



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

Case No. IT-02-60-T
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IN TRIAL CHAMBER I, SECTION A

Before: Judge Liu Daqun, Presiding
Judge Volodymyr Vassylenko
Judge Carmen Maria Argibay

Registrar: Mr. Hans Holthuis

Judgement of: 17 January 2005

PROSECUTOR

v.

**VIDOJE BLAGOJEVIĆ
DRAGAN JOKIĆ**

JUDGEMENT

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Mr. Miodrag Stojanović and Mr. Branko Lukić for Dragan Jokić

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I. INTRODUCTION

1. On or about 6 July 1995,¹ forces of the Army of Republika Srpska (“VRS”)² began an attack against the “safe area” of Srebrenica.³ The attack continued through 11 July, when the VRS forces entered Srebrenica town in Bosnia and Herzegovina. The Prosecution alleges that in the days following this attack, VRS forces forcibly transferred the Bosnian Muslim women and children of Srebrenica out of the enclave and captured, detained, summarily executed, and buried over 7,000 Bosnian Muslim boys and men from the Srebrenica enclave.⁴

2. The Prosecution alleges that the Accused, Vidoje Blagojević and Dragan Jokić participated in these crimes. It is alleged, *inter alia*, that they were members of a joint criminal enterprise, the common purpose of which was “to forcibly transfer the women and children from the Srebrenica enclave to Kladanj, on 12 July and 13 July 1995; and to capture, detain, summarily execute by firing squad, bury and rebury thousands of Bosnian Muslim men and boys aged 16 to 60 from the Srebrenica enclave from 12 July 1995 until and about 19 July 1995.”⁵

3. A brief description of the Accused, including the position and alleged role during the period relevant to the Indictment (from 11 July to 1 November 1995) of each of the Accused, and of the charges brought by the Prosecution, is presented in the paragraphs below.

A. Vidoje Blagojević

1. The Accused

4. Vidoje Blagojević was born in the Bratunac municipality on 22 June 1950.⁶ As a member of the Army of the Socialist Federal Republic of Yugoslavia (“JNA”), he rose to the rank of Lieutenant Colonel. On 2 June 1992, during the armed conflict in Bosnia and Herzegovina, he became the commander of the 1st Zvornik Infantry Brigade (“Zvornik Brigade”), a newly formed unit of the VRS.⁷ He later served on the VRS Drina Corps Staff, and for several months in 1993 he served as the acting Chief of Staff/Deputy Commander of the 1st Bratunac Light Infantry

¹ Throughout the Judgement, any reference to “July” refers to July 1995, unless otherwise specified.

² The Glossary, found in Annex 1, contains an explanation of all abbreviations used throughout the Judgement. Each abbreviation is also defined in the text upon its first use.

³ The name “Srebrenica” is used to refer to the municipality of Srebrenica, town of Srebrenica or the Srebrenica enclave. In describing the events, the Trial Chamber will be as precise as possible in identifying the location where the event in question took place.

⁴ An overview of the relevant facts that led to these events is presented in the “Factual Background relevant to this Case,” section II. C.

⁵ Indictment, para. 30.

⁶ Indictment, para. 1.

⁷ Indictment, para. 1; Ex. P395, Publication: *Drinks*, Headline: On the Road to Victory, June 1995.

Brigade (“Bratunac Brigade”).⁸ On 25 May 1995, he was appointed as the Commander of the Bratunac Brigade.⁹ In July 1995, Vidoje 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.¹⁰ When he was arrested in August 2001, Vidoje Blagojević was working with the VRS General Staff as Head of the Engineering Section in Banja Luka.¹¹

2. Overview of the Case against Vidoje Blagojević

5. The Prosecution alleges that the Bratunac Brigade was “responsible for the security of the territory opposite the northern, eastern and southern boundaries of the Srebrenica ‘safe area’ and directly participated in the actual capture of the Srebrenica ‘safe area’.”¹² It is also alleged that elements of the Bratunac Brigade were involved in the subsequent mass killings in and around, and the forcible transfer of civilians out of, the Srebrenica enclave during the period relevant to the Indictment, as well as the reburial operation that occurred from about 1 August to 1 November 1995.¹³

