srpska Verzija Sloma*” Serbian Version of the Breakup, p. 27.

<sup>4796</sup> See *supra* paras 206-209, 254-259, 788-789, 810, 830, 916, 936-937.

<sup>4797</sup> *Orić* Appeal Judgement, para. 92.

<sup>4798</sup> *Čelebići* Appeal Judgement, para. 303.

<sup>4799</sup> See *supra* paras 1676, 1687-1688.

SDC policy of keeping the VJ's involvement in the war in Croatia a secret<sup>4800</sup> – a policy advocated by Perišić – that such proceedings were not pursued. Consequently, this policy resulted in termination of the service instead of in the initiation of any proper disciplinary or criminal proceedings. These political considerations, in the view of the Majority, do not call into question Perišić's ability to use his authority against SVK officers, but rather demonstrate the inconvenience of doing so under the circumstances prevailing at that time.

1759. By the same token, the Majority finds that the fact that Perišić used his ability to punish members of the 40<sup>th</sup> PC only after the fall of the RSK in November 1995 does not raise a reasonable doubt as to his ability to punish members of the 40<sup>th</sup> PC before that. The evidence shows that the relationship between the VJ and the SVK and VRS was characterised by *overlapping* goals. As a result, Perišić only needed to make use of his authority when the VJ's military objectives diverged with those of the other two armies. This is precisely what happened: when the SVK surrendered and RSK fell into the hands of the Croat forces, Perišić decided to initiate investigations on the conduct of the highest ranking officers of the SVK.

1760. In conclusion, the evidence demonstrating that Perišić had the ability to initiate disciplinary and/or criminal proceedings against members of the 40<sup>th</sup> PC strongly militates in favour of effective control.

1761. The Majority finds that holding the highest military position in the VJ - that of Chief of the VJ General Staff - Perišić was usually not expected to interfere in the command at the operational level. The Majority, however, notes that Perišić was well-informed about the situation in the SVK and VRS through, *inter alia*, a system of regular reports sent to him by those armies.<sup>4801</sup> Based on this knowledge, he occasionally provided instructions and other military directives to 40<sup>th</sup> PC officers, at times through orders or interventions typical of a vertical military relationship and, at other times, through requests or pleadings generally typical of a horizontal relationship.<sup>4802</sup>

1762. Before 2 May 1995, Perišić issued at least one command order to the senior officer serving in the 40<sup>th</sup> PC that was subsequently obeyed.<sup>4803</sup> Notwithstanding that this order was issued on the instructions of Milošević, the fact remains that it was Perišić who was actually tasked with issuing the order and this shows that he was considered by Milošević to be a person who had authority over the SVK. The Majority is of the view that the lack of frequent interventions by Perišić in the operational command of the SVK does not necessarily cast doubt on his ability to exercise

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<sup>4800</sup> See *supra* para. 1684.

<sup>4801</sup> See *supra* para. 1436.

<sup>4802</sup> See *supra* section VII.A.2.a.(ii).(b).

<sup>4803</sup> See *supra* para. 1712.

command and control over that army. Where the objectives of the VJ coincided with those of the SVK or the VRS there was no need for Perišić to issue orders. The Majority recalls in this respect that during the monthly coordination meetings between *inter alia* Perišić and high officers of the SVK, the synchronisation of such objectives was strengthened by “exchange of information and harmonisation of positions between the VJ, VRS and SVK”.<sup>4804</sup>

1763. When a particular VJ instruction was communicated to the SVK, it was not always complied with, such as when Čeleketić did not react to Perišić’s intervention to stop the shelling of Zagreb on 2 May 1995.<sup>4805</sup> Čeleketić’s non-compliance with Perišić’s intervention of 2 May 1995, in the Majority’s view, does not necessarily imply that Čeleketić treated Perišić’s instructions as non-binding. Rather, Čeleketić’s behaviour in this respect has to be considered in the context of the existence of parallel chains of command. The evidence shows that Perišić issued certain command orders to the SVK. Even if such orders were rare, their existence and the SVK’s compliance therewith show his general ability to issue orders. This in turn shows that the system of command and control of the SVK was bifurcated in two chains of command: one controlled by Milan Martić as supreme commander of the SVK, and the other by Perišić and other members of the FRY leadership, including Milošević. Against this backdrop, there could be cases where Čeleketić was simultaneously presented with two conflicting orders/interventions. Compliance with one of them would then automatically mean non-compliance with the other. Such non-compliance, however, especially if there is evidence that Čeleketić was previously given orders from both chains of command, treating them as binding and complying with them, should be seen in this specific instance as merely showing the hierarchy between the two coexisting chains of command.

1764. Notwithstanding this instance of non-compliance, the Majority finds that Čeleketić’s behaviour does not call into question Perišić’s general ability to issue binding orders to members of the 40<sup>th</sup> PC. In the Majority’s view, this conclusion is further confirmed by evidence showing that, when Mrkšić became Commander of the SVK Main Staff after the shelling of Zagreb, he took orders not from the RSK President but directly from Perišić.<sup>4806</sup> The Majority is mindful that the superior-subordinate relationship between Perišić and the perpetrators of the crimes had to exist *at the time* of the commission of the crimes. That being noted, the Majority is of the view that there was no systemic change in the authority Perišić had *vis-à-vis* the SVK after Mrkšić succeeded Čeleketić. Rather, the change was only in the personal relations between Perišić and the new SVK Main Staff Commander and in Perišić’s decision to become more involved in exercising his control over the SVK.

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<sup>4804</sup> See *supra* para. 1408.

<sup>4805</sup> See *supra* para. 1725.

<sup>4806</sup> See *supra* para. 1730.

1765. A VJ member could be transferred to the 40<sup>th</sup> PC by an order from Perišić or the VJ General Staff Personnel Administration. The Majority, in this respect, recalls that although as a general rule VJ officers were transferred and/or appointed to the 40<sup>th</sup> PC by the VJ, it was the SVK who appointed these officers to specific posts within its structure.<sup>4807</sup> At times, however, the SVK would request the VJ to transfer specifically identified officers identifying the unit and position in which these personnel were to serve if transferred to the SVK.<sup>4808</sup> The Majority finds that in such cases the approval of the SVK request should be seen as an indirect and discrete way of appointing the 40<sup>th</sup> PC members to the specific posts in the SVK. Perišić's ability to do so should be seen as standing in full compliance with his *de jure* status as the 40<sup>th</sup> PC members superior.

1766. At the same time, however, these orders were issued and complied with while these officers were still in the sole chain of command of the VJ. Once a VJ officer complied with an order transferring him to the 40<sup>th</sup>, he entered the chain of command of the SVK. The question posed in this section is, however, whether Perišić maintained effective control over VJ officers at the time of the commission of the crimes - *i.e.* while they were serving in the SVK. In this regard, the mere fact that these officers complied with an order by Perišić to be transferred to the SVK, which was issued *before* they entered a new chain of command, bears limited weight in determining effective control. The same holds true for cases where Perišić used his authority to terminate the professional contracts of VJ soldiers refusing to join the 40<sup>th</sup> PC.<sup>4809</sup>

1767. Perišić and the VJ Personnel Administration could - and in fact did - issue orders transferring VJ personnel serving in the 40<sup>th</sup> PC back to the VJ.<sup>4810</sup> Such orders were obeyed.<sup>4811</sup> However, the evidence, does not show that Perišić could actually redeploy the members of the 40<sup>th</sup> PC back to the VJ without the approval of the SVK.<sup>4812</sup> Even if the need for such approval could be in practice nothing more than a mere formality, the conditional character of these transfer orders prevents this indicator from carrying much weight in the context of the present considerations.

1768. The fact that Perišić had both the ability to make independent recommendations with respect to the verification of promotions and the ability, under the conditions set by the Law on the VJ, to terminate the professional contracts of the VJ soldiers serving in the 40<sup>th</sup> PC,<sup>4813</sup> militates in favour of effective control.

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<sup>4807</sup> See *supra* para. 797.

<sup>4808</sup> See *e.g.* Ex. P1125, Request by the RSK President to the VJ for Assistance in Recruitment and Materiel, 21 July 1994, p. 15. See also *supra* paras 790-791.

<sup>4809</sup> See *e.g. supra* para. 805.

<sup>4810</sup> See *supra* paras 823-825.

<sup>4811</sup> *Ibid.*

<sup>4812</sup> See *supra* para. 830.

<sup>4813</sup> See *supra* paras 866, 933.

1769. After weighing the different indicators presented above, the Majority finds that Perišić had effective control over members of the 40<sup>th</sup> PC, including over perpetrators of the crimes committed by the shelling of Zagreb on 2 and 3 May 1995. The Majority therefore finds that a superior-subordinate relationship existed between them at the time of the commission of the crimes.

(b) VRS

1770. The Trial Chamber recalls that Perišić was the *de jure* superior of the 30<sup>th</sup> PC's members.<sup>4814</sup>

1771. As *de jure* superior, according to the Law on the VJ, Perišić could initiate disciplinary proceedings against the members of the 30<sup>th</sup> PC.<sup>4815</sup> The record, however, does not contain any instances of disciplinary and/or criminal proceedings initiated by Perišić *ex officio* against members of the 30<sup>th</sup> PC. The evidence shows that the VJ General Staff could initiate disciplinary proceedings against members of the 30<sup>th</sup> PC. Yet, the initiation of such proceedings was conditioned upon a decision from the 30<sup>th</sup> PC member's superior officer in the VRS, who would either pass on the relevant judgement of the VRS military disciplinary court to the VJ, or would otherwise *authorise* the investigation against such a member of the 30<sup>th</sup> PC. In this process, Perišić therefore had an auxiliary role.<sup>4816</sup> The Trial Chamber consequently finds that this factor does not militate in favour of effective control.

1772. The trial record does not contain any command orders issued by Perišić to the 30<sup>th</sup> PC members serving in the VRS. His inability to do so, as opposed to mere unwillingness, can be seen from evidence showing a divergence of views between Perišić and Mladić. This was the case when Perišić and the FRY leadership unsuccessfully attempted to convince Mladić to accept the Contact Group peace plan, which was aimed at ending the conflict in BiH.<sup>4817</sup> Similarly, in the negotiations leading to the release of French pilots, who were taken prisoner by the VRS, Perišić, acting as a mediator between the parties involved, used his influence over Mladić instead of simply ordering Mladić to release the prisoners.<sup>4818</sup> Both these instances strongly suggest that the tools available to Perišić to impose his authority upon Mladić did not include an ability to issue binding orders. The circumstances leading to the rejection of the Contact Group peace plan by the Bosnian Serbs show that his power of persuasion was not sufficient to obtain the intended results. These instances suggest cooperation between the VRS and the VJ as separate and independent military entities, rather than the subordination of the VRS to the VJ within a single military structure.

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<sup>4814</sup> See *supra* para. 1667.

<sup>4815</sup> See *supra* para. 254.

<sup>4816</sup> See *supra* para. 1700.

<sup>4817</sup> See *supra* paras 1365-1369.

<sup>4818</sup> See *supra* paras 1378-1384.

1773. The Majority additionally makes the following observations. Perišić's inability to issue orders, does not mean that he did not have, at least potentially, other tools to exert his authority over the VRS. Perišić oversaw a system providing comprehensive military assistance to the VRS and he also recurrently urged the SDC to continue this policy.<sup>4819</sup> He equally devised and implemented a plan for the establishment of the PCs thereby creating the conditions that enabled key officers to continue serving in the VRS without impediment while simultaneously enjoying all the rights conferred upon VJ members.<sup>4820</sup> The Majority is satisfied that Perišić could have stopped approving particular logistic requests or urged the SDC to discontinue its policy of supporting the VRS and that by doing so, Perišić could have exerted some level of pressure on the VRS. The question that lies at the core of the issue of effective control is whether Perišić could make use of these means to materially prevent or punish the commission of the crimes. The Majority is of the view that Perišić's actions before the SDC could have resulted in some forms of control over the VRS' behaviour. Nevertheless, without further evidence, the Majority is not satisfied beyond reasonable doubt that these actions would have *materially* prevented the perpetrators of the crimes.

1774. The Trial Chamber recalls that a VJ member could be transferred to the 30<sup>th</sup> PC by an order of Perišić or the VJ General Staff Personnel Administration. However, such orders were issued and complied with while these officers were still in the sole chain of command of the VJ. The Trial Chamber finds that the mere fact that these officers complied with an order by Perišić to be transferred to the VRS issued *before* they entered a new chain of command bears only limited weight in assessing effective control. The same holds true for cases where Perišić used his authority to terminate professional contracts of VJ soldiers refusing to join the 30<sup>th</sup> PC.<sup>4821</sup>

1775. The Trial Chamber considers the fact that the redeployment process for members of the 30<sup>th</sup> PC back to the VJ required prior approval of the VRS<sup>4822</sup> prevents this indicator from carrying much weight in the present considerations.

1776. Perišić's ability to make independent decisions and/or recommendations in the process of "verifications" of promotions of soldiers serving in the 30<sup>th</sup> PC and to terminate their professional contracts when the conditions set by the Law on the VJ were met,<sup>4823</sup> are factors militating, in the Majority's view, in favour of effective control.

1777. In conclusion, the Trial Chamber is mindful of the paucity of evidence on the system of command and control over the VRS. Even though the VRS, including its officers serving through

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<sup>4819</sup> See *supra* paras 1007-1008.

<sup>4820</sup> See *supra* para. 1609.

<sup>4821</sup> See *e.g. supra* paras 804-805, 807.

<sup>4822</sup> See *supra* para. 830.

the 30<sup>th</sup> PC, were dependent on the logistic support of the VJ and Perišić was *de jure* superior of the 30<sup>th</sup> PC members, the evidence presented does not lead to the only reasonable conclusion that the relationship between Perišić and members of the 30<sup>th</sup> PC responsible for the commission of crimes in Sarajevo and Srebrenica amounted to effective control. The Trial Chamber recalls here the holding of the Appeals Chamber that “the doctrine of command responsibility is ultimately predicated upon the power of the superior to control the acts of his subordinates”.<sup>4824</sup> Perišić could *influence* conduct of the 30<sup>th</sup> PC members through exercising certain discretion in terminating their professional contracts, suspending their salaries or through verification of their promotions for the purposes of acquiring certain benefits. Nevertheless, his ability to effectively *control* the acts of the 30<sup>th</sup> PC members is called into question by his inability to issue binding orders to them. His *material* ability to prevent or punish them is also partly called into question by his secondary role in the process of imposing disciplinary sanctions for their conduct while serving in the VRS.

1778. Instead, an alternative explanation - *i.e.* that the VJ and VRS, including its officers serving in the 30<sup>th</sup> PC, cooperated as separate and independent military entities, even if strongly interlinked in terms of logistics and other material assistance, in pursuing common goals - is also reasonably possible from that evidence. The Trial Chamber therefore cannot find beyond a reasonable doubt that Perišić had effective control over perpetrators of the crimes committed in Sarajevo and Srebrenica and that a superior-subordinate relationship existed between them at the time of their commission.

1779. Due to the finding that a superior-subordinate relationship did not exist, the Trial Chamber will not analyse the two remaining requirements of the legal test for establishing responsibility pursuant to Article 7(3) of the Statute for the crimes committed by Perišić’s subordinates in Sarajevo and Srebrenica.

### 3. Knew or Had Reason to Know

1780. The evidence shows that Perišić knew about the shelling of Zagreb and Milan Čeleketić’s role therein within hours from the incident. The Trial Chamber recalls in this regard the intercepted conversations between Perišić and Milošević held on 2 and 3 May 1995.<sup>4825</sup> In particular, during one conversation on 2 May 1995 at 11:35 hours, Perišić and Milošević had the following exchange:

Perišić: I also received information that they shelled /Zagreb/

Milošević: And who did you receive the information from?

<sup>4823</sup> See *supra* paras 866, 933.

<sup>4824</sup> Čelebići Appeal Judgement, para. 197.

<sup>4825</sup> See *supra* paras 1725-1728.



Perišić: From my guys who are there you know. [...]

Milošević: Did you tell Čeleketić that he mustn't do that?

Perišić: Wee, I did tell Čeleketić, but it seems that he and Martić did it without our knowledge. They shelled Karlovac, Sisak, and now as you see, also Zagreb.<sup>4826</sup>

#### 4. Failure to Punish

1781. A superior is bound to take “necessary and reasonable measures” to ensure that the perpetrators of the crimes in question are brought to justice.<sup>4827</sup> The evidence does not show any meaningful attempts to punish the perpetrators of the crimes committed by the shelling of Zagreb on 2 and 3 May 1995.<sup>4828</sup> Although investigations were initiated against some members of the VJ for their conduct while they were serving in the SVK, the SDC decided to avoid any prosecutions in an effort to avoid making the FRY involvement in the conflict in Croatia public.<sup>4829</sup> Perišić followed this course of action. He ordered to “finish the investigation procedure for all in order to establish if elements for criminal or disciplinary responsibility exist”. At the same time, however, he prepared decisions pensioning them off.<sup>4830</sup>

1782. In October 1995, Milan Čeleketić was retroactively pensioned off as a result of his conduct in connection with Operation Storm.<sup>4831</sup> Yet, this measure was not adopted because of his participation in the crimes related to the shelling of Zagreb but rather for losing the RSK territory to Croatia.

1783. The Majority therefore finds beyond a reasonable doubt that Perišić failed to take the reasonable and necessary steps to punish his subordinates serving in the 40<sup>th</sup> PC for the crimes they committed through the shelling of Zagreb on 2 and 3 May 1995.

#### 5. Conclusion

1784. On the basis of the foregoing analysis, the Majority is satisfied beyond a reasonable doubt that a superior-subordinate relationship between Perišić and the perpetrators of the crimes related to the shelling of Zagreb existed at the time of their commission, that Perišić knew that these crimes

<sup>4826</sup> Ex. P1297, Intercepted Conversation, 2 May 1995, p. 1. *See also* Ex. P1286, Intercepted Conversation, undated, p. 2, showing that Perišić also knew that the Orkan rocket system was used in the attack; Ex. P1389, Intercepted Conversation, undated, communication where Milošević informed Perišić of the shelling that occurred on 3 May 1995.

<sup>4827</sup> *See supra* paras 140, 160.

<sup>4828</sup> *See* Ex. P1086, Request For Assistance 656 to the Government of the Republic of Serbia, 13 July 1994, 13 July 1994; Ex. P1083, Request For Assistance 656-A to the Government of the Republic of Serbia, 27 November 2006.

<sup>4829</sup> *See supra* paras 1683-1689.

<sup>4830</sup> *See supra* para. 1684.

<sup>4831</sup> *See supra* para. 1680.

were committed by his subordinates and finally that he failed to punish them for this conduct. In conclusion, the Majority finds beyond a reasonable doubt that Perišić is responsible pursuant to Article 7(3) for failing to punish the perpetrators of crimes committed in Zagreb on 2 and 3 May 1995.

1785. The Trial Chamber finds that it has not been established that Perišić is responsible pursuant to Article 7(3) for failing to prevent and/or punish the perpetrators of crimes committed in Sarajevo and Srebrenica.

## IX. CUMULATIVE CONVICTIONS

1786. The Trial Chamber has found Momčilo Perišić responsible for murder and attacks on civilians as violations of the laws or customs of war (Article 3 of the Statute) and for murder, inhumane acts, and persecutions as crimes against humanity (Article 5 of the Statute).

1787. Cumulative convictions are multiple convictions under different statutory provisions which relate to the same conduct. The Trial Chamber recalls that cumulative convictions are permissible if each of the statutory crimes involved has a materially distinct element not contained in the other.<sup>4832</sup> In order for an element to be considered materially distinct, it requires proof of a fact that is not required by the other element.<sup>4833</sup> As pointed out by the Appeals Chamber, “[t]he cumulative convictions test serves twin aims: ensuring that the accused is convicted only for distinct offences, and at the same time, ensuring that the convictions entered fully reflect his criminality”.<sup>4834</sup>

### A. Articles 3 and 5: War Crimes and Crimes Against Humanity

1788. Cumulative convictions for the same conduct under Article 3 and Article 5 of the Statute are permissible because they require proof of distinct elements.<sup>4835</sup> Article 3 requires a close link between the acts of the accused and the armed conflict, while Article 5 requires proof of a widespread and systematic attack against a civilian population.<sup>4836</sup> Therefore, cumulative convictions for murder as a violation of the laws or customs of war punishable under Article 3 and for murder as a crime against humanity under Article 5 are permissible.<sup>4837</sup>

### B. Article 3: Murder and Attacks on Civilians

1789. Both the *actus reus* and the *mens rea* required for murder and for attacks on civilians are distinct from each other.<sup>4838</sup> The Trial Chamber therefore finds that cumulative convictions for both murder and attacks on civilians are permissible.

### C. Article 5: Persecutions, Murder, and Inhumane Acts

1790. Persecutions as a crime against humanity has a materially distinct element from murder and inhumane acts as a crime against humanity in that persecutions requires proof that an act or omission discriminates in fact, and proof that the act or omission was committed with specific

<sup>4832</sup> *Čelebići* Appeal Judgement, para. 412; *Kordić and Čerkez* Appeal Judgement, para. 1033.

<sup>4833</sup> *Ibid.*

<sup>4834</sup> *Kordić and Čerkez* Appeal Judgement, para. 1033.

<sup>4835</sup> *Kordić and Čerkez* Appeal Judgement, para. 1036; *Galić* Appeal Judgement, para. 165.

<sup>4836</sup> *Ibid.*

<sup>4837</sup> *Ibid.*

intent to discriminate.<sup>4839</sup> Therefore, cumulative convictions for persecutions and murder and inhumane acts as crimes against humanity under Article 5 are permissible.

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<sup>4838</sup> See *supra* paras 89-104.

<sup>4839</sup> *Kordić and Čerkez* Appeal Judgement, paras 1041-1042.

## X. SENTENCING

### A. Law on Sentencing

1791. A sentence is to be determined with reference to Article 24 of the Statute, and to Rules 87(C) and 101 of the Rules of Procedure and Evidence (“Rules”). In accordance with Article 24(2), the Trial Chamber takes into account “such factors as the gravity of the offence and the individual circumstances of the convicted person”.<sup>4840</sup> Rule 101 additionally requires the Trial Chamber to take into account aggravating and mitigating circumstances,<sup>4841</sup> the general practice regarding prison sentences in the courts of the former Yugoslavia,<sup>4842</sup> and the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served.<sup>4843</sup>

1792. Rule 87(C) of the Rules grants discretion to the Trial Chamber either to impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, or to impose a single sentence reflecting the totality of the criminal conduct of the accused.<sup>4844</sup>

1793. A sentence of imprisonment may be entered for a term up to and including the remainder of the convicted person’s life.<sup>4845</sup> The Trial Chamber is obligated to individualise penalties to fit the circumstances of the accused and the gravity of the crime, and is granted broad discretion to determine an appropriate sentence that will fulfil this purpose.<sup>4846</sup>

#### 1. Purposes of Sentencing

1794. Retribution and deterrence are the primary purposes of sentencing for crimes within the jurisdiction of the Tribunal.<sup>4847</sup>

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<sup>4840</sup> Article 24(2) of the Statute.

<sup>4841</sup> Rule 101 (B)(ii) of the Rules.

<sup>4842</sup> Article 24(1) of the Statute; Rule 101(B)(iii) of the Rules; *Hadžihasanović and Kubura* Appeal Judgement, para. 301; *Limaj et al.* Appeal Judgement, para. 126.

<sup>4843</sup> Rule 101(B)(iv) of the Rules.

<sup>4844</sup> Rule 87(C) of the Rules.

<sup>4845</sup> Article 24(1) of the Statute; Rule 101(A) of the Rules.

<sup>4846</sup> *Strugar* Appeal Judgement, paras 336, 348; *Hadžihasanović and Kubura* Appeal Judgement, para. 302; *Limaj et al.* Appeal Judgement, paras 127, 135; *Blagojević and Jokić* Appeal Judgement, para. 137; *Zelenović* Sentencing Appeal Judgement, para. 11; *Galić* Appeal Judgement, para. 393; *D. Nikolić* Sentencing Appeal Judgement, para. 19; *Čelebići* Appeal Judgement, para. 717.

<sup>4847</sup> *Aleksovski* Appeal Judgement, para. 185; *Čelebići* Appeal Judgement, para. 806; *Stakić* Appeal Judgement, para. 402; *Krajišnik* Appeal Judgement, paras 775, 803.

1795. As a form of retribution, the sentence should fully express society's condemnation of the crimes committed without trespassing into the realm of revenge or vengeance.<sup>4848</sup> The sentence imposed must therefore properly reflect the personal culpability of the wrongdoer.<sup>4849</sup>

1796. The purpose of deterrence manifests itself in two forms: individual and general.<sup>4850</sup> A sentence should serve both to dissuade the wrongdoer from recidivism and discourage others from committing similar crimes.<sup>4851</sup> Deterrence, however, "must not be accorded undue prominence in the overall assessment of the sentences to be imposed".<sup>4852</sup> The goal of rehabilitation is also a legitimate consideration in sentencing, but is granted lesser weight.<sup>4853</sup>

## 2. Aggravating and Mitigating Circumstances

1797. In the determination of a sentence, the Trial Chamber is required to consider the individual circumstances of the convicted person, as well as any mitigating or aggravating circumstances.<sup>4854</sup> The Statute and Rules are silent as to which factors constitute mitigating or aggravating circumstances, with the exception of Rule 101(B)(ii), which requires the Trial Chamber to take into account any "significant cooperation" with the Prosecutor as a mitigating factor.

1798. Only circumstances both directly related to the commission of the offence and to the convicted person at the time he committed the offence may be considered as aggravating factors.<sup>4855</sup> These factors must be proven beyond a reasonable doubt by the Prosecution.<sup>4856</sup> Factors considered as aggravating the gravity of the crime cannot double as separate aggravating circumstances.<sup>4857</sup>

1799. The primary consideration in sentencing is the gravity of an offence.<sup>4858</sup> The gravity of the offence is determined by assessing the inherent gravity of the crime and the criminal conduct of the wrongdoer, a determination that requires consideration of the particular circumstances of the case and the crimes for which the person was convicted, as well as the form and degree of the

<sup>4848</sup> *M. Jokić* Sentencing Trial Judgement, para. 31; *Mrda* Trial Sentencing Judgement, para. 14.

<sup>4849</sup> *Kordić and Čerkez* Appeal Judgement, para. 1075.

<sup>4850</sup> *Kordić and Čerkez* Appeal Judgement, para. 1076.

<sup>4851</sup> *D. Nikolić* Sentencing Appeal Judgement, paras 44-47; *Deronjić* Sentencing Appeal Judgement, para. 145.

<sup>4852</sup> *D. Nikolić* Sentencing Appeal Judgement, para. 46; *Kordić and Čerkez* Appeal Judgement, para. 1078; *Čelebići* Appeal Judgement, para. 717.

<sup>4853</sup> *Čelebići* Appeal Judgement, para. 806.

<sup>4854</sup> *Čelebići* Appeal Judgement, para. 717.

<sup>4855</sup> *Simba* Appeal Judgement, para. 82.

<sup>4856</sup> *Babić* Sentencing Appeal Judgement, para. 43; *Čelebići* Appeal Judgement, para. 763; *Blaškić* Appeal Judgement, para. 686; *D. Nikolić* Sentencing Appeal Judgement, para. 66.

<sup>4857</sup> *Limaj et al.* Appeal Judgement, para. 143; *M. Nikolić* Sentencing Appeal Judgement, para. 58; *Deronjić* Sentencing Appeal Judgement, paras 106-107.

<sup>4858</sup> *Galić* Appeal Judgement, para. 442; *Blaškić* Appeal Judgement, para. 683; *Mrkšić and Šljivančanin* Appeal Judgement, para. 375; *Nahimana et al.* Appeal Judgement, para. 1038; *Blagojević and Jokić* Appeal Judgement, para. 339.

wrongdoer's participation.<sup>4859</sup> In making this assessment, the Trial Chamber may consider the number of victims and the effect of the crimes upon the targeted group.<sup>4860</sup> The extent of the long-term physical, psychological and emotional suffering inflicted upon victims is always relevant to sentencing.<sup>4861</sup> The effects of the crime on relatives of the victims may also be considered.<sup>4862</sup> Moreover, while there is no codified hierarchy, it is reasonable to conclude that some crimes are of a more grievous nature than others.<sup>4863</sup> Because of their inherently discriminatory character, crimes of genocide and targeted persecutions may thus warrant enhanced scrutiny.<sup>4864</sup>

1800. The gravity of a crime under Article 7(3) is assessed with reference to two factors: (i) the gravity of the crimes committed by the convicted person's subordinate; and (ii) the gravity of the convicted person's own conduct in failing to prevent or punish these underlying offences.<sup>4865</sup> The gravity of the subordinate's underlying crimes is dependent upon the scale and brutality of the offences, the vulnerability of the victims, and the impact of the crime upon the immediate victims and their relatives.<sup>4866</sup> The gravity of the superior's conduct is dependent upon the gravity of the underlying crimes of the subordinate.<sup>4867</sup>

1801. Other factors that have been determined to potentially aggravate the severity of a crime include the victims' vulnerability,<sup>4868</sup> the length of time during which the crime continued,<sup>4869</sup> as well as premeditation and motive.<sup>4870</sup> Further, under Article 7 (1) of the Statute, the Trial Chamber may find that direct responsibility is enhanced by a perpetrator's position of authority.<sup>4871</sup> It is important to note, however, that because the existence and use of authority is an element of criminal liability under Article 7(3), it cannot double as an aggravating circumstance for this form of

<sup>4859</sup> *Galić* Appeal Judgement, para. 442; *Blaškić* Appeal Judgement, para. 683; *Mrkšić and Šljivančanin* Appeal Judgement, para. 375; *Nahimana et al.* Appeal Judgement, para. 1038; *Blagojević and Jokić* Appeal Judgement, para. 139; *Čelebići* Appeal Judgement, para. 731.

<sup>4860</sup> *Erdemović* Appeal Judgement, para. 15; *Galić* Appeal Judgement, para. 410.

<sup>4861</sup> *Krajišnik* Appeal Judgement, para. 779; *Mrkšić and Šljivančanin* Appeal Judgement, para. 409; *D. Milošević* Appeal Judgement, para. 323.

<sup>4862</sup> *Blaškić* Appeal Judgement, para. 683.

<sup>4863</sup> *Blagojević and Jokić* Appeal Judgement, para. 138; *Nahimana et al.* Appeal Judgement, para. 1060.

<sup>4864</sup> *Blagojević and Jokić* Appeal Judgement, para. 139.

<sup>4865</sup> *Čelebići* Appeal Judgement, paras 732, 741.

<sup>4866</sup> *Orić* Trial Judgement, para. 729; *Delić* Trial Judgement, para. 563.

<sup>4867</sup> *Čelebići* Appeal Judgement, paras 732, 741.

<sup>4868</sup> *Blaškić* Appeal Judgement, para. 686 (citing *Kunarac et al.* Trial Judgement, para. 867); *Kunarac et al.* Appeal Judgement, para. 352; *Deronjić* Sentencing Appeal Judgement, para. 127; *Krajišnik* Appeal Judgement, para. 779.

<sup>4869</sup> *Blaškić* Appeal Judgement, para. 686 (citing *Kunarac et al.* Appeal Judgement, para. 356).

<sup>4870</sup> *Blaškić* Appeal Judgement, para. 686 (citing *Krstić* Trial Judgement, paras 711-712).

<sup>4871</sup> *Aleksovski* Appeal Judgement, para. 183; *Čelebići* Appeal Judgement, para. 745; *Kupreškić et al.* Appeal Judgement, para. 451; *Blaškić* Appeal Judgement, paras 90-91; *Naletilić and Martinović* Appeal Judgement, para. 613; *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Strugar* Appeal Judgement, para. 353; *D. Milošević* Appeal Judgement, para. 302.

liability.<sup>4872</sup> Yet, the abuse of a position of authority may still be taken in consideration as an aggravating circumstance for Article 7(3) liability.<sup>4873</sup>

1802. Mitigating circumstances need only be proven on a balance of probabilities, and need not be related to the offence.<sup>4874</sup> It is generally within the discretion of the Trial Chamber to determine whether or not a factor will be accepted as a mitigating circumstance, and what weight the factor should be granted. Examples of factors that may be accepted as mitigating circumstances include post-conflict conduct of the defendant which promoted peace and reconciliation in the former Yugoslavia,<sup>4875</sup> substantial and qualitative cooperation with the Prosecution,<sup>4876</sup> voluntary surrender,<sup>4877</sup> good character<sup>4878</sup> and compliance with conditions of provisional release.<sup>4879</sup> The absence of a mitigating factor can never serve as an aggravating factor.<sup>4880</sup>

### 3. General Sentencing Practice in the Former Yugoslavia

1803. Under Article 24(1) of the Statute, the Trial Chamber shall have “recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia”.<sup>4881</sup> It is well established, however, that the Trial Chamber is not required to conform to that practice.<sup>4882</sup> The Tribunal has discretion to diverge from the sentencing practices of the former Yugoslavia, particularly where they would be inadequate in light of international law.<sup>4883</sup>

1804. While Article 24(1) of the Statute and Rule 101(B)(iii) of the Rules refer to case law from the courts of the former Yugoslavia, the jurisprudence of the Tribunal has established that statutory provisions in force in the former Yugoslavia at the time of the commission of the crimes should also

<sup>4872</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Čelebići* Appeal Judgement, para. 732; *Deronjić* Sentencing Appeal Judgement, para. 106.

<sup>4873</sup> *Čelebići* Appeal Judgement, para. 735; *Babić* Sentencing Appeal Judgement, para. 80; *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Blagojević and Jokić* Appeal Judgement, para. 324.

<sup>4874</sup> *Babić* Sentencing Appeal Judgement, para. 43; *Čelebići* Appeal Judgement, para. 590; *Blagojević and Jokić* Appeal Judgement, para. 328.

<sup>4875</sup> *Blagojević and Jokić* Appeal Judgement, paras 328, 330; *Babić* Sentencing Appeal Judgement, paras 43, 55-61; *M. Jokić* Sentencing Appeal Judgement, para. 54.

<sup>4876</sup> Rule 101(B)(ii) of the Rules; *D. Nikolić* Sentencing Appeal Judgement, para. 66; *Babić* Sentencing Appeal Judgement, para. 43; *Bralo* Sentencing Appeal Judgement, paras 51-52.

<sup>4877</sup> *Blagojević and Jokić* Appeal Judgement, para. 344; *Babić* Sentencing Appeal Judgement, paras 43, 74.

<sup>4878</sup> *Blagojević and Jokić* Appeal Judgement, para. 342; *Babić* Sentencing Appeal Judgement, para. 43.

<sup>4879</sup> *Babić* Sentencing Appeal Judgement, para. 43.

<sup>4880</sup> *Blaškić* Appeal Judgement, para. 687.

<sup>4881</sup> Article 21(4) of the Statute.

<sup>4882</sup> *Tadić* Sentencing Appeal Judgement, para. 21; *Čelebići* Appeal Judgement, paras 813, 816, 820; *Jelisić* Appeal Judgement, para. 117; *Kupreškić et al.* Appeal Judgement, para. 418; *Kunarac et al.* Appeal Judgement, paras 347-349; *Krstić* Appeal Judgement, para. 260; *Blaškić* Appeal Judgement, paras 681-682; *Kordić and Čerkez* Appeal Judgement, para. 1085; *D. Nikolić* Sentencing Appeal Judgement, paras 17, 69; *M. Jokić* Sentencing Appeal Judgement, para. 38; *Galić* Appeal Judgement, para. 398; *Hadžihasanović and Kubura* Appeal Judgement, paras 335, 346; *Krajišnik* Appeal Judgement, paras 749, 811; *Boškoski and Tarčulovski* Appeal Judgement, para. 212.

<sup>4883</sup> *Kunarac et al.* Appeal Judgement, para. 377.



be consulted.<sup>4884</sup> At the time of their alleged commission, offences of the kind at issue in the present case were regulated by the Criminal Code of the FRY, which had been in force since 1 July 1977.<sup>4885</sup>

1805. Article 142(1) of the FRY Criminal Code, entitled “War Crimes against the Civilian Population”, provided as follows:

Whoever, in violation of international law in time of war, armed conflict or occupation, orders an attack on the civilian population, settlement, individual civilians or persons *hors de combat*, which results in death or serious injury to body or health; indiscriminate attack affecting civilian population; the killing, torture or inhumane treatment of the civilian population [...] causing great suffering or serious injury to body or health; unlawful deportation, transfers; use of measures of intimidation and terror [...] or whoever commits any of the aforementioned offences, shall be punished by no less than five years in prison, or by the death penalty.<sup>4886</sup>

1806. Article 38(1) and (2) of the FRY Criminal Code provided that no sentence of imprisonment could exceed 15 years, but that a 20-year term could be imposed for criminal offences otherwise punishable by the death penalty.<sup>4887</sup>

#### 4. Credit for Time Served in Custody

1807. In accordance with Rule 101(C) of the Rules, credit shall be given to the convicted person for the period during which they were detained pending surrender to the Tribunal or pending trial. Momčilo Perišić has been detained since his voluntary surrender and transfer to the seat of the Tribunal on 7 March 2005, although he was provisionally released on a number of occasions.

### **B. Determination of the Sentence**

#### 1. Submissions of the Parties

1808. The Prosecution recommends that Perišić be sentenced to life imprisonment.<sup>4888</sup> In support for its position, it notably emphasises the gravity of the crimes perpetrated in Sarajevo, Zagreb and Srebrenica.<sup>4889</sup> It submits that the number of civilian victims across the three crime bases is in the

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<sup>4884</sup> *D. Nikolić* Sentencing Appeal Judgement, para. 85.

<sup>4885</sup> The Criminal Code of the SFRY was adopted by the SFRY Federal Assembly on 28 September 1976. After the dissolution of the SFRY in 1992 the Code remained in force, with some modifications, and was renamed the Criminal Code of the FRY. The Criminal Code of the FRY was renamed the Basic Criminal Code of Serbia in 2003.

<sup>4886</sup> Criminal Code of the FRY, Article 142(1).

<sup>4887</sup> Criminal Code of the FRY, Articles 38(1)-(2).

<sup>4888</sup> Prosecution Final Brief, para. 856.

<sup>4889</sup> Prosecution Final Brief, para. 838.

thousands, that the victims were vulnerable, and that they included women, children and the elderly.<sup>4890</sup>

1809. The Prosecution stresses that the attacks in Sarajevo lasted for years, were indiscriminate in nature, and led the city's inhabitants to live in fear.<sup>4891</sup> It states that defenseless Zagreb inhabitants were attacked with rockets.<sup>4892</sup> It further emphasizes that "thousands of Bosnian Muslim men and boys were summarily executed" in Srebrenica, while "[t]ens of thousands of Srebrenica inhabitants were terrorised, forced onto buses, forcibly removed from their homes and torn from their families".<sup>4893</sup>

1810. The Prosecution submits that Perišić had an extensive role in the crimes, and that his responsibility is heightened by his post as the most senior VJ officer.<sup>4894</sup> In its view, Perišić abused his authority to engage in criminal behaviour instead of upholding standards of international humanitarian law.<sup>4895</sup>

1811. Finally, the Prosecution posits that Perišić's cooperation with the Prosecution was not substantial, and that Perišić was not truthful in his pre-indictment interview.<sup>4896</sup>

1812. In relation to Perišić's family circumstances and character, the Defence submits that he has a wife, two sons and four grandchildren.<sup>4897</sup> He is "a highly professional person, a good and honest man"<sup>4898</sup> and received high evaluations during his military career.<sup>4899</sup> Perišić's actions as Chief of the VJ General Staff "were directed to achieve peace in the region generally, to maintain stability in and protect the borders of FRY, and to prevent the spread of war into FRY".<sup>4900</sup> In its view, Perišić and the FRY political leadership "consistently supported the peace initiatives of the international community and insisted that the conflicts in BiH and Croatia should be resolved peacefully and by political means".<sup>4901</sup> It emphasises Perišić's role in the release of the French pilots captured by the VRS.<sup>4902</sup> The Defence further submits that Perišić ensured that several hundred ABiH soldiers were

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<sup>4890</sup> Prosecution Final Brief, para. 840.

<sup>4891</sup> Prosecution Final Brief, paras 840, 847.

<sup>4892</sup> Prosecution Final Brief, para. 840.

<sup>4893</sup> Prosecution Final Brief, para. 840.

<sup>4894</sup> Prosecution Final Brief, paras 842, 845.

<sup>4895</sup> Prosecution Final Brief, paras 846, 848.

<sup>4896</sup> Prosecution Final Brief, para. 852.

<sup>4897</sup> Defence Final Brief, para. 1145.

<sup>4898</sup> Defence Final Brief, para. 1149, citing Ex. D316, Statement of Zoran Živković, 3 December 2009.

<sup>4899</sup> Defence Final Brief, para. 1146.

<sup>4900</sup> Defence Final Brief, para. 1150.

<sup>4901</sup> Defence Final Brief, para. 1152.

<sup>4902</sup> Defence Final Brief, para. 1158.

cared for and accommodated after they swam across the Drina River into FRY territory in July 1995 around the time of the Srebrenica events.<sup>4903</sup>

1813. The Defence additionally mentions Perišić's post-conflict behaviour, including his support for peace and for democratic forces in the FRY, as well as his opposition to Slobodan Milošević's regime, in particular between 1998 and 2000.<sup>4904</sup> Perišić was a founding member of the opposition party named Movement for a Democratic Serbia.<sup>4905</sup> Moreover, the Defence submits that Perišić participated in the preparation and adoption of the FRY's Law on Cooperation with the ICTY, and was among the persons involved in drafting and signing the decision to transfer Milošević into the Tribunal's custody.<sup>4906</sup>

1814. Finally, the Defence notes that Perišić cooperated with the OTP, voluntarily surrendered into the Tribunal's custody once indicted, and conducted himself appropriately and professionally throughout court proceedings.<sup>4907</sup>

## 2. Findings of the Trial Chamber

### (a) Gravity of the Crimes and the Role of the Accused

#### (i) Sarajevo

1815. The Trial Chamber has found, Judge Moloto dissenting, that Perišić aided and abetted the campaign of sniping and shelling that took place during the siege of Sarajevo.

1816. It would be difficult to overstate the magnitude of the crimes perpetrated in Sarajevo. The siege lasted for nearly four years during which Sarajevo civilians endured conditions of terror due to the indiscriminate nature of the attacks.<sup>4908</sup> Thousands of men, women and children were killed, and tens of thousands injured.<sup>4909</sup> In particular, Sarajevo civilians were regularly shelled and sniped in the course of Perišić's tenure as Chief of the VJ General Staff, a lengthy time span.<sup>4910</sup>

<sup>4903</sup> Defence Final Brief, para. 1155, citing Siniša Borović, T. 14003.

<sup>4904</sup> Defence Final Brief, paras 1162-1171.

<sup>4905</sup> Defence Final Brief, para. 1168, citing Ex. D373, Memo from the Movement for a Democratic Serbia (undated).

<sup>4906</sup> Defence Final Brief, para. 1172, citing Ex. D316, Statement of Zoran Živković, 3 December 2009.

<sup>4907</sup> Defence Final Brief, paras 1173-1175.

<sup>4908</sup> Sarajevo Adjudicated Facts III, 82-83.

<sup>4909</sup> Ex. P137, Witness Statement of General John Wilson, 5 June 1995 and 19 December 2002, para. 53; Ex. P2331, Expert Report of Ewa Tabeau, Death Toll in the Siege of Sarajevo, April 1992 to December 1995: A Study of Mortality Based on Eight Large Data Sources, 18 August 2003, p. 9; Sarajevo Adjudicated Facts I, 154-155; Sarajevo Adjudicated Facts III, 11.

<sup>4910</sup> Sarajevo Adjudicated Facts I, 132, 149.

1817. The victims of these shelling and sniping attacks were especially vulnerable. The people of Sarajevo could hardly find refuge. Civilians were targeted in their homes, at places of worship, in hospitals and schools.<sup>4911</sup> Women, children, and the elderly were not spared.<sup>4912</sup>

(ii) Zagreb

1818. The Trial Chamber has held, Judge Moloto dissenting, that Perišić bears individual criminal responsibility for failing to punish his subordinates for the shelling of Zagreb.

1819. The shelling of Zagreb was executed with callous disregard for civilian life. On multiple occasions, the SVK fired Orkan rockets into the centre of Zagreb, unleashing powerful, unguided explosives into a densely populated urban area.<sup>4913</sup> These indiscriminate attacks struck several civilian areas and notably a children's hospital.<sup>4914</sup> They resulted in injuries to over 200 civilians and 7 deaths.<sup>4915</sup> The victims were especially vulnerable.