6. The Prosecution alleges that “during the VRS attack on the Srebrenica ‘safe area’ and the subsequent killings and mass executions of Bosnian Muslim men, Colonel Blagojević [...] was present in the Bratunac Brigade zone of responsibility exercising command through at least 17 July.”¹⁴ After 17 July, he led his troops as part of a VRS operation in an attack against the Bosnian Muslim enclave of Žepa. “After the fall of Žepa, he returned to the Bratunac Brigade zone of responsibility where he remained until 22 September 1995, on which day the Bratunac Brigade was attached to the Sarajevo-Romanjia-Corps (“SRK”)¹⁵ According to the Prosecution, Colonel Blagojević did not remain exclusively in the sector of the SRK, but frequently travelled back to his brigade’s headquarters location in Bratunac.¹⁶

⁸ Indictment, para. 1. The Defence contests that “[w]hile the Prosecution presented evidence that Colonel Blagojević held the position of *acting Chief of Staff* of the Bratunac Brigade for several months in 1993, no evidence was adduced proving that Colonel Blagojević also held the title of, or acted as, the *acting Deputy Commander* of the Bratunac Brigade.” Blagojević Defence Final Brief, para. 182 (*referring* to Witness DP-106, T. 10362-66). The Trial Chamber heard evidence that Colonel Blagojević served as acting Chief of Staff of the Bratunac Brigade for several months. This evidence is unclear on the exact year that he served as such. The Prosecution military expert holds in his report that Colonel Blagojević was acting Chief of Staff in 1993, whereas Momir Nikolić testified that this was in 1994. Ex. P358, Butler Military Narrative, p. 21, para. 2.8; Momir Nikolić, T. 1599-1601, 1867.

⁹ See *infra* section II. B. 1. (c), para. 41.

¹⁰ See Pre-Trial Provisional Release Request of Accused Blagojević, 17 July 2002, fn. 6.

¹¹ Pre-Trial Provisional Release Request of Accused Blagojević, 17 July 2002, para. 3.

¹² Indictment, para. 1.

¹³ Indictment, paras 36-51.

¹⁴ Indictment, para. 2.

¹⁵ Indictment, para. 2.

¹⁶ Indictment, para. 2.

7. It is alleged that by virtue of his position as Commander of the Bratunac Brigade, Colonel Blagojević participated in the forcible transfer of women and children from the Srebrenica enclave to Kladanj on 12 and 13 July, and that he was “responsible for all prisoners captured, detained, or killed within the Bratunac Brigade zone of responsibility, including those prisoners captured in the Bratunac Brigade zone and subsequently transported with [his] knowledge to the Zvornik Brigade zone for further detention and execution.”¹⁷ The Prosecution submits that thousands of Bosnian Muslim men were collected, transported and subsequently executed during the period of 12-19 July.¹⁸ ‘Opportunistic killings’ are alleged to have occurred in Potočari and Bratunac, as Bosnian Muslims were taken prisoner and temporarily detained in both locations.¹⁹ The Prosecution further submits that mass executions occurred in various locations in the Srebrenica, Bratunac and Zvornik municipalities, including at the Kravica Warehouse, in Orahovac near the Grbavci school, at the Petkovci School, Branjevo Military Farm and the Pilica Cultural Centre.²⁰

8. Accordingly, Vidoje Blagojević is charged with six counts, under both Article 7(1) and Article 7(3) of the Statute of the Tribunal. Vidoje Blagojević is charged under Count 1B,²¹ with complicity to commit genocide, punishable under Article 4(3)(e) of the Statute; under Count 2, with extermination, a crime against humanity punishable under Article 5(b) of the Statute; under Counts 3 and 4, with murder, as a crime against humanity punishable under Article 5(a) of the Statute, and as a violation of the laws or customs of war punishable under Article 3 of the Statute; under Count 5, with persecutions, a crime against humanity punishable under Article 5(h) of the Statute, through murder, cruel and inhumane treatment, terrorising of civilians, destruction of personal property and effects, and forcible transfer; and finally, under Count 6, with inhumane acts (forcible transfer), a crime against humanity punishable under Article 5(i) of the Statute.