(iii) Srebrenica

1820. The Trial Chamber, has determined, Judge Moloto dissenting, that Perišić aided and abetted crimes perpetrated in Srebrenica.

1821. The Srebrenica tragedy stands as one of the darkest chapters in European history since World War Two. While the Srebrenica enclave was designated as a safe area, the VRS fiercely attacked civilians,<sup>4916</sup> as it had previously done in Sarajevo. The VRS's victims were, again, numerous<sup>4917</sup> and defenceless.<sup>4918</sup> The Srebrenica atrocities shattered families and left behind countless broken homes.

<sup>4911</sup> Sarajevo Adjudicated Facts I 138; Mesud Jusufović, T. 3237; Ex. P520, Transcript of Mesud Jusufović from *Prosecutor v. Stanislav Galić*, T. 6532; Ex. P521, List of High Profile Facilities Set on Fire by Shelling During the War; Ex. P125, Witness Statement of Anda Gotovac, 17 May 2006, para. 6 (the apartment building of Gotovac's brother-in-law Trg Heroja was destroyed and burned by shelling in 1992); Ex. P37, Witness Statement of Enes Jašarević, 10 March 1997, para. 3 (stating that in September 1993, a Serbian tank positioned in Gavrica Brdo fired a shell into his apartment, killing his 11-year-old son); Ex. P57, Witness Statement of Ramiz Hodžić, 22 November 1995, p. 3; Ex. P61, Witness Statement of Đula Leka, 25 February 1996, para. 1.

<sup>4912</sup> Sarajevo Adjudicated Facts I, 154, 176.

<sup>4913</sup> Zagreb Adjudicated Facts, 8, 39.

<sup>4914</sup> Zagreb Adjudicated Fact 39. See Ex. P290, Photograph Album of 3 May 1995 Rocket Attack, Žitnjak-Martinci Village, Zagreb; Ex. P302, Map of Zagreb Centre; Ex. P297, Photograph Album of 3 May 1995 Rocket Attack, Zagreb Paediatric Hospital; Ex. P303, Site Documentation and Maps of the Rocket Attacks on the City of Zagreb on 2 and 3 May 1995; Ex. P307, Report of the Zagreb Police Administration, 17 May 1995.

<sup>4915</sup> Zagreb Adjudicated Facts, 9, 38, 57, 58.

<sup>4916</sup> MP-443, T. 8877; Ex. P2651-P2655, Expert Report of William Haglund on Forensic Investigation of the Cerska Grave Site, Volumes I-V, 15 June 1998; Ex. P2646, Expert Report of William Haglund on Forensic Investigation of the Lazete 2 Grave Site, Volume I, 15 June 1998, pp vii-ix; Dražen Erdemović, T. 7968.

<sup>4917</sup> Helge Brunborg, T. 2545, 2562-2564. See also Ex. P409, Report by Helge Brunborg, Ewa Tabeau and Arve Hetland, 16 November 2005, p. 6.

1822. However, the Majority recalls the Trial Chamber's finding that Perišić is not culpable for the crime of extermination because it was not foreseeable to him that this crime would occur in Srebrenica. For the same reason, the Majority finds that the fact that "thousands of Bosnian Muslim men and boys were summarily executed" in Srebrenica, as submitted by the Prosecution,<sup>4919</sup> cannot be considered for sentencing purposes.

(iv) Aggravating Circumstances

1823. The Majority finds, beyond a reasonable doubt, that Perišić's high rank in the VJ and the lengthy time span over which the crimes were committed are aggravating overall. In particular, the Majority recalls that the Accused was in charge of the highest professional and staff organ for the preparation and use of the VJ in times of war and peace.<sup>4920</sup>

1824. The Majority emphasises the death of numerous victims and the long-term physical, psychological and emotional suffering inflicted on survivors, as well as victims' relatives and loved ones.<sup>4921</sup> The Trial Chamber recalls that the vulnerability of the victims was taken into consideration in evaluating the gravity of the offences.

1825. With regard to the conviction under Article 7(1), it further takes note of Perišić's military rank and experience,<sup>4922</sup> and of the fact that Perišić wrongfully exercised his authority to aid and abet grave crimes perpetrated by the VRS.

1826. Finally, the Majority considers that Perišić showed callous disregard for the VRS's atrocities. It notably recalls that, while Perišić was aware that crimes were being committed in Srebrenica as early as 13 July 1995, he met with Mladić and Gvero nearby Han Pijesak on 18 July 1995 in a pic-nic area and that there was a "lot of joking around at lunch". Perišić continued approving logistical assistance to the VRS for months after learning of the enormous and monstrous massacre at Srebrenica. The Majority also recalls that, long after the atrocities of Srebrenica were uncovered, Perišić maintained a close relationship with Mladić. In 1997 and 1998, Mladić resided over long periods of time at VJ facilities in Rajac and Stragari and the Accused visited him on several occasions, as well as the fact that in 1997 Perišić attended the wedding of Mladić's son.

<sup>4918</sup> Dražen Erdemović, T. 7966; Ex. P2662, Expert Report of Christopher Lawrence on Autopsies of Human Remains from the Dam Site June 1998, Annex EE, pp 2994, 3012. See MP-294, T. 9060-9061; Srebrenica Agreed Fact 19 (Schedule D3.6); Srebrenica Agreed Fact 20 (Schedule D3.7).

<sup>4919</sup> Prosecution Final Brief, para. 840.

<sup>4920</sup> See Ex. P197, Law on the VJ, 18 May 1994, Article 5.

<sup>4921</sup> *Blaškić* Appeal Judgement, para. 683.

<sup>4922</sup> *Aleksovski* Appeal Judgement, para. 183; *Čelebići* Appeal Judgement, para. 745; *Kupreškić et al.* Appeal Judgement, para. 451; *Blaškić* Appeal Judgement, paras 90-91; *Naletilić and Martinović* Appeal Judgement, para. 613; *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Strugar* Appeal Judgement, para. 353; *D. Milošević* Appeal Judgement, para. 302.

### 3. Mitigating Circumstances

1827. The Majority has taken note of Momčilo Perišić's relative cooperation with the Office of the Prosecutor and good conduct during the course of the proceedings. It considers these facts to be mitigating circumstances, albeit of limited weight.

1828. The Majority has also taken into consideration the fact that Perišić voluntarily surrendered to the Tribunal's custody without delay and finds this to be a mitigating circumstance.

1829. The Majority has considered the Defence's argument that Perišić worked towards peace during the Bosnian war,<sup>4923</sup> although it recalls that Perišić recurrently encouraged the SDC to continue approving assistance to the VRS so it could continue to wage war; and that Perišić oversaw the provision of this support. The Majority finds that Perišić did not genuinely work towards peace, and that the Defence's claim cannot reasonably serve as a mitigating circumstance for sentencing purposes.

1830. The Majority recalls Perišić's involvement in the release of the French pilots held hostage by the VRS. The Majority finds that it is a mitigating circumstance, though of limited weight. It would be unreasonable to conclude that Perišić's involvement was simply motivated by altruism for the pilots' fates as opposed to the FRY's military and political interest in easing its conflict with NATO.

1831. The Defence solely cites Siniša Borović for its proposition that Perišić ensured that ABiH soldiers were accommodated after they swam across the Drina River in July 1995.<sup>4924</sup> The Majority recalls that Borović was Perišić's Chef de Cabinet during the war and generally lacked credibility as a witness. The Majority nonetheless does not dispute Borović in his assertion that Perišić's position was that the ABiH soldiers "be accommodated at reception centres, that they should be registered, and after talking about this with President Milošević, that they should then be handed over to the Ministry of the Interior who would go on securing them".<sup>4925</sup> However, the Majority finds this fact to lack weight as a mitigating circumstance for sentencing because Perišić had himself helped precipitate this situation due to his support to the VRS. This circumstance's limited mitigating weight is also attributable to the absence of additional details and corroboration.

1832. The Majority has considered Perišić's post-conflict behaviour in promoting peace and democratic reforms in the former Yugoslavia. It finds it to be a mitigating circumstance.

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<sup>4923</sup> Defence Final Brief, paras 1150, 1152-1161.

<sup>4924</sup> Defence Final Brief, para. 1155, citing Siniša Borović, T. 14003.

<sup>4925</sup> Siniša Borović, T. 14003.

1833. The Majority notes that Perišić has a wife, two sons and four grandchildren. The Majority acknowledges that Perišić's imprisonment may cause hardship on his family, and considers it to be a mitigating factor, albeit of limited weight.

1834. Finally, the Majority considers that Perišić's age and the low probability that he will commit another crime in the future are mitigating circumstances for sentencing purposes.

## XI. DISPOSITION

1835. For the foregoing reasons, having considered all of the evidence and the parties' submissions, it is decided as follows.

1836. The Trial Chamber unanimously finds **MOMČILO PERIŠIĆ NOT GUILTY** and therefore **ACQUITS** him of the following count:

- **Count 13:** Extermination as a crime against humanity pursuant to Articles 7(1) and 7(3) of the Statute.

1837. The Trial Chamber unanimously finds **MOMČILO PERIŠIĆ NOT GUILTY** as a superior under Article 7(3) of the Statute for failing to prevent and/or punish his alleged subordinates in relation to the following counts:

- **Count 1:** Murder as a crime against humanity;
- **Count 2:** Murder as a violation of the laws or customs of war;
- **Count 3:** Inhumane Acts (injuring and wounding civilians) as a crime against humanity;
- **Count 4:** Attacks on Civilians as a violation of the laws or customs of war;
- **Count 9:** Murder as a crime against humanity;
- **Count 10:** Murder as a violation of the laws or customs of war;
- **Count 11:** Inhumane Acts (inflicting serious injuries, wounding, forcible transfer) as a crime against humanity;
- **Count 12:** Persecutions on political, racial or religious grounds as a crime against humanity.

1838. The Trial Chamber finds by majority, Judge Moloto dissenting, **MOMČILO PERIŠIĆ GUILTY** as an aider and abettor, under Article 7(1) of the Statute, of the following counts:

- **Count 1:** Murder as a crime against humanity;
- **Count 2:** Murder as a violation of the laws or customs of war;



- **Count 3:** Inhumane Acts (injuring and wounding civilians) as a crime against humanity;
- **Count 4:** Attacks on Civilians as a violation of the laws or customs of war;
- **Count 9:** Murder as a crime against humanity;
- **Count 10:** Murder as a violation of the laws or customs of war;
- **Count 11:** Inhumane Acts (inflicting serious injuries, wounding, forcible transfer) as a crime against humanity;
- **Count 12:** Persecutions on political, racial or religious grounds as a crime against humanity.

1839. The Trial Chamber finds by majority, Judge Moloto dissenting, **MOMČILO PERIŠIĆ GUILTY** as a superior, under Article 7(3) of the Statute, for failing to punish his subordinates, of the following counts:

- **Count 5:** Murder as a crime against humanity;
- **Count 6:** Murder as a violation of the laws or customs of war;
- **Count 7:** Inhumane Acts (injuring and wounding civilians) as a crime against humanity;
- **Count 8:** Attacks on Civilians as a violation of the laws or customs of war.

1840. The Trial Chamber by majority, Judge Moloto dissenting, hereby sentences Momčilo Perišić to a single sentence of 27 years of imprisonment. Momčilo Perišić has been in custody for 1,078 days. Pursuant to Rule 101(C) of the Rules, he is entitled to credit for the period of time he has been in custody towards service of the sentence imposed.

1841. Pursuant to Rule 103(C) of the Rules, Momčilo Perišić shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the state where he shall serve his sentence.

Done in English and French, the English text being authoritative.

Dated this sixth day of September 2011

At the Hague

The Netherlands



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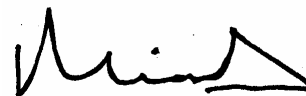
**Judge Bakone Justice Moloto**

**Presiding**



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**Judge Pedro David**



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**Judge Michèle Picard**

Judge Moloto appends a Dissenting Opinion.

## **XII. DISSENTING OPINION OF JUDGE MOLOTO ON COUNTS 1 TO 4 AND 9 TO 12**

1. I respectfully dissent from the Majority's finding as to Momčilo Perišić's individual criminal responsibility pursuant to Article 7(1) of the Statute in relation to Counts 1 to 4 and Counts 9 to 12 of the Indictment.

### **A. Introductory Remarks**

2. The Majority's conclusion that the objective element of aiding and abetting has been met in this case is premised on two findings: (1) that the VRS heavily depended on the VJ for logistical and personnel support; and (2) that the crimes were inextricably linked with the strategy of the Bosnian Serb leadership.

#### **1. VRS Dependence on VJ Logistical and Personnel Support**

3. In my view, providing assistance to the VRS to wage war cannot and should not be equated with aiding and abetting the crimes committed during such war. The provision of assistance by Perišić to the VRS is too remote from the crimes committed during the war to qualify as aiding and abetting such crimes. To conclude otherwise, as the Majority has done, is to criminalise the waging of war, which is not a crime according to the Statute of the Tribunal. In addition, it raises the question: where is the cut-off line? For instance, would a manufacturer of weapons who supplies an army with weapons which are then used to commit crimes during a war also be criminally responsible? In this respect, I note that it is immaterial whether the arms are provided for cash or free of charge. It is noteworthy that, notwithstanding numerous opportunities to do so, no superior has been charged before the Tribunal with aiding and abetting the crimes of his soldiers merely for the reason that he supplied them with arms, sent them to war and they committed crimes. Unlike this example, Perišić was not supplying his soldiers, but soldiers of another army, thus placing him in a more remote position in relation to the crimes. Aiding and abetting has always been charged where the conduct of the accused is proximate to the crime committed by the principal perpetrator. Therefore, if a superior who supplies his soldiers is not charged, Perišić, who supplied a different army, should not be charged.

4. While there is no doubt in my mind that the VRS was, to a large degree, dependent upon the VJ to function as an army, I respectfully submit that it is inappropriate to infer *ipso facto* on the notion of dependence that Perišić's assistance had a substantial effect on the commission of crimes. It is noteworthy that the trial record established that the dependence of the VRS on the VJ was not absolute.

## 2. Crimes Linked to the Strategy of the Bosnian Serb Leadership

5. States provide military and technical assistance to one another with varying strategic objectives in a number of regions around the world. However, this does not render the leaders of the assisting states individually criminally responsible for aiding and abetting the crimes committed during such wars, simply because they provided the aid. It is required that to be held individually criminal responsible, they must be shown to have committed or aided and abetted the commission of some crimes during the war, an act which is distinct, and apart, from the mere provision of military assistance. By holding Perišić criminally liable for aiding and abetting the crimes charged in the Indictment based on his knowledge of the strategic objectives of the Bosnian Serb leadership, the Majority conflates aiding and abetting with joint criminal enterprise (“JCE”), and moreover, is criminalising the waging of war which is not a crime under the Statute.

6. Perišić is not charged with waging an illegal or criminal war. Neither is he charged with participation in a JCE.<sup>1</sup> He is charged with aiding and abetting the crimes that were committed during the war and not for the war itself; therefore his conduct must be judged in relation to the commission of those crimes and not in relation to the waging of war or the dependence of the VRS as an army on the VJ.

7. For the above reasons, I am of the view that Perišić is not individually criminally responsible for the crimes committed in Sarajevo and Srebrenica during the Indictment period. I cannot agree with the Majority’s finding that the logistical and personnel assistance provided by Perišić, both individually and cumulatively, had a substantial effect on the crimes perpetrated by the VRS in Sarajevo and Srebrenica. However, I deal in more detail with the findings of the Majority hereunder in addition, and in the alternative, to the above. Finally, I also cannot agree with the Majority’s finding that Perišić had knowledge of the crimes which occurred in Sarajevo and Srebrenica from the sources of information tendered into evidence.

### **B. Actus Reus**

#### 1. Preliminary Remarks on the Requisite Objective Element of Aiding and Abetting

8. The notion of “aiding and abetting” has been defined as an act *specifically directed* at providing practical assistance, encouragement or moral support to the principal perpetrator of the

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<sup>1</sup> Had the Prosecution desired to establish that the purpose of the war was criminal, it should have done so in the Indictment by alleging, for instance, the existence of a JCE, which indeed requires participation in a common plan or a shared criminal goal, *Krajišnik* Appeal Judgment, para. 706; *Brdanin* Appeal Judgment, para. 430. See *Kvočka et al.* Appeal Judgment, para. 96; *Vasiljević* Appeal Judgment, para. 100; *Tadić* Appeal Judgment, para. 227.

crime, which had a *substantial effect* on the perpetration of the crime.<sup>2</sup> I underscore that this definition was first articulated by the Appeals Chamber in the course of drawing a distinction between a case of aiding and abetting and one of JCE.<sup>3</sup> This is an important point which cannot go unnoticed in light of the Majority's reliance upon the Bosnian Serb leadership's strategic objectives to support a finding that the objective element for aiding and abetting has been met. I emphasise that the jurisprudence of this Tribunal has clearly established that in the case of aiding and abetting, proof is not required of the existence or pre-existence of a common concerted plan as compared to the case of acting in pursuance of a JCE where "it is sufficient for the participant to perform acts that in *some way* are directed to the furthering of the common plan or purpose".<sup>4</sup>

9. I respectfully disagree with the Majority's conclusion that "the acts of the aider and abettor need not have been 'specifically directed' to assist the crimes",<sup>5</sup> and stress that the notion of "specific direction" has been consistently cited by this Tribunal in the definition of aiding and abetting.<sup>6</sup> Although the Appeals Chamber in *Blagojević* held that "specific direction" has not been an essential element of the *actus reus* of aiding and abetting,<sup>7</sup> it clarified that the definition in *Tadić* had not been departed from and that whether an act is specifically directed at the commission of the crimes "will often be *implicit* in the finding that the accused has provided practical assistance to the principal perpetrator which had a substantial effect on the commission of the crime".<sup>8</sup> I interpret the Appeals Chamber in *Blagojević* to say that there is no *additional* requirement in the notion of aiding and abetting beyond the requirement that the assistance given to the principal perpetrator had a substantial effect on the crimes.

10. However, if the notion of "specific direction" is in fact implicit in finding that an accused has provided practical assistance to the principal perpetrator which had a substantial effect on the commission of the crime, I cannot but conclude that to reach this finding, a direct link needs to be

<sup>2</sup> *Tadić* Appeal Judgement, 229; *Vasiljević* Appeal Judgement, para. 102(i); *Blagojević and Jokić* Appeal Judgement, para. 127; *Blaškić* Appeal Judgement, para. 45; *Simić* Appeal Judgement, para. 85. See *Orić* Appeal Judgement, para. 43. See also *Seromba* Appeal Judgement, para. 44; *Ntagerura et al.* Appeal Judgement, para. 370; *Nahimana et al.* Appeal Judgement, para. 482. But see *Blagojević and Jokić* Appeal Judgement, para. 188 (quoting *Furundžija* Trial Judgement, para. 249). While the Appeals Chamber in *Mrkšić* found specific direction not to be an essential ingredient, I note that it still included the notion of direction in distinguishing the *actus reus* from the *mens rea* of aiding and abetting, but see *Mrkšić and Šlišančanin* Appeal Judgement, para. 159.

<sup>3</sup> *Tadić* Appeal Judgement, para. 229.

<sup>4</sup> *Tadić* Appeal Judgement, para. 229 (emphasis added); *Vasiljević* Appeal Judgement, para. 102.

<sup>5</sup> See *supra* para. 1624.

<sup>6</sup> *Vasiljević* Appeal Judgement, para. 102(i); *Blagojević and Jokić* Appeal Judgement, para. 127; *Blaškić* Appeal Judgement, para. 45; *Simić* Appeal Judgement, para. 85. See *Orić* Appeal Judgement, para. 43. See also *Seromba* Appeal Judgement, para. 44; *Ntagerura et al.* Appeal Judgement, para. 370; *Nahimana* Appeal Judgement, para. 482.

<sup>7</sup> *Blagojević and Jokić* Appeal Judgement, para. 189. See also *Mrkšić and Šlišančanin* Appeal Judgement, para. 159.

<sup>8</sup> *Blagojević and Jokić* Appeal Judgement, para. 189 (emphasis added).

established between the conduct of the aider and abettor and the commission of the crimes.<sup>9</sup> Against this backdrop, I draw a distinction between aiding and abetting in the present case and cases which have previously been decided by the Appeals Chamber, where the aider and abettor was either at, or proximate to, the crime scene. I contend that in cases of remoteness, the notion of specific direction must form an integral and *explicit* component of the objective element of aiding and abetting.

11. Thus, if the Appeals Chamber in *Blagojević* is correct that such a finding is indeed implicit in cases such as this one, I contend that the salient question is then whether the Prosecution was able to bring sufficient evidence, either direct or circumstantial, showing the existence of such a link. This is consistent with the fact that aiding and abetting is in itself a form of commission pursuant to Article 7(1). I contend that this link, as will be discussed in greater detail, cannot be established based on: (1) the dependence of the VRS on the VJ; or (2) the fact that systematic criminal acts were perpetrated against Bosnian Muslim civilians as part of the Bosnian Serb leadership's strategic objectives. I am of the view that the jurisprudence is clear that the objectives have no place in an analysis under aiding and abetting. It follows, therefore, that the notion of dependence alone cannot lead to the only reasonable conclusion that the objective element of aiding and abetting has been met in the case before us.

12. In the present case, the only *direct* evidence brought by the Prosecution on the existence of such a link clearly shows that the assistance provided by Perišić *did not* have a substantial effect on the crimes. I am referring to what was found at the scene of the crimes concerning Srebrenica. Prosecution witness Garry Selsky testified that of 3,644 bullet casings found in Srebrenica, only 378 bullet casings that were manufactured by the *Prvi Partizan* depot in Užice, Serbia could be clearly attributed to the assistance provided by the FRY.<sup>10</sup> I am respectfully of the view that the finding that only 10% of the bullets found could be attributed to the assistance from the FRY cannot lead to the only reasonable conclusion that such assistance had a substantial effect on the crimes. Moreover, the evidence shows that this number included not only assistance potentially from the VJ, but also logistics given by "special purpose industries", which I recall were state-owned and legally subordinated to the FRY MOD and not the VJ.<sup>11</sup> Furthermore, the Prosecution was unable to demonstrate that any of the bullets could be specifically attributed to the assistance provided by Perišić. There was evidence of assistance provided by VJ officers without Perišić's approval and also evidence of unauthorised smuggling of VJ materials. I further note the finding that the trial

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<sup>9</sup> See *Ndindabahizi* Appeal Judgement, para. 117.