9. The Indictment alleges that Colonel Blagojević incurs responsibility under Article 7(1) of the Statute as a result of his individual participation in these acts.²² Additionally, Colonel Blagojević is alleged to incur criminal responsibility under Article 7(3) of the Statute since “he knew or had reason to know that his subordinates were about to commit such acts or had done so

¹⁷ Indictment, para. 36. *See generally* Indictment, paras 36-51.

¹⁸ Prosecution Pre-Trial Brief, paras 34-100, 108-09.

¹⁹ Prosecution Pre-Trial Brief, paras 31-32, 37-41; Indictment, paras 43-45. ‘Opportunistic killings’ are also alleged to have occurred in the Zvornik Brigade area of responsibility. Indictment, paras 47.6-47.8.

²⁰ Indictment, paras 46, 46.4, 46.6, 46.7, 46.10, 46.11.

²¹ Following the guilty plea of Momir Nikolić and the filing of a new indictment in May 2003, the Indictment does not contain a Count 1A (genocide), as this count was limited to Momir Nikolić.

²² Indictment, paras 27 and 30.

and he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”²³

10. On 5 April 2004, the Trial Chamber entered a judgement of acquittal for Vidoje Blagojević on Counts 2 to 4 of the Indictment, insofar as his individual criminal responsibility is alleged under Article 7(1) for planning, instigating, ordering and committing the crimes. The Trial Chamber further entered a judgement of acquittal on Counts 2, 4 -6 of the Indictment, insofar as Vidoje Blagojević’s individual criminal responsibility is alleged under Article 7(1) for planning, instigating and ordering the crimes.²⁴

B. Dragan Jokić

1. The Accused

11. Dragan Jokić was born on 20 August 1957 in the village of Grbavci in the Zvornik municipality.²⁵ He attended military school for non-commissioned officers and the military academy.²⁶ He completed a battalion commander’s course in engineering and he joined the VRS on 16 May 1992.²⁷ Dragan Jokić was Chief of Staff of the Zvornik Brigade during the first half of June 1992 and from end of July 1992 until 1st of December 1992.²⁸ During the time period relevant to the Indictment, Dragan Jokić was the Chief of Engineering of the Zvornik Brigade and held the rank of Major.²⁹ He was a Lieutenant Colonel working for the 5th Corps of the VRS located in Sokolac, Bosnia and Herzegovina, when he voluntarily surrendered to the Tribunal in August 2001.³⁰

2. Overview of the Case against Dragan Jokić

12. The Prosecution alleges that in July 1995, Major Jokić, as Chief of Engineering, was “the advisor to the Zvornik Brigade Commander and to the Chief of Staff/Deputy Commander for matters relating to Engineering Services such as defence works, mining activities, road construction and excavation projects.”³¹ Dragan Jokić is also alleged to have been responsible for

²³ Indictment, para. 28.

²⁴ Judgement on Motions for Acquittal. The Trial Chamber also dismissed certain factual allegations brought against Vidoje Blagojević, 5 April 2004, p 24.

²⁵ Indictment, para. 12.

²⁶ Indictment, para. 12; Ex. P398, detail from VRS personnel file for Dragan Jokić, 20 March 1994.

²⁷ Ex. P398, detail from VRS personnel file for Dragan Jokić, 20 March 1994.

²⁸ Dragan Obrenović, T. 2875; Ex. P398, detail from VRS personnel file for Dragan Jokić, 20 March 1994, indicates that Dragan Jokić was appointed Chief of Engineering on 6 December 1992.