<sup>10</sup> Ex. P1833, Declaration by the OTP Investigator, 25 October 2007; Ex. P2892, 92bis Declaration and Statement of Garry Selsky, 24 January 2010; Garry Selsky, T. 9771, 9789-9798.

<sup>11</sup> See *supra* para. 1172.

record does not establish that the particular shells used in Scheduled Incidents A7 and A9 in Sarajevo were provided to the VRS by Perišić.<sup>12</sup>

13. Lacking direct evidence, this case is therefore based on circumstantial evidence. I recall that where an inference is drawn from circumstantial evidence to establish a fact on which a conviction relies, it must be the only reasonable inference that could be drawn from the evidence presented. I am of the view that the Majority's conclusion that Perišić contributed to the facilitation of the commission of the crimes is not the only reasonable conclusion. An alternative reasonable explanation is that the assistance provided by Perišić to the VRS was directed at supporting the war effort and not to the commission of the crimes and that such assistance did not contribute substantially to the commission of crimes.

14. With that in mind, I cannot simply ignore that the notion of "specific direction" to the commission of crimes continues to be expressly recited by the Appeals Chamber in the formulation of the objective element of aiding and abetting.<sup>13</sup> I contend that in cases such as this one, where the assistance provided by an accused is remote, the notion of *specific direction* must form an explicit part of the analysis of the objective element of aiding and abetting.

## 2. Logistical Assistance

15. It is indisputable that the FRY and the VJ provided assistance to the VRS, part of which was given to VRS units involved in the commission of crimes, namely to the Drina Corps, Krajina Corps and Sarajevo-Romanija Corps. I, however, respectfully disagree with the conclusion of the Majority that by recurrently urging the SDC to provide the VRS with extensive logistical and technical assistance and by overseeing the process, Perišić provided practical assistance to the crimes committed by the VRS.

16. I acknowledge that the SDC authorised Perišić, who was not a member of the SDC, to supply the VRS and the SVK with weapons and ammunition pursuant to an order by Zoran Lilić dated 18 February 1994.<sup>14</sup> At the same time, I also underline that the evidence in this case warrants the conclusion that the ultimate decision-making authority on provision of assistance to the VRS was retained *de facto* by the SDC, notwithstanding the order by Lilić. This is clear, for instance, in the exhibit referring to a 6 December 1994 request of the RSK MOD for ammunition and land mines, to which Perišić appended a handwritten note stating that the final decision was to be made

<sup>12</sup> See *supra* paras 1293-1294.

<sup>13</sup> *Blagojević and Jokić* Appeal Judgement, para. 189; *Orić* Appeal Judgement, para. 43. See also *Nahimana et al.* Appeal Judgement, para. 482; *Seromba* Appeal Judgement, para. 44; but see *Mrkšić and Šlišančanin* Appeal Judgement, para. 159.

<sup>14</sup> Ex. P1009, Order of FRY President, 18 February 1994.

by the SDC.<sup>15</sup> I also refer to the evidence that Perišić participated in discussions and presented proposals to the SDC, but that the SDC ultimately decided upon the type of assistance to provide.<sup>16</sup> This conclusion is corroborated by a number of witnesses who testified that Perišić had a limited role in the appropriation of logistical assistance to the VRS.<sup>17</sup>

17. Against this backdrop, while I acknowledge that Perišić directly issued orders providing assistance to the VRS and on numerous occasions urged the SDC to continue providing logistical assistance to the VRS, no evidence was presented that such requests were *specifically directed* at providing practical assistance to the perpetration of the crimes which occurred in Sarajevo and Srebrenica. Rather, the evidence demonstrates that Perišić's requests were made in the context of supporting the war effort. In this regard, I note that the minutes of the SDC sessions show that not even once was there a discussion among the participants linking the provision of logistical assistance to the VRS to the commission of crimes.

18. I also underline the fact that the evidence before the Trial Chamber does not establish that the specific weapons used in committing the crimes which occurred in Sarajevo and Srebrenica were provided "by a process overseen by Perišić".<sup>18</sup>

19. Furthermore, the Majority acknowledges that the evidence does not conclusively establish that the VJ supplied the completed modified air-bombs to the VRS. I do not refute that the only reasonable inference is that the VJ General Staff played a key role in devising the technical model by which the VRS's aerial bombs were successfully modified. I recall that the Majority's conclusion is premised on three findings: (i) the VRS's initial technical model was unsuccessful; (ii) the successful model was developed by Ivan Đokić's team in the VJ General Staff; and (iii) Major Marković, a *Pretis* engineer who was on the VJ payroll, was responsible for modifying air-bomb. I concur that it may be inferred that the production of modified air-bombs at the *Pretis* factory in Bosnia for the VRS was based on the successful technical model developed by Ivan Đokić, then Chief of the VJ General Staff's Aeronautical Administration.

20. However, I am of the view that the Majority's finding ignores the fact that no evidence was presented that the technical model developed by Đokić's team was specifically directed at, or part of, assisting the VRS to commit crimes at the time in which such assistance was provided by the VJ. I also am mindful in this regard that Perišić, or Đokić for that matter, could not have expected

<sup>15</sup> See Ex. P1142, Letter from RSK MOD to Cabinet of the Chief of the VJ General Staff, 6 December 1994; Radojica Kadijević, T. 13629. See also Ex. P1143, Response from the Cabinet of the Chief of the VJ General Staff to Letter from RSK MOD, 7 December 1994.

<sup>16</sup> See *supra* section VI.B.4.

<sup>17</sup> *Ibid.*

<sup>18</sup> See *supra* para. 1624.



that such modified air-bombs would be used by the VRS to attack *illegitimate* targets. This was assistance directed at waging the war.

21. Even if one accepts the Majority's characterisation of the role of Perišić, I recall that the evidence in this case shows that the VRS also obtained, albeit to a lesser extent, logistical assistance from a number of sources other than the VJ.<sup>19</sup> In addition to the assistance provided by the VJ, I recall that the VRS obtained fuel from other countries, purchased weaponry directly from FRY military factories managed by the FRY MOD and military factories in RS, bought contraband from VJ facilities, and received donations from the Serb diaspora, as well as unauthorised donations from VJ personnel and local sponsors in RS.<sup>20</sup> The VRS also had large reserves of arms and ammunition left by the JNA in the wake of the break-up of the former Yugoslavia.<sup>21</sup>

### 3. Personnel Assistance

22. The Majority also finds that the high-ranking VRS officers and other principal perpetrators of the crimes, sustained through the 30<sup>th</sup> PC by Perišić, "[were] instrumental in helping the VRS plan and carry out its operations in Sarajevo and Srebrenica".<sup>22</sup> I recall that the evidence in this case shows that all but three individuals holding key positions in the VRS held those positions prior to Perišić's tenure. It follows that the contribution by Perišić regarding personnel assistance cannot be considered as *substantial* within the meaning of aiding and abetting pursuant to Article 7(1).

23. I acknowledge that salaries paid by the VJ and other benefits, such as housing, pensions and medical insurance, provided to 30<sup>th</sup> PC members and their families were important to officers serving in the 30<sup>th</sup> PC. However, it is worth recalling that members of the 30<sup>th</sup> PC continued serving in the VRS when the payment of their salaries by the VJ was suspended for six months.<sup>23</sup> Since the cessation of payments did not cause high-ranking VRS officers and other principal perpetrators of the crimes charged in Sarajevo and Srebrenica to leave their posts, it cannot be said that the only reasonable inference is that the payment of salaries had a substantial effect on the crimes. Similarly, the evidence demonstrates that the lack of verification of a promotion first acquired in the VRS did not result in the loss of rank within the VRS or cause a particular officer to resign.<sup>24</sup>

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<sup>19</sup> See *supra* section VI.C.9.

<sup>20</sup> *Ibid.*

<sup>21</sup> See *supra* section VI.C.9.(c).

<sup>22</sup> See *supra* para. 1623.

<sup>23</sup> See *supra* para. 867.

<sup>24</sup> See *supra* para. 852.

#### 4. Conclusions

24. The Prosecution must prove *beyond a reasonable doubt* that the logistical and personnel assistance provided by Perišić was *specifically directed* at providing practical assistance to the perpetration of the crimes and that it had a substantial effect on the perpetration of the crimes. In a case where this finding is based on circumstantial evidence, such a finding must be the *only* reasonable conclusion based on the evidence.

25. By the foregoing analysis, I provided examples of how circumstantial evidence is reasonably open to the conclusion that Perišić did not provide practical assistance to the perpetrators of the crimes which had a substantial effect on the perpetration of the crimes. The Majority fails to point to evidence from which a finding that Perišić's practical assistance had a substantial effect on the perpetration of the crimes in Sarajevo and Srebrenica may reasonably be inferred, let alone which would establish it as the only reasonable conclusion.

26. I concur with the Majority that "the legal standard does not require that Perišić be the exclusive source of assistance".<sup>25</sup> While I also concur that evidence of materiel from other sources does not raise a reasonable doubt that the FRY and/or the VJ was the primary source of weaponry in this case, I respectfully cannot agree with the conclusion of the Majority that this does not raise a reasonable doubt as to Perišić's responsibility pursuant to Article 7(1).

27. I note that the question is not whether the VRS substantially *depended* upon the VJ's support to function as an army, but rather, whether the support of Perišić had a substantial *effect* on the perpetration of crimes. That is, dependence of an army as a whole, on a foreign army as a whole, *alone* does not automatically lead to the only reasonable conclusion that such assistance provided to that dependent army and distributed by that army to its subordinate units was specifically directed at providing those officers in those units, being the principal perpetrators of the crimes, with practical support which had a *substantial effect* on the perpetration of the crimes.

28. Perišić provided logistical assistance to the VRS and the commanders in the VRS gave arms and ammunition to their soldiers and sent them to the theatre of war. This step is in my view a *novus actus interveniens* that places Perišić in a remote position in relation to the crimes committed. At the same time, I am well aware that the jurisprudence of the Tribunal does not require a cause-effect relationship but rather a substantial effect on the commission of the crime.<sup>26</sup>

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<sup>25</sup> See *supra* para. 1601.

<sup>26</sup> *Blaškić* Appeal Judgement, para. 48; *Mrkšić and Šljivančanin* Appeal Judgement, para. 198; *Simić* Appeal Judgement, para. 85.

29. Although the Majority is correct that it is not necessary to establish that the logistical assistance provided by Perišić served as a *conditio sine qua non* to the commission of crimes, the presence of these intervening factors breaking the chain of events raises a reasonable doubt as to whether the logistical assistance provided by Perišić, in fact, had a substantial effect on the crimes committed in Srebrenica and Sarajevo. I am therefore satisfied that the intervening factors present in this case support an alternative inference which interrupts the natural flow of consequences from the provision of logistical assistance provided by Perišić to the VRS.

30. If the notion of direction is implicit in finding substantial assistance, I am of the view that a linkage between the action and the crimes must exist and needs to be proved by the Prosecution beyond a reasonable doubt. I find that based on the evidence in this case, there is no clear connection between the assistance provided and the commission of crimes in Sarajevo and Srebrenica. It is clear that Perišić supported the conflict as a whole, but there is no evidence to suggest that such assistance supported the commission of the crimes which occurred in Sarajevo and Srebrenica. I recall in that regard that assisting the VRS wage war *per se* is not a crime under the Statute.

31. I underscore the novelty of this case in the context of the application of aiding and abetting. It is true that “[n]ever before have a commander and the Chief of Staff of General Staff of one army been criminally responsible for the crimes committed by members of the armed forces of another state or entity”.<sup>27</sup> This case is also unique insofar as it is the first clear expression of a direct link between the FRY and the crimes committed in Srebrenica and Sarajevo. I am satisfied that the evidence before the Trial Chamber establishes this link. It is, however, imperative at this point to recall a fundamental principle of national and international criminal law – namely that individual criminal liability is based on personal guilt, not state responsibility.

32. With that in mind, one cannot simply ignore the reality that relations between states are often reinforced by the provision of significant military aid. Many foreign armies are dependent, to various degrees, upon such assistance to function. In this context, I am mindful that in many conflict zones around the world, the provision of military aid is aimed at supporting mutual interests such as the deterrence of war, the promotion of regional and global peace, stability and prosperity and other objectives.

33. If we are to accept the Majority’s conclusion based solely on the finding of dependence, as it is *in casu*, without requiring that such assistance be specifically directed to the assistance of crimes, then all military and political leaders, who on the basis of circumstantial evidence are found to

provide logistical assistance to a foreign army dependent on such assistance, can meet the objective element of aiding and abetting. I respectfully hold that such an approach is manifestly inconsistent with the law.

34. I therefore respectfully contend that the Majority erred in concluding that the logistical and personnel assistance provided by Perišić met the objective elements of aiding and abetting under Article 7(1) of the Statute.

### **C. Perišić's Knowledge of the Crimes Committed in Sarajevo and Srebrenica**

35. I respectfully dissent from the Majority's finding that Perišić satisfied the *mens rea* requirement for aiding and abetting.

36. In line with the order followed by the Majority in presenting its reasoning, I will set forth my arguments as follows: (1) preliminary remarks on the standard of knowledge under Article 7(1) of the Statute; (2) Perišić's knowledge of the VRS's criminal conduct both preceding and following his appointment as Chief of the VJ General Staff; (3) Perišić's knowledge of the crimes committed by the VRS in Sarajevo; and finally (4) Perišić's knowledge of the crimes committed by the VRS in Srebrenica.

#### **1. Preliminary Remarks on the Standard of Knowledge**

37. In order to be found liable for aiding and abetting under Article 7(1) of the Statute, the accused must have possessed the requisite *mens rea*. That is, the accused must know that his acts or omissions would assist in the commission of the crime by the principal perpetrators.<sup>28</sup> While the accused does not need to have knowledge of the specific crimes that will be committed, the accused must at least have had awareness that one of a number of crimes will probably be committed, and one of those crimes must then in fact be committed.<sup>29</sup> With respect to specific intent crimes, such as persecution, the accused must have been aware that the principal perpetrators of the crime(s) possessed a discriminatory intent.<sup>30</sup>

38. I am fully in agreement with the Majority that the appropriate standard is a probability test. I note, however, that this legal standard translates to actual knowledge of the probability and is substantially different from the much lower standard applicable to responsibility under Article 7(3),

<sup>27</sup> Momčilo Perišić, T. 426 (included in Perišić's statement pursuant to Rule 84 *bis* of the Rules).

<sup>28</sup> *Blagojević and Jokić* Appeal Judgement, para. 127.

<sup>29</sup> *Haradinaj et al.* Appeal Judgement, para. 58. See *Blaškić* Appeal Judgement, para. 49; *Tadić* Appeal Judgement, para. 229.

<sup>30</sup> *Simić* Appeal Judgement, para. 86; *Blagojević and Jokić* Appeal Judgement, para. 127; *Krstić* Appeal Judgement, para. 143.

which is based on a “had reason to know” test. I will demonstrate that some of the inferences drawn by the Majority from the evidence incorrectly rely on the “had reason to know” standard of Article 7(3), as opposed to the knowledge standard of Article 7(1).<sup>31</sup>

39. That being noted, I find the jurisprudence on Article 7(3), insofar as it discusses the evidentiary requirements, instructive to the extent that it refers to the *actual* knowledge of the commander.

40. According to the relevant Article 7(3) jurisprudence, in order for an accused to have actual knowledge, the accused must have had direct or circumstantial evidence that crimes were committed or about to be committed.<sup>32</sup> In the *Čelebići* case, the Trial Chamber concluded that the knowledge of an accused cannot be *presumed* simply because information is generally available or because it is public knowledge.<sup>33</sup> Rather, knowledge must be established “on the basis of the evidence pertaining to each individual defendant”.<sup>34</sup> In this regard, in the absence of direct evidence, the Trial Chamber can consider certain types of circumstantial evidence which are indicative of whether or not the accused possessed the requisite knowledge.<sup>35</sup> This holding was not disturbed on appeal.<sup>36</sup> I will show instances where the Majority seems to presume the knowledge of the Accused from the public nature of the information rather than based on the evidence actually received by or availed to him.

## 2. Perišić’s Knowledge of the VRS’s Criminal Conduct

41. The Majority concludes that Perišić had knowledge prior to and during his tenure as Chief of the VJ General Staff of the VRS’s discriminatory intent and criminal conduct in BiH.<sup>37</sup> I respectfully disagree with this conclusion and address individually the two relevant periods of time in turn.

<sup>31</sup> See generally Article 7(1), Article 7(3). See also *supra* paras 151-153.

<sup>32</sup> See *Čelebići* Trial Judgement, para. 383.

<sup>33</sup> *Čelebići* Trial Judgement, para. 385.

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

<sup>35</sup> *Čelebići* Trial Judgement, para. 386, providing that the factors to be considered are:

- (a) The number of illegal acts;
- (b) The type of illegal acts;
- (c) The scope of illegal acts;
- (d) The time during which the illegal act occurred;
- (e) The number and type of troops involved;
- (f) The logistics involved, if any;
- (g) The geographical location of the acts;
- (h) The widespread occurrence of the acts;
- (i) The tactical tempo of operations;
- (j) The modus operandi of similar illegal acts;
- (k) The officers and staff involved; and
- (l) The location of the commander at the time.

(a) Evidence Preceding Perišić's Appointment as Chief of the VJ General Staff

42. The Majority concludes that the only reasonable inference that can be drawn from the evidence is that Perišić knew of the criminal conduct of the VRS and its discriminatory intent prior to his appointment as Chief of the VJ General Staff.<sup>38</sup> The Majority bases its finding on the position of Perišić at that time, the scale and gravity of the crimes alleged to have been committed in BiH, UNSC resolutions and the notoriety of reports issued by the UNHRC Special Rapporteur Tadeusz Mazowiecki.

43. The UNSC adopted several resolutions between May 1992 and May 1993 expressing alarm concerning allegations of ethnic cleansing and other crimes committed in BiH. Special Rapporteur Mazowiecki also issued a number of reports concerning the human rights situation in the territory of the former Yugoslavia.<sup>39</sup> Although I acknowledge that the FRY leadership was aware of allegations made by the UN and by Special Rapporteur Mazowiecki of ethnic cleansing and other crimes which occurred in BiH, I am of the view that the evidence does not establish that Perišić necessarily shared such knowledge.

44. I note that the Trial Chamber was not presented with evidence demonstrating that the UNSC resolutions and the Mazowiecki reports were made available to, let alone read by, Perišić. The Majority nonetheless makes its finding based on the public nature of these documents and Perišić's position of authority, concluding, based on circumstantial evidence, that the "only reasonable inference" is that Perišić knew about the allegations of war crimes from these sources prior to his appointment.<sup>40</sup> I will address both points individually.

45. As stated earlier, the knowledge of an accused cannot be presumed simply because information is generally available or in the public domain.<sup>41</sup> I am also respectfully of the view that Perišić's positions of authority in the VJ before he became Chief of the VJ General Staff are irrelevant to the determination as to whether Perišić had *actual knowledge* of the VRS's criminal behaviour, lacking any evidence on what information was made available to him. In this regard, evidence has not been presented with respect to Perišić's ability to access information prior to his appointment as Chief of the VJ General Staff. I find pertinent to this issue what was stated in the *Delić* case: open source documents are *in principle* accessible to an accused. However, without evidence that the accused was ever provided with a copy of the document, or that the information

<sup>36</sup> See *Čelebići* Appeal Judgement, para. 241.

<sup>37</sup> See *supra* para. 1484.

<sup>38</sup> See *supra* paras 1484, 1521-1522.

<sup>39</sup> See *supra* para. 1452.

<sup>40</sup> See *supra* paras 1456, 1485.

<sup>41</sup> See *supra* para. 40.

contained therein was brought to his attention, it cannot be presumed that the *information* contained in an open source document was “available” to him,<sup>42</sup> let alone – I add – that he had knowledge of it.

46. Even if Perišić had read the relevant UNSC resolutions and Mazowiecki reports, I am of the view that their contents would not have provided Perišić with actual knowledge of the VRS’s discriminatory intent and criminal conduct. They refer only generally to war crimes and fail to specifically link any allegations of criminal conduct to the VRS. In fact, a large number of the documents in question attribute the commission of crimes to unidentified “paramilitary” groups,<sup>43</sup> and therefore, did not contain information which would have informed Perišić of the fact that the VRS was committing crimes. Consequently, even if Perišić had knowledge of the reports themselves, this information would not be sufficient to conclude that the only reasonable inference is that Perišić was aware of the criminal conduct of the VRS.

47. Finally, the Majority points to two statements made by Perišić as evidence of his knowledge of the VRS’s propensity to commit crimes. First, in his OTP interview, Perišić stated that in April 1992, Karadžić offered him an opportunity to become the VRS Main Staff Commander.<sup>44</sup> Perišić stated that one of the reasons for refusing the offer was because “they wanted [an] ethnically clean army, and [he] was against that”.<sup>45</sup> It is important to note that the VRS was not established until May 1992. Moreover, while this statement certainly indicates that Perišić understood that the RS leadership intended to exclude non-Serbs from the army, and that Perišić opposed that practice, it does not establish as the only reasonable conclusion that he was, in fact, aware that the VRS would be likely to engage in the commission of war crimes.

48. Second, the Majority notes that during the same interview, Perišić stated that as Commander of the Bileća Corps, “not a single Muslim was killed by soldiers and not a single soldier was killed by Muslims” in the Muslim enclaves of Stolac, Kula Fazlagića, and Podveležje, but that after he left in June 1992, “the exodus in this territory started”.<sup>46</sup> First, it is important to recognise that Perišić made this statement in hindsight; it tells us nothing about how much he knew about events in the region contemporaneously. Second, one must consider the temporal context of these events. The

<sup>42</sup> *Delić* Trial Judgement, para. 530.

<sup>43</sup> See e.g. Ex. P208, UNSC Resolution 819, 16 April 1993, p. 1; Ex. P2439, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 28 August 1992, p. 4 (referring not to the VRS, but to informal “[...] Serbian mercenaries”); Ex. P2440, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 27 October 1992; Ex. P2441, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 17 November 1992.

<sup>44</sup> Ex. P803, Transcript of Interview with Perišić, 8 December 2003, p. 4.

<sup>45</sup> *Ibid.*

dissolution of the SFRY had started by 25 June 1991,<sup>47</sup> and the conflict broke out in BiH in 1992.<sup>48</sup> In June 1992, the VRS was still in the nascent stages of its formation and the evidence suggests that paramilitary groups were responsible for much of the violence taking place at that time.<sup>49</sup> Perišić made no reference to the VRS in this statement thus, the exodus he referred to cannot necessarily be attributable to the actions of the VRS. This statement therefore does not establish as the only reasonable conclusion that Perišić became aware of the VRS's propensity to commit crimes at that time.

49. On a more general note, both of these statements involve knowledge that the Majority purports Perišić acquired prior to the Indictment period. Even accepting the Majority's interpretation of these statements – which I do not – it is important to recognise that situations during a war can change dramatically over time. What Perišić knew or thought he knew about the activities and propensities of the VRS during the initial break-up of the SFRY cannot be equated with his understanding of circumstances during the later stages of the war.

(b) Evidence Following Perišić's Appointment as Chief of the VJ General Staff

50. I respectfully dissent from the Majority's conclusion that Perišić was aware from the early stages of his appointment as Chief of the VJ General Staff of the VRS's discriminatory intent and criminal conduct in BiH.<sup>50</sup>

(i) Letter from the VRS

51. The congratulatory letter sent from the VRS Krajina Corps Command to Perišić on 26 August 1993 regarding his appointment as Chief of the VJ General Staff – reflecting a desire to unify the VRS and VJ to create a unified Serbian state – did not provide Perišić with knowledge of any sort of discriminatory intent or criminal conduct of the VRS.<sup>51</sup> The letter stated, in relevant part:

We wish you to settle at your new duty as soon as possible, to choose your associates, transform the army where needed, removing the weaknesses of the old system and the former JNA, creating

<sup>46</sup> Ex. P803, Transcript of Interview with Perišić, 8 December 2003, p. 6.

<sup>47</sup> Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 16.

<sup>48</sup> Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, p. 16; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, pp 30-32.

<sup>49</sup> Ex. P208, UNSC Resolution 819, 16 April 1993, p. 1; Ex. P212, UNSC Resolution 824, 6 May 1993, p. 1; Ex. P2439, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 28 August 1992, p. 4; Ex. P2454, UNSC Resolution 787, 16 November 1992, p. 3.

<sup>50</sup> See *supra* para. 1486.

<sup>51</sup> See Ex. P1801, Letter from 1<sup>st</sup> Krajina Corps to Perišić, 26 August 1993.



together a unified Serbian state and army, a state in which all the Serbs will live together, proudly and with dignity.<sup>52</sup>

In my view, the letter does not contain any language which would provide Perišić with knowledge of the probability that crimes would be committed by the VRS.

(ii) UN Reports and Resolutions

52. The Majority points to various UNSC resolutions and UN reports which generally discuss the conflict in the former Yugoslavia, as proof that Perišić knew of the criminal conduct of the VRS and its discriminatory intent after he assumed the position of Chief of the VJ General Staff on 26 August 1993.<sup>53</sup> For example, on 27 May 1994, the UN Commission of Experts, established pursuant to UNSC Resolution 780,<sup>54</sup> produced a report which detailed the commission of war crimes, including, *inter alia*, “mass killings” and “rapes and looting”.<sup>55</sup> This report generally attributed these alleged crimes to “Bosnian Serb paramilitary forces”; it did not specifically attribute them to the VRS.<sup>56</sup> The Majority also points to UNSC Resolution 941, adopted on 23 September 1994, which alleged “grave violations of international humanitarian law [...]”, such as “ethnic cleansing”.<sup>57</sup>

53. The Majority concludes that because the FRY leadership generally had knowledge of these resolutions and reports and because the media often published these reports, the only reasonable inference is that Perišić had knowledge of the criminal conduct and discriminatory intent of the VRS. I respectfully disagree. The fact that information may have been general knowledge or widely disseminated does not support a *presumption* of knowledge on the part of the accused. Knowledge must be proven beyond a reasonable doubt based upon evidence which is specific to the accused. The Majority also refers to letters from the BiH UN Mission which were circulated to the UNSC, copies of which were provided to the FRY leadership, reporting on the humanitarian situation, atrocities and military activity in BiH.<sup>58</sup> While evidence was presented that the FRY leadership was aware of such information, as they often responded by way of informal communications with BiH representatives, there is no evidence that Perišić was privy to the same.

54. There is insufficient evidence to support a finding that Perišić was aware of the following information: any documentation of crimes by BiH representatives or the informal communications

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<sup>52</sup> *Ibid.*

<sup>53</sup> *See supra* para. 1484 and section VI.J.2.(b)(ii).

<sup>54</sup> Ex. P2451, UNSC Resolution 780, 6 October 1992.

<sup>55</sup> Ex. P1535, Annexes to the Final Report of the UN Commission of Experts Established Pursuant to the UNSC Resolution 780 (1992), 27 May 1994, para. 110.

<sup>56</sup> *Ibid.*

<sup>57</sup> Ex. P2479, UNSC Resolution 941, 23 September 1994.

<sup>58</sup> *See supra* paras 1462-1464.

as a result thereof; the Mazowiecki reports; the report of the UN Commission of Experts and the relevant UNSC resolutions tendered into evidence. In fact, even the Majority concedes that there is no direct evidence that Perišić received, let alone read, the aforementioned.<sup>59</sup> Therefore, I contend that the evidence does not establish beyond a reasonable doubt that Perišić had actual knowledge of their content.

(iii) Media Reports

55. The Majority relies upon a variety of international and Serbian media reports on the war to support the inference that Perišić knew of the VRS's discriminatory intent and criminal conduct. While I acknowledge the extensive media coverage on the war in BiH while Perišić served as Chief of the VJ General Staff, I recall that the mere general availability of information cannot support a presumption of Perišić's actual knowledge so as to impute individual criminal responsibility to him.<sup>60</sup> I therefore respectfully hold that even the extensive dissemination of information in the media cannot support a finding of actual knowledge under Article 7(1), absent evidence that such information was specifically made available to the accused and that it specifically referred to crimes committed by the VRS. No evidence was presented demonstrating that Perišić received, let alone read, any of the international or Serbian media reports tendered into evidence. I contend that it is manifestly improper to impute knowledge based on circumstantial evidence, unless of course it is the only reasonable conclusion. This is particularly so where the contents of such media do not point to the identity of those alleged to have committed crimes.

56. I also note that the Majority refers to the practice of the VJ General Staff of preparing regular press clippings for Perišić.<sup>61</sup> I am of the view that this practice, in and of itself, does not establish actual knowledge with any greater degree of specificity than the general availability standard rejected in *Čelebići*.<sup>62</sup> Without evidence of instances of the specific clippings provided to Perišić and proof of the contents of such clippings, the mere practice of receiving press clippings cannot support a finding of actual knowledge beyond a reasonable doubt.

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<sup>59</sup> See *supra* para. 1557.

<sup>60</sup> See *supra* para. 40, referring to *Čelebići* Trial Judgement, para. 386; *Čelebići* Appeal Judgement, para. 226.

<sup>61</sup> See *supra* paras 1404, 1520.

<sup>62</sup> See *Čelebići* Trial Judgement, para. 386; *Čelebići* Appeal Judgement, para. 226.

### 3. Perišić's Knowledge of Crimes Committed by the VRS in Sarajevo

57. I respectfully disagree with the conclusion of the Majority that Perišić, while serving as Chief of the VJ General Staff, was aware of the crimes committed by the VRS in Sarajevo and that more crimes would probably follow.<sup>63</sup>

#### (a) Intelligence Reports

58. I agree with the Majority that Perišić, as Chief of the VJ General Staff, had a sophisticated intelligence network which informed him of alleged VRS criminal acts in BiH.<sup>64</sup> It is well established that various intelligence sources kept Perišić informed of military and strategic developments in BiH.<sup>65</sup> I, however, note that there is no evidence that these intelligence sources informed Perišić that the VRS had committed crimes in Sarajevo.

59. The limited direct evidence presented to the Trial Chamber suggests that Perišić's intelligence sources disputed the accuracy of reports alleging VRS crimes. For example, following the Markale I incident, Perišić stated that RS had denied responsibility for the attack, and that his sources had told him that the mujahedin or Croats were likely responsible.<sup>66</sup> After Markale II, the Intelligence Administration of the VJ General Staff issued a report to the FRY MOD which described reasons to doubt UNPROFOR's accusation that the VRS was responsible for the shelling, noting that the "examination was not carried out on location [...] but on the basis of photographs, sketches and TV images. The dead and the wounded were not examined, nor was any type of medical examination carried out".<sup>67</sup> Perišić also attended a meeting in Dobanovci on 29 August 1995, where President Milošević informed participants that a UN source claimed that the shell was fired from Serbian positions. Mladić, who was in attendance, disputed this assertion, arguing that a statement from a different UN source proved that the shell could not have come from Serbian positions.<sup>68</sup>

60. The only direct evidence available to the Trial Chamber regarding Sarajevo suggests two possible conclusions. Either the sources relied upon by Perišić were mistaken regarding the responsibility of the VRS, or they deliberately reported information denying VRS culpability. I therefore respectfully contend that the Majority erred in concluding that the *only* reasonable inference to be drawn from this evidence is that Perišić's intelligence sources informed him of the

<sup>63</sup> See *supra* paras 1521-1522.

<sup>64</sup> See *supra* para. 1520.

<sup>65</sup> See *supra* para. 1520 and section VI.I.2.(b).

<sup>66</sup> See *supra* para. 1492 (citing Ex. P782, Stenographic Transcript of the 18<sup>th</sup> Session of the SDC, 7 February 1994, p. 61).

<sup>67</sup> See *supra* para. 1494 (citing Ex. D542, Report from the VJ to the FRY MOD, 11 October 1995).

commission of crimes by the VRS in Sarajevo. I also recall that, unlike in the case of Article 7(3) responsibility, the information which was received by Perišić does not constitute notice evoking a duty to investigate.

61. Finally, the Majority notes that, during the siege of Sarajevo and throughout the Indictment period, Perišić attended Collegium meetings which were intended to facilitate the exchange of information and were attended by the heads of the Intelligence Administration, the Security Administration and the Operational Staff Sector.<sup>69</sup> In reviewing the minutes from the Collegium meetings, I note that not once is there any mention of the commission of crimes by the VRS.<sup>70</sup> The evidence therefore does not support a finding that these meetings provided Perišić with actual knowledge that the VRS had committed crimes or was likely to commit crimes in Sarajevo.

(b) Diplomatic Cables

62. The Majority relies on various diplomatic cables sent to the FRY Mission as proof that Perišić knew that the VRS was committing crimes in Sarajevo. I respectfully disagree with the Majority on this point. It is first imperative to recall that the cables tendered into evidence can be classified into two categories: cables that were copied directly to Perišić; and those that were not. I acknowledge that Perišić may have been aware of *some* of these diplomatic cables, because he was directly copied on them. However, I do not accept the conclusion of the Majority that Perišić had knowledge of those cables sent to the FRY leadership on which he was not copied. I further acknowledge that the information contained in those cables on which he was copied may have been sufficient to create a general awareness that abuses were occurring in BiH. However, in my view, the few cables on which Perišić was directly copied were insufficient to provide Perišić with knowledge that the VRS either had committed crimes or was likely to commit crimes in Sarajevo.

63. While Perišić may have been copied on many cables by FRY missions around the world, the Trial Chamber has evidence of *only two* diplomatic cables on which Perišić was directly copied concerning Sarajevo. I am of the view that the information contained within those cables was insufficient to have given Perišić actual knowledge of the VRS's role in committing crimes in Sarajevo.

<sup>68</sup> Ex. P232, Notes of Meeting Held in Dobanovci, 30 August 1995, p. 12.

<sup>69</sup> See *supra* para. 1392 (citing Siniša Borović, T. 13932; Miodrag Simić, T. 9981; Branko Gajić, T. 10813); see e.g. Ex. P2207, Transcript of the Collegium of the Chief of the VJ General Staff, 4 December 1995; Ex. P727, Order from Office of Chief of General Staff on Organisation and Method of Work of the Chief of the General Staff and VJ Supreme Command Staff, 15 October 1993, p. 5. The record contains many transcripts of the Collegium meetings, see e.g. Exs. P2193-P2215.

<sup>70</sup> See e.g. Ex. P2207, Transcript of the Collegium of the Chief of the VJ General Staff, 4 December 1995; Ex. P2193; Transcript of the Collegium of the Chief of the VJ General Staff held on 15 September 1995; Ex. P2197, Transcript of the Collegium of the Chief of the VJ General Staff, 28 October 1995.

64. The first cable, sent by the FRY's UN Mission and copied on Perišić, referred to international concern over attacks on civilians in Sarajevo, and attributed responsibility for the escalation of the situation to "Bosnian Serbs" generally.<sup>71</sup> As multiple UN resolutions and other documents admitted into evidence made reference to "Bosnian Serb paramilitary" units when discussing the commission of crimes,<sup>72</sup> the omission of a specific reference to the VRS in this cable leaves open the possibility that Perišić would have understood it to be implicating paramilitary units, or other forces outside the VRS, for the alleged attacks on civilians. The second cable on which Perišić was copied, also prepared by the FRY's UN Mission, focused simply upon the general military situation in Sarajevo, describing "sniper activities and artillery attacks" without making any allegations regarding war crimes or specific perpetrators.<sup>73</sup>

65. The Majority also relies upon diplomatic communications on which Perišić was not directly copied. A diplomatic cable sent from the FRY Mission in London to the VJ General Staff accused the Western media of "widely manipulating the latest massacre of civilians in Sarajevo" to promote air strikes against Serbian positions after Markale I, and further noted that the UK Defense Minister had stressed that there was not yet enough information to conclusively identify the perpetrators of the attack.<sup>74</sup> An earlier cable sent by the FRY Mission in London simply noted that British officials opposed the continued bombardment of Sarajevo.<sup>75</sup> As there is no evidence that Perišić ever read or received these cables, they form an improper evidentiary basis upon which to infer any type of knowledge. Furthermore, as these diplomatic cables fail to specifically discuss the commission of crimes by the VRS, I find that even if Perišić had read them, they would not establish as the only reasonable inference that he had actual knowledge that the VRS had committed or was likely to commit crimes during the siege of Sarajevo.

(c) Documentation by the International Community of Crimes in Sarajevo

66. The mere existence of UN reports and resolutions which discussed the events occurring in Sarajevo was not, in my view, sufficient to provide Perišić with actual knowledge of any allegations of criminal acts committed by the VRS. First, as I noted above regarding the documentation of the international community generally, Perišić cannot be presumed to have knowledge of this type of

<sup>71</sup> Ex. P852 (under seal).

<sup>72</sup> See e.g. Ex. P208, UNSC Resolution 819, 16 April 1993, p. 1; Ex. P212, UNSC Resolution 824, 6 May 1993, p. 1; Ex. P1535, Annexes to the Final Report of the UN Commission of Experts Established Pursuant to the UNSC Resolution 780 (1992), 27 May 1994, para. 110; Ex. P2439, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 28 August 1992, p. 4, referring not to the VRS but to "[...] Serbian mercenaries"; Ex. P2454, UNSC Resolution 787, 16 November 1992, p. 3.

<sup>73</sup> Ex. P853 (under seal).

<sup>74</sup> Ex. P2852 (under seal).

<sup>75</sup> Ex. P2853 (under seal).

evidence and I recall my previous finding that the evidence does not support the conclusion that Perišić was in possession of these reports.<sup>76</sup>

67. Furthermore, even if Perišić was in possession of the UN reports and resolutions, the information contained therein does not support the conclusion that Perišić would have had actual knowledge of VRS criminal conduct in Sarajevo. With the exception of UNSC Resolution 859,<sup>77</sup> which does not implicate any specific perpetrators, the resolutions and reports refer only generally to war crimes and fail to specifically link any allegations of criminal conduct with the VRS. In fact, a large number of the UN documents in question attribute the commission of war crimes to unidentified “paramilitary” groups, while the VRS and the VJ are not implicated in these reports.<sup>78</sup> Other reports, instead of detailing specific allegations of criminal conduct and attributing such conduct to the VRS, focused generally on the effect of the military campaign on the humanitarian situation on the ground.<sup>79</sup>

68. The reports issued by Mazowiecki also did not contain sufficient detail from which to conclude which group was responsible for the alleged crimes in Sarajevo. These reports either referred to crimes committed by “Serb soldiers” and “Serb mercenaries” without identifying their organisational affiliation,<sup>80</sup> or expressly declined to assign specific culpability for the criminal conduct described therein.<sup>81</sup>

<sup>76</sup> See *supra* paras 45, 52-54.

<sup>77</sup> Ex. P2474, UNSC Resolution 859, 24 August 1993, condemning all war crimes and other violations of international humanitarian law, by “whomsoever committed, Bosnian Serbs or other individuals”.

<sup>78</sup> See Ex. P208, UNSC Resolution 819, 16 April 1993, p. 1; Ex. P212, UNSC Resolution 824, 6 May 1993, p. 1; Ex. P1535, Annexes to the Final Report of the UN Commission of Experts Established Pursuant to the UNSC Resolution 780 (1992), 27 May 1994, para. 110; Ex. P2454, UNSC Resolution 787, 16 November 1992, p. 3.

<sup>79</sup> See Ex. P1536, Letter of the UN Secretary General to the President of the UNSC along with Final Report of the UN Commission of Experts Established Pursuant to UNSC Resolution 780 (1992), 27 May 1994, para. 186, stating that military forces have “concentrated their efforts on weakening the city through constant bombardment from the surrounding hillsides”.

<sup>80</sup> Ex. P2439, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 28 August 1992, p. 4; Ex. P2440, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 27 October 1992; Ex. P2441, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 17 November 1992; Ex. P2442, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 10 February 1993; Ex. P2443, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 5 May 1993.

<sup>81</sup> Ex. P2441, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 17 November 1992, para. 42, stating that “[a]ll sides are guilty”.

(d) Media Reports

69. The Majority states that Perišić was “generally informed of what was being reported in the international and Serbian press”<sup>82</sup> and that because attacks on Muslim civilians in Sarajevo were widely reported, the only reasonable inference is that Perišić knew of these allegations.<sup>83</sup> The Majority cites press articles from *Borba*, *NIN*, and other publications.<sup>84</sup> However, nothing in the evidentiary record demonstrates that these particular documents or, for that matter, any media describing VRS violence against Muslim civilians were provided to Perišić as part of his press clippings. I am therefore not persuaded that the evidence establishes as the only reasonable inference that Perišić had actual knowledge that his assistance would aid in the probable commission of crimes by the VRS in Sarajevo.

4. Perišić’s Knowledge of Crimes Committed by the VRS in Srebrenica

70. I respectfully disagree with the finding of the Majority that Perišić knew that his assistance would aid in the probable commission of crimes by the VRS in Srebrenica.

(a) Statements made by Perišić

71. The Majority notes that, contemporaneous with the VRS takeover of the enclave, the Užice Corps Commander informed Perišić of a large group of Muslims escaping from Žepa and crossing the Drina River into Serbia.<sup>85</sup> The commander then informed him that the Užice MUP, a unit of the VJ, wanted to kill refugees and that he had contacted Milošević to prevent this.<sup>86</sup> While this communication certainly made Perišić aware that something significant was happening in the area of Žepa, the commander’s declaration that he had communicated with Milošević gave Perišić reason to believe that any danger the Užice Corps may have posed to the Muslim civilians had been eliminated. Furthermore, there was nothing in this communication which would have informed Perišić that the VRS was perpetrating crimes in the area at that time.

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<sup>82</sup> See *supra* para. 1521.

<sup>83</sup> *Ibid.*

<sup>84</sup> See *supra* para. 1514, citing Ex. P2829, Reuters Article Regarding Attacks on Sarajevo, 15 December 1993; Ex. P2830, Reuters Article Regarding Attacks on Sarajevo, 5 January 1994; Ex. P333, Interview of Ratko Mladić for *Nin*, 7 January 1994, p. 24; Ex. P2831, *Nin* Article Reacting to Previous Feature on Mladić, 11 March 1994, p. 3; Ex. P2878, Article in *Borba*, 30-31 July 1994; Ex. P2832, V.I.P. Daily New Report, 4 July 1995, pp 1-2.

<sup>85</sup> See *supra* para. 1545 (citing Ex. P802, Transcript of Interview with Perišić, 7 December 2003, p. 27).

<sup>86</sup> See *supra* para. 1545 (citing Ex. P802, Transcript of Interview with Perišić, 7 December 2003, p. 28).

(b) Intelligence Reports

72. I acknowledge that Perišić received periodic “situation reports” from the VRS,<sup>87</sup> that the VRS intelligence organs sent regular reports to the VJ General Staff, and that he received daily reports from his own Security and Intelligence Administrations.<sup>88</sup> None of this evidence actually references the commission of criminal acts by the VRS.

73. All of the reports issued by the VJ General Staff Intelligence Administration focused exclusively upon military activities of the Muslim and VRS forces in the region; nowhere in these reports is there any mention of the commission of crimes by the VRS, either before<sup>89</sup> or after<sup>90</sup> the fall of Srebrenica. It is also important to note that the movements of VRS forces were reported with far less specificity than those of the Muslim forces.<sup>91</sup>

74. Prior to the takeover of Srebrenica, the reports Perišić and the VJ General Staff received from the VRS primarily described ABiH military activity and movements. The only reference to allegations of crimes tendered into evidence can be found in the following VRS Main Staff intelligence reports: a 18 May 1995 VRS report which described Muslim propaganda alleging VRS operations against the Podrinje enclaves;<sup>92</sup> and a 26 May 1995 report wherein the Muslim media alleged that there were large numbers of civilian victims in an effort to force additional NATO air strikes against the VRS.<sup>93</sup> As both of these communications described the reports of crimes as either Muslim propaganda or self-serving allegations generated by Muslim media sources, they implied that the allegations should not be believed.

(c) Meetings with Members of the VRS

75. The Majority notes that Perišić communicated with several VRS officers, including Mladić, as crimes were occurring in Srebrenica.<sup>94</sup> Perišić also attended a lunch meeting with Mladić, Gvero, and others in Han Pijesak during the same period.<sup>95</sup> There is no evidence, however, that the

<sup>87</sup> See *supra* paras 1419, 1534. See also Ex. D547, Intelligence Report of the VRS Main Staff, 15 September 1993.

<sup>88</sup> See *supra* paras 1396, 1400, 1535. See also Ex. D547, Intelligence Report of the VRS Main Staff, 15 September 1993.

<sup>89</sup> See *supra* para. 1539.

<sup>90</sup> See *supra* para. 1540.

<sup>91</sup> See *supra* para. 1536.

<sup>92</sup> See *supra* para. 1536 (citing Ex. P1831, VRS Intelligence Report, 18 May 1995, p. 3).

<sup>93</sup> See *supra* para. 1536 (citing Ex. P2180, VRS Main Staff Intelligence Report, 26 May 1995, p. 1).

<sup>94</sup> See *supra* paras 1554-1555.

<sup>95</sup> See *supra* para. 1555 (citing Ex. P2799, Lešić Photograph of Perišić with Mladić and others in Crna Rijeka, 18 July 1995; Ex. P2800, Lešić Photograph of Perišić with Mladić and others in Crna Rijeka, 18 July 1995; Ex. P2801, Lešić Photograph of Perišić with Mladić and others in Crna Rijeka, 18 July 1995; Ex. P2802, Lešić Photograph of Perišić with Mladić and others in Crna Rijeka, 18 July 1995; Ex. P2803, Lešić Photograph of Perišić with Mladić and others in Crna Rijeka, 18 July 1995; Ex. P2804, Lešić Photograph of Perišić with Mladić and others in Crna Rijeka, 18 July 1995; Ex. P2805, Lešić Photograph of Perišić with Mladić and others in Crna Rijeka, 18 July 1995).



commission of crimes by the VRS was discussed on any of these occasions. Therefore, these conversations cannot be used to support the inference that Perišić had actual knowledge of the crimes committed by the VRS in Srebrenica.

(d) Diplomatic Cables

76. I recall that a number of diplomatic cables concerning Srebrenica were sent by the FRY's UN Mission and other diplomatic missions to the FRY leadership, only some of which were copied directly to Perišić. I reach a similar conclusion with respect to the diplomatic cables which reference Srebrenica as I did above for those related to Sarajevo. I will first address those cables copied directly on Perišić.

77. A cable dated 12 July 1995, on which Perišić was copied, summarised the positions of various participants in a UNSC debate.<sup>96</sup> The cable did not contain any specific factual findings of the UNSC with respect to any specific crime. Another cable, also dated 12 July 1995, is also inconclusive because, while it referred to the military situation on the ground by discussing missile attacks and to a general humanitarian crisis, there was no explicit discussion of crimes perpetrated by the VRS.<sup>97</sup> While the cable does mention Mladić by name, it is not in the context of the missile attacks, which are attributed more generally to "Bosnian Serbs". The cable also failed to provide any details regarding the damage or loss of life caused by the missile attacks, or the targets of these attacks.<sup>98</sup> Therefore, in the context of this cable, it would have been impossible for Perišić to conclusively ascertain what crimes, if any, were committed and by whom. Similarly, other cables on which Perišić was copied did not contain any detailed allegations of specific crimes committed by the VRS, but instead focused more generally on the humanitarian situation<sup>99</sup> or the international media coverage of the events.<sup>100</sup> Consequently, I respectfully disagree with the Majority's conclusion that the only reasonable inference to be drawn from the evidence is that Perišić had actual knowledge that the VRS was committing crimes in Srebrenica. *In dubio pro reo*.

78. In addition, I recall my previous finding that any diplomatic cables on which Perišić was not directly copied cannot be indicative of whether or not Perišić had actual knowledge of the criminal

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in Crna Rijeka, 18 July 1995; Ex. P2705, Photographs of Perišić with Mladić and others, including General Milan Gvero, 18 July 1995).

<sup>96</sup> Ex. P897 (under seal).

<sup>97</sup> Ex. P896 (under seal).

<sup>98</sup> Ex. P896 (under seal). *See also* Ex. P855 (under seal) (generally discussing a concern over "severe violations of humanitarian law" occurring in Srebrenica without listing any specific details of the alleged incidents and without attributing the crimes to any specific group).

<sup>99</sup> Ex. P857 (under seal), p. 2.

<sup>100</sup> Ex. P856 (under seal).

conduct of the VRS. Therefore, any diplomatic cable discussing the events occurring in Srebrenica, on which Perišić was not copied, cannot be used to infer actual knowledge on his part.

79. Similar to my previous conclusions regarding the Sarajevo diplomatic cables, I respectfully hold that *even if* Perišić was aware of the contents of the diplomatic cables on which he was not copied, the information contained within these cables does not support the conclusion that Perišić would have had knowledge of the crimes charged with respect to Srebrenica. While I acknowledge that the information contained within these cables would have been sufficient to make Perišić aware of the fact that crimes were generally occurring, the cables did not contain sufficient details that could have made Perišić aware of any involvement on the part of the VRS. For instance, many of these diplomatic cables merely summarised various reports from the international media.<sup>101</sup> Many of the reports referenced in these cables focused on the humanitarian situation on the ground and did not specifically reference war crimes or single out the VRS as the perpetrator of individual criminal acts, while one report even mentioned that the RS leadership had pledged that civilians would not be harmed.<sup>102</sup>

(e) Documentation by the International Community of Crimes in Srebrenica

80. The Majority refers to UNSC statements,<sup>103</sup> excerpts from UNSC meetings,<sup>104</sup> and diplomatic communications on which Perišić was not copied<sup>105</sup> to demonstrate that Perišić had knowledge that the VRS were committing crimes in Srebrenica. I disagree with this conclusion. Perišić was not present at the UNSC meetings and there is simply no evidence to suggest that he had knowledge of the contents of these meetings or of the UNSC resolutions adopted at these meetings.

(f) Media Reports

81. Regarding Perišić's awareness of crimes committed in Srebrenica, the Majority again relies upon the existence of specific media reports,<sup>106</sup> of which we have no evidence that Perišić ever

<sup>101</sup> See e.g. Ex. P857 (under seal), p. 2 (summarising the media in Great Britain); Ex. P856 (under seal), p. 3 (summarising the media in Germany).

<sup>102</sup> Ex. P857 (under seal), p. 2.

<sup>103</sup> Ex. P2507, Statement of the UNSC President, 25 July 1995.

<sup>104</sup> Ex. P2502, Record of the 3554<sup>th</sup> Meeting of the UNSC, 14 July 1995.

<sup>105</sup> Ex. P899 (under seal); Ex. P2498, Letter of the Charge D'Affaires of the Permanent Mission of BiH to the UN, to the President of the UNSC, 9 July 1995; Ex. P2499, Letter of the Charge D'Affaires of the Permanent Mission of BiH to the UN, to the President of the UNSC, 13 July 1995.

<sup>106</sup> See e.g. Ex. P1089, Adam Brown, "Evacuation of Srebrenica Refugees Continues - Serbs Holding Male Prisoners", Agence France-Presse, 13 July 1995 (discussing the forced removal of the enclave's population, organised by General Mladić); Ex. P1092, Report Entitled "Evacuation of Srebrenica Civilians Continues; Aid Executing Men on the Spot", Agence France-Presse, 14 July 1995 (reporting that Bosnian Serb forces were executing refugees and taking prisoners after the fall of the enclave); Ex. P1104, *Naša Borba*/New York Times

received, in order to find that he had actual knowledge of crimes committed by the VRS.<sup>107</sup> Branko Gajić's testimony further diminishes the probability that these reports would have informed Perišić of VRS crimes. He stated that notices of media reports regarding possible VRS atrocities in Srebrenica were disregarded because they did not represent a counter-intelligence issue.<sup>108</sup> It is striking that the only testimony available to the Trial Chamber dealing directly with the dissemination of media reports regarding Srebrenica through the VJ intelligence apparatus contradicts the inference drawn by the Majority.

## 5. Conclusion

82. The Majority holds that the only reasonable inference supported by the evidence is that Perišić knew of the VRS's discriminatory intent and criminal conduct in BiH during his tenure as Chief of the VJ General Staff.

83. I am in agreement that the evidence shows that Perišić received alarming information alerting him to the fact that crimes may have been occurring during the war. In accordance with the jurisprudence on Article 7(1) responsibility, Perišić was under no obligation to investigate these allegations. The question, then, is whether it was highly probable that when Perišić provided assistance, he knew that the VRS would very likely use this assistance to commit crimes in Sarajevo and Srebrenica. In this regard, I am of the view that the Majority erred in concluding that Perišić possessed the requisite knowledge.

84. In my view, the largely circumstantial evidence presented to the Trial Chamber does not establish as the only reasonable inference that Perišić was aware of the commission of crimes by the VRS in Sarajevo and Srebrenica during the period of his tenure as Chief of the VJ General Staff. In fact, no knowledge on Perišić's part, of crimes being committed in Sarajevo and Srebrenica by the VRS, can reasonably be inferred from the entirety of the evidence admitted in this case.

85. As a result, I am not persuaded that Momčilo Perišić is individually criminally responsible pursuant to Article 7(1) of the Statute for crimes committed in Sarajevo and Srebrenica as charged in Counts 1 to 4 and Counts 9 to 12 of the Indictment.

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*Article* on Events in Srebrenica, 24 July 1995, p. 5 (reporting about allegations by members of DutchBat that they had witnessed Bosnian Serbs killing and torturing Muslims in Srebrenica).

<sup>107</sup> See *supra* para. 1578.

<sup>108</sup> See *supra* para. 1576 (citing Branko Gajić, T. 10960-10962).

### **XIII. DISSENTING OPINION OF JUDGE MOLOTO ON COUNTS 5 TO 8**

86. I respectfully dissent from the Majority's finding as to Momčilo Perišić's individual criminal responsibility pursuant to Article 7(3) of the Statute in relation to Counts 5-8. In particular, I cannot agree with the Majority's finding that Momčilo Perišić exercised effective control over the perpetrators of the crimes committed by the shelling of Zagreb in May 1995.

#### **A. Introductory Remarks**

87. In reaching its conclusion, the Majority analysed a number of indicators of effective control.<sup>109</sup> While, for the most part, I do not dispute the relevance of these indicators, I respectfully contend that there is another indicator that the Majority did not consider, namely, whether Perišić viewed himself as the superior officer of the 40<sup>th</sup> PC members and whether those members, being the perpetrators of the underlying crimes, in turn, subjectively viewed Perišić in such a role. I believe that an analysis of the instances in which Perišić attempted to intervene in the SVK chain of command clearly demonstrates that the answer to this question is in the negative. Perišić did not consider himself to be the superior officer of the members of the 40<sup>th</sup> PC and the latter did not view themselves as his subordinates. Rather, the evidence paints a picture in which the members of the 40<sup>th</sup> PC were re-subordinated to the SVK and therefore, acted solely within its chain of command. The fact that their salaries, as well as other benefits, were still paid by the VJ remains, in my view, fully compatible with this notion of re-subordination. Consequently, once the 40<sup>th</sup> PC members were re-subordinated to the SVK, Perišić could no longer exercise control over them, certainly not operational control.

#### **B. Perišić's Ability to Issue Orders to the 40<sup>th</sup> PC Members**

88. The Majority holds that Perišić issued certain command orders to the SVK, stressing that even if such orders were rare, their existence and the SVK's compliance with them, demonstrate that he had a general ability to issue orders.<sup>110</sup> The Majority went on to conclude that this ability to issue orders supports the conclusion that the SVK system of command and control was bifurcated into two parallel chains of command: one controlled by Milan Martić as supreme commander of the SVK, and the other by Perišić and other members of the FRY leadership, including Milošević.<sup>111</sup>

89. I respectfully take issue with the Majority's finding that before 2 May 1995, Perišić issued at least one command order to a senior officer serving in the 40<sup>th</sup> PC that was subsequently

<sup>109</sup> See *supra* paras 1757-1769. See also *supra* paras 1672 *et seq.*

<sup>110</sup> See *supra* para. 1763.

<sup>111</sup> *Ibid.*

obeyed.<sup>112</sup> I note that the order the Majority refers to, P1800, is the *only* order allegedly given by Perišić to a member of the 40<sup>th</sup> PC at that time that was proven to have been followed.

90. In my view, a reading of this document leaves no doubt that it was an order sent directly from Milošević and that Perišić was only instrumental in passing it along. I note the following characteristics which distinguish it from an order given within a chain of command:

- (a) It was written on the authority of Milošević, not of Perišić;
- (b) Milošević was neither in the chain of command of the VJ nor the SVK to entitle him to issue a command order;
- (c) One of the addressees, Milan Martić, was not a member of the 40<sup>th</sup> PC and therefore could not be within Perišić's alleged chain of command;
- (d) Reasons were provided for the issuance of the document, a feature not present in command orders;
- (e) One of the reasons for issuing it was that Milan Martić had promised Yasushi Akashi to facilitate the passage of UNPROFOR humanitarian aid in Western Bosnia; therefore it is more of a reminder to Martić to honour his word as opposed to an order; and
- (f) Čeleketić addressed his response to Milošević, not to Perišić, evincing his view of whom, between Milošević and Perišić, he regarded as the one having given the order.<sup>113</sup>

91. In my view, P1800 cannot, therefore, be used to find the existence of a parallel chain of command on the axis VJ General Staff – SVK Main Staff. Rather it is demonstrative of a successful attempt by Milošević to influence Martić and Čeleketić, through a mixture of reason and authority, to get Martić to honour his prior agreement with Akashi.

92. I am of the view that the notion of a parallel chain of command cannot be relied upon, as the Majority does, to support a finding of effective control. It bears noting that the existence of a parallel chain of command in an army that professes unity of command is, *per se*, indicative of lack of effective control. The fact that Čeleketić disregarded Perišić's warning to stop shelling Zagreb and followed Martić's order is a clear demonstration of the unworkability of a system of parallel chain of command in a unity-of-command army.

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<sup>112</sup> See *supra* para. 1762.

<sup>113</sup> Ex. P2857, SVK Main Staff Commander Communication to Perišić and Milošević, 7 December 1994.

93. I am satisfied that P1800 was not an order within the chain of command, therefore, it is my view that the Majority erred in relying on it, among others, to find that Perišić had effective control over the members of the 40<sup>th</sup> PC.

94. Similarly, P1925 has the following characteristics distinguishing it from a command order:

- a) Marko Gulić, who is mentioned therein, is an officer in the RSK MOD, not a member of the 40<sup>th</sup> PC, therefore could not be in Perišić's alleged chain of command;
- b) Ljubomir Lalić, who is mentioned therein and described by the Majority as a VJ officer serving in the 40<sup>th</sup> PC, was in fact a member of the "VJ [General Staff] Personnel Administration 40<sup>th</sup> Personnel Centre, Department for Personnel Affairs" a department in the VJ and not in the SVK;
- c) Ljubomir Bajić, who is mentioned therein, was a retired officer of the VJ. While witness Starčević testified that the order was a proper exercise of command over the 40<sup>th</sup> PC officers, he conceded the shortcomings of the document in that one of the addressees was a retired VJ officer;<sup>114</sup>
- d) Only one other officer listed therein served in the Main Staff of the SVK through the 40<sup>th</sup> PC;
- e) The remaining officers mentioned in the document were VJ officers.<sup>115</sup>

95. I note that the record does not demonstrate that P1925 was obeyed. For effective control to be established, it is not enough that the superior gave orders; the order must be obeyed. Even if, for argument sake, one assumes that it was obeyed, it bears noting that the purpose of the order was to establish an entity to co-ordinate provision of assistance by the VJ to the SVK, a welcome step to the SVK, which would explain the compliance of the one individual who was an SVK member. A reasonable inference to draw is that the individual would comply because of a prior agreement by the SVK that he be part of the co-ordinating entity. After all, the VJ or Perišić would not know what assistance to give without the input of someone from the SVK. The order does not confirm the existence of a parallel chain of command.

96. The Majority's theory of the existence of a parallel chain of command is contradicted by communications which took place between the VJ General Staff and the Main Staff of the SVK in which the VJ General Staff used the word "please" instead of the mandatory language normally

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<sup>114</sup> Miodrag Starčević, T. 6762-6763.

seen in orders issued within the VJ.<sup>116</sup> Finally, the testimony of several officers serving in the 40<sup>th</sup> PC and holding high positions in the SVK – including Prosecution witnesses Orlić and Rašeta – strongly suggests that they had only one single operative chain of command – which originated from the SVK leadership.<sup>117</sup> This was also confirmed by MP-80 who specifically denied that Perišić had any command authority over Čeleketić. The evidence further shows that during the monthly coordination meetings between the VJ, VRS, and the SVK no orders were ever given by Perišić.<sup>118</sup>

97. During the early days of May 1995, when the Croatian forces launched an attack on the RSK, Martić gave an order to his subordinate Čeleketić to retaliate by shelling Zagreb with “Orkan” rockets. Čeleketić carried out that order.<sup>119</sup> After learning about the incident, Perišić intervened by telling Čeleketić to stop the shelling. The evidence demonstrates that Perišić’s intervention was not successful because Zagreb was shelled again the next day.<sup>120</sup> In this regard, I note that the record does not contain the actual conversation Perišić had with Čeleketić on 2 May 1995. However, from an intercepted conversation between Perišić and Milošević, in which Perišić refers to his intervention with Čeleketić, it is clear that Perišić used the expression “I told him” rather than referring to ordering.<sup>121</sup>

98. Čeleketić’s non-compliance with this intervention can only be understood in the context of previous communication practices between the VJ General Staff and the SVK Main Staff, communications which did not resemble orders but rather were characterised by language typical of a horizontal relationship. I am of the view that the only reasonable conclusion to be drawn from the evidence is that not only was Perišić’s intervention of 2 May 1995 treated as non-binding by Čeleketić but it was also treated as non-binding by Perišić himself. Perišić was clearly against the shelling of Zagreb. Čeleketić was bent on shelling Zagreb. This is the one occasion that Perišić should have given a firm order to Čeleketić to stop the shelling if he saw himself as having any control, let alone effective control, over him. Similarly, if Čeleketić saw himself as Perišić’s subordinate, he should have obeyed. He did not. He shelled Zagreb again on 3 May 1995. The only reasonable explanation is that Čeleketić saw himself as being in a single chain of command, that of Martić, whose command he chose to obey, demonstrating that Perišić did not have effective control over him. It is this very uncertainty on which line of the parallel chain will be obeyed which confirms the lack of effective control. I referred earlier to the fact that the attitude of the “superior”

<sup>115</sup> Ex. P1925, Order of Momčilo Perišić to Form a Coordinating Staff, 24 March 1995.

<sup>116</sup> Ex. P1138, Correspondence Between Chief of the VJ General Staff and the SVK Main Staff, 19 January 1994; Ex. P2177, Letter from VJ General Staff to SVK Main Staff, 11 May 1994. *See supra* paras 1716-1718, 1732.

<sup>117</sup> Rade Orlić, T. 5740, 5762-5763; Rade Rašeta, T. 5969. *See supra* para. 1720.

<sup>118</sup> *See supra* para. 1719.

<sup>119</sup> *See supra* para. 585.

<sup>120</sup> *See supra* para. 1725.

<sup>121</sup> *Ibid.*

and “subordinate” to their relationship is a factor to be considered in determining the existence of effective control. The attitudes of Perišić and Čeleketić to their relationship and that of Čeleketić to his relationship with Martić, demonstrate the importance of this factor.

99. Although Perišić claimed, in a conversation with Milošević, that he ultimately forced Čeleketić to stop the shelling of Zagreb,<sup>122</sup> this claim is not corroborated by any other evidence. As a consequence, this statement about Perišić’s role in the events, especially in light of unsuccessful attempts to force Čeleketić to discontinue the shelling, carries no weight.

100. I am also of the view that Perišić’s communications with the SVK 11<sup>th</sup> Corps Commander, Dušan Lončar, equally suggest the lack of a superior-subordinate relationship between them. I do not dispute that Perišić tried and in fact succeeded in influencing Lončar to take specific steps on several occasions. However, the evidence is clear that in order to do so he used persuasion rather than any command authority. I recall in this respect Perišić referring to the fact that “Lončar completely *understands* the things and *accepts* to do as we say” and Perišić reporting that “[he] *told* Lončar not to send [one battalion to Western Slavonia] without our approval, which he *accepted*”.<sup>123</sup> (Emphasis added) This language demonstrates that Perišić did not issue a binding order but rather that Lončar acquiesced to his request. It also demonstrates Perišić’s view of his relationship with Lončar.

101. Having said that, I note that some evidence suggests a change in the circumstances after Čeleketić was replaced by Mile Mrkšić. The evidence of MP-80 suggests that Mrkšić, instead of taking orders from Martić, was following direct orders from Perišić.<sup>124</sup> At this point, I note that MP-80’s testimony is not fully supported by other evidence. The record contains several documents potentially suggesting that Perišić was issuing orders to the officers serving in the SVK through the 40<sup>th</sup> PC. I will briefly discuss them in turn.

102. P2412 refers to Perišić’s “oral order” to submit to him the list of officers who participated or did not participate in the combat operations of the SVK 18<sup>th</sup> Corps on 1 and 2 May 1995. Although this request was considered as an order by the Commander of the SVK 18<sup>th</sup> Corps and was duly complied with, I note that it did not fall within the scope of operational commands but rather concerned the sharing of information between the SVK and the VJ. On 1 November 1995, a similar request for submitting information was sent to the Command of the SVK 11<sup>th</sup> Corps by Perišić’s Chef de Cabinet (P2707). This time, instead of referring to an “order”, the communication used the

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<sup>122</sup> See *supra* para. 1728.

<sup>123</sup> See *supra* paras 1723-1724.

<sup>124</sup> MP-80, T. 8457, 8481 (closed session). See *supra* para. 1730.



form “you are required”. The use of the term “required” in my view is similarly inconsistent with the mandatory language typically used in military orders and in the VJ in particular. Moreover, the response from the 11<sup>th</sup> Corps referred to it as a “letter”, not an order.

103. P2146 reports Lončar referring to an “order” he received from Perišić to make a list of commanding officers from the VJ who were born in Western and Eastern Slavonia and in North Dalmatia, based on which the VJ General Staff would issue orders reassigning such officers to the SVK 11<sup>th</sup> Corps. Again, I note that the substance of this order does not fall within the notion of operational command but rather relates to Perišić’s effort to support the SVK with additional officers and this notion is compatible with the cooperative relations between the two separate armies. I also note that there is no evidence showing whether or not this order was actually obeyed.

104. Finally, I note the intercept of a conversation (P1461) between Perišić and most probably an officer in the SVK 11<sup>th</sup> Corps in which Perišić left a message for Lončar that the latter should arrest all “scaremongers” and all others who are harmful to the morale of the 11<sup>th</sup> Corps and execute them if necessary. From the intercept it is clear that it has the appearance of an order. This message, left at the time of the Croatian offensive on the RSK, stands out as the only strictly apparent operational order issued by Perišić to an officer of the 40<sup>th</sup> PC. At the same time, I note that there is no evidence that this message was received by Lončar and more importantly, whether it was actually obeyed. The message is just so outrageously criminal and out of character with anything Perišić had said before that it leaves the impression that it was not intended to be obeyed. Instead, it sounds like emphasis of the speaker’s frustration with the situation.

105. The testimony of MP-80 regarding Perišić issuing orders to the SVK is further called into question by the fact that even at the time when Mrkšić replaced Čeleketić, some communications between Perišić and the new Chief of the SVK Main Staff contained words such as “please” and “kindly”,<sup>125</sup> language which is inherent to horizontal relationships.

106. Based on the above, I find the testimony of MP-80 on this issue not credible. The very scant evidence showing the “orders” given by Perišić – orders which in any event related mostly to the exchange of information – and a recurring use of language of pleading as opposed to the formulations typical for orders, all raise a reasonable doubt as to Perišić’s control over the SVK even after mid-May 1995.

107. Even if, for argument’s sake, one would assume that during Mrkšić’s time at the helm of the SVK, Perišić exerted significant influence over the SVK Main Staff which was characterised by the

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<sup>125</sup> Ex. D125, Correspondence from General Perišić to the SVK Main Staff, 18 July 1995. *See supra* para. 1732.

ability to issue orders that were met with the understanding as to their binding character, it cannot simply be concluded that Perišić could have exerted similar authority over the SVK during Čeleketić's time in command. I agree with the conclusion of the Majority that there was "no systemic change in the authority Perišić had *vis-à-vis* the SVK after Mrkšić succeeded Čeleketić" and that "the change was only in the personal relations between Perišić and the new SVK Main Staff Commander". This further underlines the importance of the attitudes of the alleged superior and subordinate to their relationship. It did not depend on a systemic change for a change in relations to occur in this case. It depended on how the supposed superior and subordinate view their relationship. It is clear that, unlike Čeleketić, Mrkšić was more amenable to Perišić's influence – certainly not control, based on the evidence referred to above. However, even if it could be said Perišić had effective control over Mrkšić, which I disagree with, such control was not over the perpetrator of the crime of shelling Zagreb and was not at the time of such shelling. For effective control to evoke individual criminal responsibility for a superior, it must exist at the time of the commission of the underlying crime by the subordinate.

108. The fact that Perišić did not consider himself to be the superior of the officers serving in the SVK, coupled with the fact that these officers equally did not consider themselves as Perišić's subordinates, even if they officially held the status of VJ members, and the above analysis of the so-called Perišić orders, raise a reasonable doubt as to the validity of the theory of a "parallel chain of command". Rather, the evidence shows that at the time of the commission of the crimes relating to the shelling of Zagreb, the VJ officers serving in the 40<sup>th</sup> PC were re-subordinated to the SVK acting within its sole chain of command and not subject to Perišić's control.

### **C. Ability to Initiate Disciplinary and/or Criminal Investigation**

109. The Majority asserts that "[i]t was only due to the SDC policy of keeping the VJ's involvement in the war in Croatia a secret [...] that such proceedings were not pursued".<sup>126</sup> The Majority goes on to state that "these political considerations [...] do not call into question Perišić's ability to use his authority against SVK officers, but rather demonstrates the inconvenience of doing so under the circumstances prevailing at that time". I agree that, even if Perišić might have believed himself to have control over 40<sup>th</sup> PC officers, the need to keep VJ involvement in the SVK secret would have been a serious impediment in the exercise of such control because keeping VJ involvement in the SVK secret was a national imperative. Publicising such involvement would have had catastrophic consequences for the FRY by way of intensified international sanctions or even attack. Therefore, I respectfully disagree with the Majority that "these political considerations"

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<sup>126</sup> See *supra* para. 1758.

demonstrate the “inconvenience” of exercising authority. It was not just inconvenience, the consequences could have been dire. Therefore, even on the theory of the Majority, this constraint would have been a further limitation on Perišić’s control over the 40<sup>th</sup> PC members.

110. Retroactive pensioning off of several high ranking officers serving in the 40<sup>th</sup> PC was the only measure that could be taken in relative secrecy. These measures were aimed at punishing the senior officers for losing the war in August 1995, not for any crimes committed by them while serving in the SVK. This is consistent with Perišić’s view of his relationship with such officers during the time they served in the SVK. The reason for so punishing them is not difficult to see. Perišić had supported the war against Croatia and wanted the SVK to win. By losing the war the SVK brought to naught all his support for the war and with it great disappointment. This disappointment is captured in the following discussion taking place in September 1995 at a meeting of the SDC:

Perišić: [T]he status of the [SVK Main Staff] should be solved. We should answer whether we think it exists or it does not, or should it be revoked or not, because it still exists there. Martić is there with some of his people. Mrkšić is in vicinity of Banja Luka. We should first make our standpoint about it and after that we should know what to do with those people. If they live there and are going to form something there and they are for establishing of some kind of Liberation Army of Krajina then it would be logical that we send most of these officers to that area.

Lilić: I will remind you that we agreed to abolish the 40<sup>th</sup> [PC], except for the part of it related to the units deployed in Sector East. This is an answer to what General Perišić said. I think that the unresolved status of these people is the worst possible option.

Milošević: We have to discuss this only in connection with the issue of reimbursement of the salaries. At the moment the question is whom we should help if it no longer exists there. This issue is related only to salaries and not to other material issues.

[...]

Lilić: [Perišić’s] dilemma is in the fact that he thinks that we should send all of these people back there.

Perišić: If that is going to be abolished over there then it means that nothing would be left there except the 11<sup>th</sup> Corps. And we will be sending our volunteers to that Corps. As for the others, why do not you let me appoint them selectively according to their behaviour, capabilities, instead of appointing some riffraff, who even contributed to have the situation as it is.

[...]

Perišić: Should I erase the names of those people from the payroll or should I consider them a part of the 11<sup>th</sup> Corps, actually should I consider them as participants of the war? This is the essence of my question.

Milošević: The war over there is over. They are not in that territory any more.

Perišić: In another words: whoever is there should be asked to come here?

Milošević: You should not ask anyone to come.

Perišić: I should not ask them to come and I should not pay them the salaries?

Milošević: To whom you should pay the salary and what do you mean to pay them salaries?

Perišić: I am just asking because I have to resolve their status.

Milošević: There was the Republic of Serbian Krajina, which we supported through the 40<sup>th</sup> [PC]. The RSK no longer exists and accordingly the 40<sup>th</sup> PC no longer exists!<sup>127</sup>

111. It is clear from the above discussion that no reference was made to any punishment for the crimes committed, indicating that the SDC did not view either itself, or Perišić, as having the authority to do so. Rather, as mentioned by Perišić, the concern was that the SVK officers “contributed to have the situation as it is” – losing the war.

a. Whether Perišić had the Capacity to Promote Members of the 40<sup>th</sup> PC

112. I respectfully disagree with the Majority’s finding that “[t]he fact that Perišić had [...] the ability to make independent recommendations with respect to the verification of promotions [...] of the VJ soldiers serving in the 40<sup>th</sup> PC, militates in favour of effective control”.<sup>128</sup> I recall that there were instances where the verifications of promotions first acquired in the SVK were delayed, sometimes for months, but this did not result in the loss of rank within the SVK and the soldiers did not resign or desert the army or show any change, such as loss of morale, as result of such delays in verifications.

113. In my view Perišić’s capacity to promote members of the 40<sup>th</sup> PC carries very little or no weight as a factor in the determination of whether Perišić exercised effective control over the 40<sup>th</sup> PC members.

b. Whether Perišić had the Capacity to Appoint 40<sup>th</sup> PC Members to Specific Posts in the SVK

114. The Majority states:

The Majority, in this respect, recalls that although as a general rule VJ officers were transferred and/or appointed to the 40<sup>th</sup> PC by the VJ, it was the SVK who appointed these officers to specific posts within its structure. At times, however, the SVK would request the VJ to transfer specifically identified officers identifying the unit and position in which these personnel were to serve if transferred to the SVK. The Majority finds that in such cases the approval of the SVK request should be seen as an indirect and discrete way of appointing the 40<sup>th</sup> PC members to the specific posts in the SVK. Perišić’s ability to do so should be seen as standing in full compliance with his *de jure* status as the 40<sup>th</sup> PC members superior.<sup>129</sup>

<sup>127</sup> Ex. P798, Stenographic Transcript of the 44<sup>th</sup> Session of the SDC, 12 September 1995, pp 5 *et seq.*

<sup>128</sup> *See supra* para. 1768.

<sup>129</sup> *See supra* para. 1765.

115. I cannot agree with the logic and finding of the Majority in the above quotation. There is no indirect appointment by Perišić of officers to specific posts in the SVK. The plain language of the request by the SVK and the response by Perišić clearly show that he is merely agreeing to a request of the SVK in which the SVK has pre-determined the posts to which the officers are to be appointed. The determination is not made by Perišić. It is clearly a misapprehension of the evidence to interpret the situation otherwise.

#### **D. Conclusion**

116. The Prosecution bears the burden of proving beyond a reasonable doubt that Momčilo Perišić exercised effective control over the members of the 40<sup>th</sup> PC who shelled Zagreb on 2 and 3 May 1995. In my view, based on the above analysis of the evidence, the Prosecution failed to adduce sufficient evidence to prove that Perišić had effective control over members of the 40<sup>th</sup> PC who perpetrated the crimes charged in Counts 5-8 of the Indictment. Consequently, I respectfully disagree with the Majority's finding that Perišić is individually criminally responsible for the crimes charged in Counts 5-8 of the Indictment.

117. Whereas the Judgement refers to the Majority on the findings subsequent to "effective control", I place on record that I participated in deliberations and concur with all of the findings on Momčilo Perišić's notice and failure to punish.

Done in English and French, the English text being authoritative.

Dated this sixth day of September 2011  
At the Hague  
The Netherlands



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**Judge Bakone Justice Moloto**  
**Presiding**

## XIV. ANNEXES

### A. ANNEX A – PROCEDURAL BACKGROUND

#### 1. Pre-Trial Proceedings

##### (a) Surrender and Initial Appearance

1. An initial indictment against Momčilo Perišić was confirmed by Judge Jean-Claude Antonetti on 24 February 2005 and unsealed on 7 March 2005.<sup>1</sup> It charged Momčilo Perišić with five counts of violations of the laws or customs of war pursuant to Article 3 of the Statute and eight counts of crimes against humanity pursuant to Article 5 of the Statute. Momčilo Perišić was charged with aiding and abetting the planning, preparation, or execution of the aforementioned crimes pursuant to Article 7(1) of the Statute<sup>2</sup> and as a superior officer, with failure to prevent or punish the unlawful acts of his subordinates in the VJ pursuant to Article 7(3) of the Statute.<sup>3</sup>

2. Momčilo Perišić expressed his intention to voluntarily surrender and on 7 March 2005 he was transferred into the custody of the Tribunal.<sup>4</sup>

3. Momčilo Perišić made his initial appearance before Trial Chamber III on 9 March 2005. He pleaded not guilty to all counts in the indictment.<sup>5</sup> On 9 June 2005, Trial Chamber III granted the Defence request for provisional release of Momčilo Perišić.<sup>6</sup> He returned to the UNDU in The Hague on 18 September 2008.<sup>7</sup>

##### (b) Amendments to the Indictment

4. On 29 August 2005, Trial Chamber III ordered the Prosecution to amend the indictment.<sup>8</sup>

5. On 26 September 2005, the Prosecution filed an amended indictment.<sup>9</sup> On 12 December 2005, Trial Chamber III granted the Prosecution's motion to further amend the indictment to correct a typographical error.<sup>10</sup>

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<sup>1</sup> Confirmation of Indictment (under seal), 24 February 2005; Order to Disclose Indictment and Warrant of Arrest Against Momčilo Perišić, 7 March 2005.

<sup>2</sup> Indictment, 22 February 2005, paras 46, 62. With regards to Counts 1 to 4 and 9 to 13 only.

<sup>3</sup> Indictment, 22 February 2005, paras 46, 54, 62.

<sup>4</sup> Order for Detention on Remand, 8 March 2005.

<sup>5</sup> Initial Appearance, 9 March 2005, T. 3-7.

<sup>6</sup> Decision on Momčilo Perišić's Motion for Provisional Release, 9 June 2005.

<sup>7</sup> Order Recalling Momčilo Perišić from Provisional Release, 27 August 2008.

<sup>8</sup> Decision on Preliminary Motions, 29 August 2005, para. 40.

<sup>9</sup> Prosecution's Filing of Amended Indictment in Compliance with Trial Chamber Order of 29 August 2005, 26 September 2005.

<sup>10</sup> Decision Granting Prosecution Motion to Amend Indictment, 12 December 2005.

6. On 20 November 2006, Trial Chamber III invited the Prosecutor to propose means of reducing the scope of the indictment.<sup>11</sup> On 4 December 2006, the Prosecution declined the Trial Chamber's invitation.<sup>12</sup> During a status conference held on 1 December 2006, the Prosecution indicated its preference to make two minor typographical amendments to the indictment of 26 September 2005 in conjunction with an order from Trial Chamber III to reduce the scope of the amended indictment.<sup>13</sup> The Trial Chamber ultimately ordered the Prosecution not to lead evidence on "terror" in relation to the Sarajevo counts, only to lead evidence relating to the scheduled incidents that are listed in schedules A and B of the Amended Indictment and to reduce its witness list accordingly.<sup>14</sup>

7. On 15 May 2007, Trial Chamber III allowed the proposed amendments to the amended indictment.<sup>15</sup> On 13 September 2007, the Prosecution filed a second amended indictment.<sup>16</sup> On 5 February 2008, the Prosecution filed a revised second amended indictment, which is the operative Indictment in this case.<sup>17</sup>

(c) Composition of the Trial Chamber

8. The case was initially assigned to Trial Chamber III<sup>18</sup> with Judge Patrick Robinson designated as pre-trial Judge.<sup>19</sup> On 12 May 2006, Judges Krister Thelin and Frank Höpfel were assigned to the case to conduct pre-trial work.<sup>20</sup>

9. On 20 March 2008, the case was reassigned to Trial Chamber I<sup>21</sup> composed of Judges Alphons Orié, Christine Van den Wyngaert and Bakone Justice Moloto.<sup>22</sup> On 26 March 2008, Judge Moloto was designated pre-trial Judge.<sup>23</sup> On 29 May 2008, Judges Flavia Lattanzi and Michèle Picard were assigned as *ad litem* judges to the pre-trial proceedings.<sup>24</sup>

<sup>11</sup> Invitation to the Prosecutor to Make Proposals to Reduce the Scope of the Indictment, 20 November 2006.

<sup>12</sup> Prosecution's Response to Invitation to the Prosecutor to Make Proposals to Reduce the Scope of the Incident, 4 December 2006.

<sup>13</sup> Status Conference, 6 February 2007, T. 82-83.

<sup>14</sup> Decision on Application of Rule 73 *bis* and Amendment of Indictment, 15 May 2007, paras 16-17, 20.

<sup>15</sup> Decision on Application of Rule 73 *bis* and Amendment of Indictment, 15 May 2007.

<sup>16</sup> Prosecution Filing of Second Amended Indictment, 13 September 2007.

<sup>17</sup> Prosecution Filing of Revised Second Amended Indictment with Annex A, 5 February 2008.

<sup>18</sup> Order Assigning a Case to a Trial Chamber (confidential and *ex parte*), 7 March 2005.

<sup>19</sup> Order Designating Pre-Trial Judge, 9 March 2005.

<sup>20</sup> Order Assigning an *Ad Litem* Judge for Pre-Trial Work, 12 May 2006.

<sup>21</sup> Order Reassigning a Case to a Trial Chamber, 20 March 2008.

<sup>22</sup> Order Composing a Pre-Trial Bench, 20 March 2008.

<sup>23</sup> Order Designating a Pre-Trial Judge, 26 March 2008.

<sup>24</sup> President's Order Assigning *Ad Litem* Judges to Pre-Trial Proceedings, 29 May 2008.

10. On 2 October 2009, the President of the Tribunal ordered that the trial bench be composed of Judge Bakone Justice Moloto as Presiding Judge, Judge Pedro David and Judge Michèle Picard.<sup>25</sup>

(d) Counsel

11. On 9 March 2005, the Registrar assigned Mr. Karim Khan as duty counsel to Momčilo Perišić.<sup>26</sup> On 21 April 2005, Mr. James Castle was provisionally assigned as counsel for the Accused for a period of 120 days.<sup>27</sup> On 15 August 2005, the Deputy Registrar issued a decision finding that the Accused was able to remunerate counsel in part and assigning Mr. Castle as his counsel permanently.<sup>28</sup>

12. On 7 April 2006, Dušan Slijepčević was assigned as co-counsel.<sup>29</sup> On 12 June 2006, Mr. Castle requested the withdrawal of Mr. Slijepčević.<sup>30</sup> Mr. Slijepčević was withdrawn as co-counsel on 25 August 2006.<sup>31</sup> On 25 April 2007, Novak Lukić was appointed as co-counsel.<sup>32</sup>

13. On 29 July 2008, Mr. Castle was withdrawn as lead counsel and re-assigned as co-counsel for the Accused. On the same date Mr. Lukić was assigned as lead counsel and Mr. Guy-Smith was assigned as an additional co-counsel for the Accused.<sup>33</sup> On 22 December 2008, Mr. Castle was withdrawn as co-counsel by the Deputy Registrar.<sup>34</sup>

(e) Preparations for Trial

14. The Prosecution filed its Pre-Trial Brief on 23 February 2007.<sup>35</sup> The Defence submitted its Pre-Trial Brief on 30 March 2007.<sup>36</sup>

15. Pursuant to Rule 65 *bis* of the Rules, status conferences were held on 6 July 2005,<sup>37</sup> 25 October 2005,<sup>38</sup> 15 February 2006,<sup>39</sup> 14 June 2006,<sup>40</sup> 11 October 2006,<sup>41</sup> 6 February 2007,<sup>42</sup>

<sup>25</sup> Order Composing a Trial Bench, 2 October 2008.

<sup>26</sup> Decision by the Registrar Re Assignment of Duty Counsel, 9 March 2005.

<sup>27</sup> Decision by the Registrar Re Assignment of Counsel Pending Completion of Inquiry into Accused's Ability to Remunerate Counsel, 22 April 2005.

<sup>28</sup> Decision by the Deputy Registrar Re Remuneration of Counsel, 15 August 2005.

<sup>29</sup> Decision by the Registrar Assigning Mr Slijepčević as Co-counsel, 10 April 2006.

<sup>30</sup> See Decision by the Deputy Registrar to Withdraw Mr. Slijepčević as Co-counsel, 25 August 2006.

<sup>31</sup> Decision by the Deputy Registrar to Withdraw Mr. Slijepčević as Co-counsel, 25 August 2006.

<sup>32</sup> Decision by the Deputy Registrar Re Assignment of Co-counsel, 25 April 2007.

<sup>33</sup> Decision by the Deputy Registrar Re Assignment of Counsel and Co-counsel, 29 July 2008.

<sup>34</sup> Decision by the Deputy Registrar to Withdraw Mr. Castle as Co-counsel to Mr. Lukic, 22 December 2008.

<sup>35</sup> Prosecution's Rule 65 *ter* Submission (confidential), 23 February 2007.

<sup>36</sup> Pre-Trial Brief of the Defence (confidential), 30 March 2007.

<sup>37</sup> Scheduling Order, 8 June 2005.

<sup>38</sup> Order Scheduling a Status Conference, 18 October 2005.

<sup>39</sup> Order Scheduling a Status Conference, 7 February 2006.

<sup>40</sup> Order Scheduling a Status Conference, 31 May 2006.



23 May 2007,<sup>43</sup> 19 September 2007,<sup>44</sup> 15 January 2008,<sup>45</sup> 6 May 2008,<sup>46</sup> 2 September 2008<sup>47</sup> and 24 September 2008.<sup>48</sup>

16. At a status conference held on 6 May 2008, the Presiding Judge invited the Prosecution to present its case within nine months, allowing 540 hours for the Prosecution phase.<sup>49</sup>

17. On 27 June 2008, Trial Chamber I ordered the Pre-Trial Conference to take place on 24 September 2008 and set the Opening Statement of the Prosecution to take place on 1 October 2008, followed on 2 October 2008 by the Opening Statement of the Defence and/or a statement of the Accused at that stage of the proceedings.<sup>50</sup> On 23 September 2008, Trial Chamber I rescheduled the Pre-Trial Conference to take place on 1 October 2008, with Opening Statements to begin on the same date.<sup>51</sup>

18. A Pre-Trial Conference pursuant to Rule 73 *bis* was held on 2 October 2008.<sup>52</sup> The Trial Chamber granted the Prosecution 355 hours for the presentation of its evidence and set the number of witnesses to be called by the Prosecution at 150.<sup>53</sup>

## 2. Trial Proceedings

19. The trial was held between 2 October 2008 and 31 March 2011. The Trial Chamber sat for 198 trial days.

20. The Prosecution case commenced on 2 October 2008 and concluded on 25 January 2010.<sup>54</sup> The Prosecution adduced evidence from 108 witnesses in total, of whom 35 testified *viva voce*. 37 witnesses gave evidence pursuant to Rule 92 *ter*. The evidence of three witnesses was admitted exclusively in written form pursuant to Rule 92 *bis*, one witness pursuant to Rule 71 and 11 pursuant to Rule 92 *quater*. Moreover, the Trial Chamber admitted the evidence of 21 witnesses pursuant to Rule 94 *bis*.<sup>55</sup>

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<sup>41</sup> Order Rescheduling a Status Conference, 22 September 2006.

<sup>42</sup> Order Scheduling a Status Conference, 15 January 2007.

<sup>43</sup> Order Scheduling a Status Conference, 15 May 2007.

<sup>44</sup> Order Scheduling a Status Conference, 21 August 2007.

<sup>45</sup> Order Scheduling a Status Conference, 22 November 2007.

<sup>46</sup> Order Scheduling a Status Conference, 23 April 2008.

<sup>47</sup> Order Scheduling a Status Conference, 15 August 2008.

<sup>48</sup> Scheduling Order, 23 September 2008.

<sup>49</sup> See Status Conference, 6 May 2008, T. 162.

<sup>50</sup> Order Rescheduling Start of Trial, 27 June 2008.

<sup>51</sup> Scheduling Order, 23 September 2008.

<sup>52</sup> Scheduling Order, 2 October 2008.

<sup>53</sup> Prosecution Opening Statement, 2 October 2008, T. 343.

<sup>54</sup> Hearing, 25 January 2010, T. 9801.

<sup>55</sup> Decision on Uncontested Srebrenica Experts Reports, 26 August 2009.

21. On 13 and 14 December 2008, witness Nikola Tošković gave evidence by deposition at his home pursuant to Rule 71.<sup>56</sup>
22. Pursuant to Rule 73 *ter*, pre-Defence conferences were held on 29 January 2010<sup>57</sup> and 10 February 2010.<sup>58</sup>
23. At the pre-Defence conference held on 10 February 2010, the Trial Chamber allocated the Defence 180 hours to present their case.<sup>59</sup>
24. The Defence case commenced on 22 February 2010 with its Opening Statement<sup>60</sup> and concluded on 11 January 2011.<sup>61</sup> The Defence adduced evidence from 28 witnesses in total, of whom 21 testified *viva voce*. The evidence of three witnesses was admitted in written form pursuant to Rule 92 *bis*, three pursuant to Rule 92 *quater* and one pursuant to Rule 94 *bis*.
25. On 4 March 2011, the Parties submitted their Final Briefs.<sup>62</sup> The closing arguments took place between 28 March 2011 and 31 March 2011.<sup>63</sup>
26. The Trial Chamber admitted a total of 3,797 exhibits into evidence; 2,945 exhibits were tendered by the Prosecution, 849 by the Defence and three by the Trial Chamber.

(a) Provisional Release

27. On 17 December 2008, Momčilo Perišić was granted provisional release, to last from 22 December 2008 to 9 January 2009.<sup>64</sup> He was again provisionally released between 9 and 17 April 2009,<sup>65</sup> 25 July 2009 and 14 August 2009<sup>66</sup>, 9 December 2009 and 14 January 2010,<sup>67</sup> 23 July 2010 and 19 August 2010.<sup>68</sup> The Trial Chamber nevertheless also denied several requests for provisional release.<sup>69</sup>

<sup>56</sup> Filing of Public Redacted and Corrected Version of 2 December 2008 Decision for Deposition Pursuant to Rule 71, 10 February 2009.

<sup>57</sup> Rule 73 Conference, 29 January 2010, T. 9803 (Oral Order).

<sup>58</sup> Scheduling Order, 8 February 2010.

<sup>59</sup> Pre-Defence Conference, 10 February 2010, T. 9845.

<sup>60</sup> Defence Opening Statement, 22 February 2010, T. 9855-9913.

<sup>61</sup> Hearing, 11 January 2011, T. 14582-14588.

<sup>62</sup> Prosecution Final Brief, 4 March 2011; Defence Final Brief, 4 March 2011.

<sup>63</sup> Closing Arguments, 8 February 2011, T. 14615.

<sup>64</sup> Decision on Mr. Perišić's Motion for Provisional Release During the Winter Recess, 17 December 2008.

<sup>65</sup> Decision on Mr. Perišić's Motion for Provisional Release During the Easter Court Recess, 6 April 2009.

<sup>66</sup> Decision on Perišić's Motion for Provisional Release During the Summer Court Recess, 17 July 2009.

<sup>67</sup> Decision on Mr. Perišić's Motion for Provisional Release, 7 December 2009.

<sup>68</sup> Public Redacted Version of Decision on Perišić's Motion for Provisional Release During the Summer Recess, 15 July 2010.

<sup>69</sup> Decision on Mr. Perišić's Motion for Provisional Release, 31 March 2010; Decision on Perišić's Motion for Provisional Release During the Winter Recess, 15 December 2010; Decision on Perišić's Motion for Provisional Release, 14 July 2011.

(b) Site Visit

28. In accordance with Rule 4, the Trial Chamber and the Parties conducted an on-site visit to various locations in the Republic of Croatia and BiH between 21 and 26 June 2009.<sup>70</sup> The Trial Chamber admitted *proprio motu* the record of the visit into evidence.<sup>71</sup>

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<sup>70</sup> Order on Site Visit with Annex Containing Rules of Procedure and Conduct during Site Visit, 21 May 2009, p. 2.

<sup>71</sup> Decision on the Admission into Evidence of Record of Site Visit, 2 December 2010.

## **B. ANNEX B – GLOSSARY**

### 1. ICTY Judgements and Decisions

<i>Aleksovski</i> Appeal Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, Judgement, 24 March 2000
<i>Aleksovski</i> Trial Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, Judgement, 25 June 1999
<i>Aleksovski</i> February 1999 Appeal Decision	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999
<i>Babić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Milan Babić</i> , Case No. IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005
<i>Blagojević and Jokić</i> Appeal Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-A, Judgement, 9 May 2007
<i>Blagojević and Jokić</i> Trial Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-T, Judgement, 17 January 2005
<i>Blaškić</i> Appeal Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 29 July 2004
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgement, 3 March 2000
<i>Boškoski and Tarčulovski</i> Appeal Judgement	<i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-A, Judgement, 19 May 2010
<i>Boškoski and Tarčulovski</i> Trial Judgement	<i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-T, Judgement, 10 July 2008
<i>Brdanin</i> Appeal Judgement	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-A, Judgement, 3 April 2007

<i>Brđanin</i> Trial Judgement	<i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-T, Judgement, 1 September 2004
<i>Čelebići</i> Appeal Judgement	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić, and Esad Landžo</i> , Case No. IT-96-21-A, Judgement, 20 February 2001
<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić, and Esad Landžo</i> , Case No. IT-96-21-T, Judgement, 16 November 1998
<i>Delić</i> Trial Judgement	<i>Prosecutor v. Rasim Delić</i> , Case No. 04-83-T, 15 September 2008
<i>Deronjić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Miroslav Deronjić</i> , Case No. IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005
<i>Erdemović</i> Appeal Judgement	<i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-A, Judgement, 7 October 1997
<i>Furundžija</i> Trial Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 December 1998
<i>Galić</i> Appeal Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, Judgement, 30 November 2006
<i>Galić</i> Trial Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003
<i>Galić</i> June 2002 Appeal Rule 92 <i>bis</i> (C) Decision	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 <i>bis</i> (C), 7 June 2002
<i>Galić</i> July 2002 Trial Expert Witnesses Decision	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002

<i>Gotovina et al.</i> Trial Judgement	<i>Prosecutor v. Ante Gotovina, Ivan Čermak and Mladen Markač</i> , Case No. IT-06-90-T, Judgement, 15 April 2011
<i>Hadžihasanović and Kubura</i> Appeal Judgement	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-A, Judgement, 22 April 2008
<i>Hadžihasanović and Kubura</i> Trial Judgement	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T, Judgement, 15 March 2006
<i>Hadžihasanović and Kubura</i> Appeal Jurisdiction Decision	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003
<i>Halilović</i> Appeal Judgement	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, Appeal Judgement, 16 October 2007
<i>Halilović</i> Trial Judgement	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T, Judgement, 16 November 2005
<i>Haradinaj et al.</i> Appeal Judgement	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj</i> , Case No. IT-04-84-A, Judgement, 19 July 2010
<i>Haraqija and Morina</i> Appeal Judgement	<i>Prosecutor v. Astrit Haraqija and Bajrush Morina</i> , Case No. IT-04-84-R77.4-A, Judgement, 23 July 2009
<i>Jelisić</i> Trial Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-T, Judgement, 14 December 1999
<i>M. Jokić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-A, Judgement on Sentencing Appeal, 30 August 2005

<i>M. Jokić</i> Sentencing Trial Judgement	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-S, Sentencing Judgement, 18 March 2004
<i>Kordić and Čerkez</i> Appeal Judgement	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-A, Judgement, 17 December 2004
<i>Kordić and Čerkez</i> Appeal Judgement Corrigendum of 26 January 2005	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-A, “Corrigendum to Judgement of 17 December 2004”, 26 January 2005
<i>Kordić and Čerkez</i> Trial Judgement	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001
<i>Krajišnik</i> Appeal Judgement	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, Judgement, 17 March 2009
<i>Krajišnik</i> Trial Judgement	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, Judgement, 27 September 2006
<i>Krnojelac</i> Appeal Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, Judgement, 17 September 2003
<i>Krnojelac</i> Trial Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgement, 15 March 2002
<i>Krstić</i> Appeal Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, Judgement, 19 April 2004
<i>Krstić</i> Trial Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, Judgement, 2 August 2001
<i>Kunarac et al.</i> Appeal Judgement	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković</i> , Case No. IT-96-23-A & IT-96-23/1-A, Judgement, 12 June 2002

<i>Kunarac et al.</i> Trial Judgement	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković</i> , Case No. IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001
<i>Kupreškić et al.</i> Appeal Judgement	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlado Kupreškić, Drago Josipović and Vladimir Šantić</i> , Case No. IT-95-16-A, Judgement, 23 October 2001
<i>Kupreškić et al.</i> Trial Judgement	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlado Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić</i> , Case No. IT-95-16-T, Judgement, 14 January 2000
<i>Kvočka et al.</i> Appeal Judgement	<i>Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić and Dragoljub Prcać</i> , Case No. IT-98-30/1-A, Judgement, 28 February 2005
<i>Kvočka et al.</i> Trial Judgement	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać</i> , Case No. IT-98-30/1-T, Judgement, 2 November 2001
<i>Limaj et al.</i> Trial Judgement	<i>Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu</i> , Case No. IT-03-66-T, Judgement, 30 November 2005
<i>Martić</i> Appeal Judgement	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-A, Judgement, 8 October 2008
<i>Martić</i> Trial Judgement	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-T, Judgement, 12 June 2007
<i>Martić</i> September 2006 Appeal Decision	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-AR73.2, Decision on Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 14 September 2006
<i>D. Milošević</i> Appeal Judgement	<i>Prosecutor v. Dragomir Milošević</i> , Case No.



	IT-98-29/1-A, Judgement, 12 November 2009
<i>D. Milošević</i> Trial Judgement	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-T, Judgement, 12 December 2007
<i>D. Milošević</i> June 2007 Appeal Decision	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-AR73.1, Decision on Interlocutory Appeals Against Trial Chamber's Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts and Prosecution's Catalogue of Agreed Facts, 26 June 2007
<i>Milutinović et al.</i> Trial Judgement	<i>Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Streten Lukić</i> , Case No. IT-05-87-T, Judgement, 26 February 2009
<i>Mrda</i> Trial Sentencing Judgement	<i>Prosecutor v. Darko Mrda</i> , Case No. IT-02-59-S, Sentencing Judgement, 31 March 2004
<i>Mrkšić and Šljivančanin</i> Appeal Judgement	<i>Prosecutor v. Mile Mrkšić and Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, Judgement, 5 May 2009
<i>Mrkšić et al.</i> Trial Judgement	<i>Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin</i> , Case No. IT-95-13/1-T, Judgement, 27 September 2007
<i>Naletilić and Martinović</i> Appeal Judgement	<i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No. IT-98-34-A, Judgement, 3 May 2006
<i>D. Nikolić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-2-A, Judgement on Sentencing Appeal, 4 February 2005
<i>M. Nikolić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-A, Judgement on Sentencing Appeal,

	8 March 2006
<i>Orić</i> Appeal Judgement	<i>Prosecutor v. Naser Orić</i> , Case No. IT-03-68-A, Judgement, 03 July 2008
<i>Orić</i> Trial Judgement	<i>Prosecutor v. Naser Orić</i> , Case No. IT-03-68-T, Judgement, 30 June 2006
<i>Popović et al.</i> January 2008 Appeal Decision	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Zdravko Tolimir, Radivoje Miletić, Milan Gvero, Vinko Pandurević and Milorad Trbić</i> , Case No. IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008
<i>Popović et al.</i> Trial Judgement	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Zdravko Tolimir, Radivoje Miletić, Milan Gvero, Vinko Pandurević and Milorad Trbić</i> , Case No. IT-05-88-T, Judgement, 10 June 2010
<i>Popović et al.</i> December 2007 Trial Decision	<i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Zdravko Tolimir, Radivoje Miletić, Milan Gvero, Vinko Pandurević and Milorad Trbić</i> , Case No. IT-05-88-T, Decision on Admissibility of Intercepted Communications, 7 December 2007
<i>Prlić et al.</i> November 2007 Appeal Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Pektović, Valentin Ćorić and Berislav Pušić</i> , Case No. 04-74-AR73.6, Decision on Appeals against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 November 2007

<i>Prlić et al.</i> April 2009 Appeal Decision	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Pektović, Valentin Ćorić and Berislav Pušić</i> , Case No. 04-74-AR73.15, Decision on Jadranko Prlić's Interlocutory Appeal against the Decision regarding Supplement to the Accused Prlić's Rule 84 <i>bis</i> Statement, 20 April 2009
<i>Simić</i> Appeal Judgement	<i>Prosecutor v. Blagoje Simić</i> , Case No. IT-95-9-A, Judgement, 28 November 2006
<i>Stakić</i> Appeal Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, Judgement, 22 March 2006
<i>Stakić</i> Trial Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, Judgement, 31 July 2003
<i>Stanišić and Župljanin</i> February 2011 Trial Decision	<i>Prosecutor v. Mićo Stanišić and Stojan Župljanin</i> , Case No. IT-08-91-T, Decision Granting in Part the Prosecution's Bar Table Motion and the Prosecution's Supplemental Bar Table Motion, 1 February 2011
<i>Strugar</i> Appeal Judgement	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-A, Judgement, 17 July 2008
<i>Strugar</i> Trial Judgement	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-T, Judgement, 31 January 2005
<i>Strugar</i> November 2002 Appeal Decision	<i>Prosecutor v. Pavle Strugar, Miodrag Jokić and others</i> , Case No. IT-01-42-AR72, Decision on Interlocutory Appeal, 22 November 2002
<i>Tadić</i> Appeal Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A, Judgement, 15 July 1999
<i>Tadić</i> Trial Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-T, Opinion and Judgement, 7 May 1997

<i>Tadić</i> October 1995 Appeal Jurisdiction Decision	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
<i>Vasiljević</i> Appeal Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004
<i>Vasiljević</i> Trial Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, Judgement, 29 November 2002

## 2. ICTR Judgements and Decisions

<i>Akayesu</i> Trial Judgement	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-T, Judgement, 2 September 1998
<i>Karemera et al.</i> June 2006 Appeal Decision	<i>Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera</i> , Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006
<i>Karera</i> Appeal Judgement	<i>Prosecutor v. Francois Karera</i> , Case No. ICTR-01-74-A, Judgement, 2 February 2009
<i>Kayishema and Ruzindana</i> Appeal Judgement	<i>Prosecutor v. Clement Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-A, Judgement, 1 June 2001
<i>Kayishema and Ruzindana</i> Trial Judgement	<i>Prosecutor v. Clement Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-T, Judgement, 21 May 1999
<i>Muvunyi</i> Trial Judgement	<i>Prosecutor v. Tharcisse Muvunyi</i> , Case No. ICTR-2000-55A-T, Judgement, 12 September 2006
<i>Nahimana et al.</i> Appeal Judgement	<i>Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze</i> , Case No. ICTR-99-52-A, Judgement, 28 November 2007

<i>Nahimana et al.</i> Trial Judgement	<i>Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze</i> , Case No. ICTR-99-52-T, Judgement, 3 December 2003
<i>Ndindabahizi</i> Appeal Judgement	<i>Prosecutor v. Emmanuel Ndindabahizi</i> , Case No. ICTR-01-71-A, Judgement, 16 January 2007
<i>Ntagerura et al.</i> Appeal Judgement	<i>Prosecutor v. Andre Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe</i> , Case No. ICTR-99-46-A, Judgement, 7 July 2006
<i>Ntakirutimana and Ntakirutimana</i> Appeal Judgement	<i>Prosecutor v. Elizaphan Ntakirutimana and Gerard Ntakirutimana</i> , Case No. ICTR-96-10-A & ICTR-96-17-A, Judgement, 13 December 2004
<i>Seromba</i> Appeal Judgement	<i>Prosecutor v. Athanase Seromba</i> , Case No. ICTR-2001-66-A, Judgement, 12 March 2008
<i>Simba</i> Appeal Judgement	<i>Prosecutor v. Aloys Simba</i> , Case No. ICTR-01-76-A, Judgement, 27 November 2007

### 3. Other Jurisprudence

<i>High Command Case</i>	<i>United States v. Wilhelm von Leeb et al.</i> , Judgement, 27 October 1948, Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, Vol. XI
<i>Hostage Case</i>	<i>United States v. Wilhelm List et al.</i> , Judgement, 19 February 1948, Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, Vol. XI
<i>Threat or Use of Nuclear Weapons</i> , ICJ Advisory Opinion	Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996
<i>Tamba Brima et al.</i> Trial Judgement	<i>Prosecutor v. Alex Tamba Brima, Brima Bazzy</i>

	<i>Kamara and Santigie Borbor Kanu</i> , Case No. SCSL-04-16-T, 20 June 2007
Tokyo Judgement	Judgement of the International Military Tribunal for the Far East, Tokyo, 12 November 1948, Vol. I

#### 4. Table of other Authorities

##### (a) Domestic Laws

SFRY Criminal Code	Criminal Code of the Socialist Federal Republic of Yugoslavia, adopted by the SFRY Assembly at the session of the Federal Council on 28 September 1976; published in the official Gazette of the SFRY No. 44 of 8 October 1976; correction made in the Official Gazette, SFRY No. 36 of 15 July 1977; entry into force 1 July 1977; after the dissolution of the SFRY in 1992 the Code remained in force, with some modifications, and was renamed the Criminal Code of the FRY.
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##### (b) International Legal Instruments and Commentaries

Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977
Common Article 3	Article 3 common to the four Geneva Conventions of 1949
Geneva Convention IV	Geneva Convention (IV) relative to the Protection of Civil Persons in Time of war,

	12 August 1949
ICRC Commentary on Additional Protocols	Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Geneva: ICRC, 1987)

5. Table of Short Forms

ABiH	Army of Bosnia and Herzegovina
Accused	Momčilo Perišić
APC	Armoured Personnel Carriers
APZB NO	Autonomous Province of Western Bosnia National Defence
BiH	Bosnia and Herzegovina
City Market	Indoor City Market of Sarajevo
CS	Disabling Chemical Agent
CSB	Security Service Centre
BCS	The Bosnian-Croatian-Serbian Language
BiH	Bosnia and Heržegovina
D-2	Type of Diesel Oil
DNA	Deoxyribo Nucleic Acid
Defence Adjudicated Facts I	Trial Chamber Decision on Defence Motion for Judicial Notice of Adjudicated Facts, 4 May 2010
Defence Adjudicated Facts II	Trial Chamber Decision on Second Defence Motion for Judicial Notice of Adjudicated Facts, 2 August 2010
Defence Agreed Facts	Trial Chamber Decision in Respect of Joint Submission of Agreed Facts Proposed by the Defence, 29 June 2010

Defence Final Brief	Mr. Perišić's Final Brief (confidential), 4 March 2011
Drina Wolves	Podrinje Detachment or Drina Corps Manoeuvre Detachment
DutchBat	Dutch Battalion of UNPROFOR
EC	European Community
ECOSOC	United Nations Economic and Social Council
ECtHR	European Court of Human Rights
Ex. Dxxxx	Defence exhibit
Ex. Pxxxx	Prosecution exhibit
Exs	Exhibits
FAB	Fugasno Avio Bombes
Fn.	Footnote
FRY	Federal Republic of Yugoslavia
GŠ	Main Staff (predecessor to the General Staff)
HDZ	Croatian Democratic Union
HK	Herzegovina Corps
HV	Croatian Army
HVO	Croatian Defence Council
IBK	Eastern Bosnia Corps
ICFY	International Conference on the former Yugoslavia
ICJ	International Court of Justice



ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994
IFOR	Implementation Force (NATO-led multinational force serving in BiH)
IHL	International Humanitarian Law
IKM	Forward Command Post
JNA	Yugoslav People's Army
KDZ	Anti-Bomb-Squad
Kg	Kilogram
KK	Kozluk Site
KSJ (SUC)	Special Units Corps
KSZ	Department for Forensic and Anti-Terrorism
MOD	Ministry of Defence
MUP	Ministry of the Interior in Republika Srpska
NATO	North Atlantic Treaty Organisation
NCO	Non-Commissioned Officer
NGŠ	Chief of the General Staff

NK	Nova Kasaba
NVO	Weapons and Military Equipment
OP	Observation Post
OTP/Prosecution	Office of the Prosecutor
p.	Page
pp	Pages
para.	Paragraph
paras.	Paragraphs
PC	Personnel Centre
PJP	Special Police Units
Prosecution Final Brief	Prosecution Final Trial Brief (confidential), 4 March 2011
PTT Building	Former Postal, Telephone and Telegraph Building that harboured the UNMO headquarters
RS	Republika Srpska
RSK	Republika Srpska Krajina
Rules	Rules of Procedure and Evidence of the International Tribunal for the former Yugoslavia (IT/32/Rev.45)
SAO	Serbian Autonomous District
Sarajevo Adjudicated Facts I	Trial Chamber's Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts Concerning Sarajevo, 26 June 2008
Sarajevo Adjudicated Facts II	Trial Chamber's Decision on Second Motion for

	Judicial Notice of Facts Relevant to the Sarajevo Crime Base, 17 September 2008
Sarajevo Adjudicated Facts III	Trial Chamber's Decision on Third Motion for Judicial Notice of Facts Relevant to the Sarajevo Crime Base, 12 January 2010
SBC	Slavonia-Baranja Corps in the SVK
SDA	Party of Democratic Action
SDC (VSO)	Supreme Defence Council
SDS	Serb Democratic Party
SerBiH	Serbian Republic of Bosnia and Heržegovina
SFRY	Socialist Federative Republic of Yugoslavia
SMO	Federal Ministry of Defence
Srebrenica Adjudicated Facts	Trial Chamber's Decision on Prosecution's Motion for Judicial Notice of Facts Relevant to the Srebrenica Crime Base, 22 September 2008
Srebrenica Agreed Facts	Trial Chamber's Decision in Respect of Srebrenica Agreed Facts, 19 August 2009
SRK	Sarajevo-Romanija Corps
SSNO	Federal Secretariat of People's Defence
SVK	Serbian Army of Krajina
T.	Transcript page
TEZ	Total Exclusion Zone
TG	Tactical Group
TNT	Tri Nitro Toluene

TO	Territorial Defence forces
Tribunal	International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991
TRZ	Technical Overhaul Company
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNHQ	United Nations Headquarters
UNMO	United Nations Military Observer
UNPAS	United Nations Protected Areas
UNPROFOR	United Nations Protection Force
UNPROFOR G-2	United Nations Protection Force Intelligence Officer
UNSC	United Nations Security Council
USA	United States of America
VBR	Modified Aerial Bomb with Multiple Rocket Launchers
VMA	Military Medical Academy Hospital in Belgrade
VJ	Yugoslav Army
VRS	Army of Republika Srpska