²⁹ See *infra* section II. B. 1. (d).

³⁰ Proposal for a Provisional Release from Prison for the Defendant Dragan Jokić, 10 January 2002, p. 2; Indictment, para. 12.

³¹ Indictment, para. 13.

“planning, directing, organising and monitoring the activities of the Zvornik Brigade Engineering Company.”³² In this respect, the Prosecution alleges that he “was empowered to issue orders to the Engineering Company which implemented the directives of the Brigade Commander and/or the Chief of Staff/Deputy Commander.”³³

13. In addition, the Prosecution alleges that Dragan Jokić was the Duty Officer³⁴ of the Zvornik Brigade for a 24-hour period, from the morning of 14 July through the morning of 15 July.³⁵ It is submitted that in that capacity, he was “the designated representative of the Zvornik Brigade Commander or Chief of Staff/Deputy Commander, and remained present at the Zvornik Brigade Headquarters during this period of duty.”³⁶ The Prosecution alleges that “operational orders from the Superior Command (Main Staff and Drina Corps) passed through him, and reports from the Zvornik Brigade to the Superior Command were either written by him, or relayed through him. In the event that the Commander or Chief of Staff was temporarily absent from the headquarters during the duty period, the Duty Officer would ensure that their orders to subordinates were sent, and reports from these subordinates were received in a timely manner.”³⁷ According to the Prosecution, “the Duty Officer was the central point of co-ordination and communications for the Zvornik Brigade zone of responsibility.”³⁸

14. Major Jokić, as Chief of Engineering of the Zvornik Brigade, is accused of having “assisted in the planning, monitoring, organising and carrying out of the burials involved in the murder operation” and of having, “as Brigade Duty Officer on 14 and 15 July 1995, assisted in co-ordinating communication between VRS officers and commands involving the transportation, detention, execution and burial of Srebrenica Muslims and issued or transmitted reports and updates to superiors on the progress of the overall murder operation.”³⁹ Forces of the Zvornik Brigade Engineering Company are also alleged to have “participated in th[e] reburial operation under the direction of Dragan Jokić”.⁴⁰

15. Accordingly, Dragan Jokić is charged with four counts under Article 7(1) of the Statute. Dragan Jokić is charged under Count 2 with extermination, a crime against humanity punishable under Article 5(b) of the Statute; under Counts 3 and 4, with murder, as a crime against humanity punishable under Article 5(a) of the Statute, and as a violation of the laws or customs of war

³² Indictment, para. 13.

³³ Indictment, para. 13.

³⁴ The terms ‘Duty Officer’ and ‘Duty Operation Officer’ are used interchangeably throughout the Judgement.

³⁵ Indictment, para. 14.

³⁶ Indictment, para. 14.

³⁷ Indictment, para. 14.

³⁸ Indictment, para. 14.

³⁹ Indictment, para. 36.

punishable under Article 3 of the Statute; and under Count 5, with persecutions, a crime against humanity punishable under Article 5(h) of the Statute, through murder, cruel and inhumane treatment, terrorising of civilians, and destruction of personal property and effects. In its Pre-Trial Brief, the Prosecution alleged that Dragan Jokić “played a key role in facilitating the murders, burials and reburials;” it does not refer to any events taking place outside the Zvornik Brigade ‘area of responsibility.’⁴¹ The Prosecution argues that Jokić’s liability under Count 5 therefore is limited to persecutions through murder, and cruel and inhumane treatment, including severe beatings in detention facilities in Zvornik. The Indictment alleges that Dragan Jokić incurs responsibility under Article 7(1) of the Statute as a result of his individual participation in the above acts.⁴²

16. On 5 April 2004, the Trial Chamber entered a judgement of acquittal for Dragan Jokić on Counts 2 to 5 of the Indictment, insofar as his individual criminal responsibility is alleged under Article 7(1) for planning, instigating and ordering the crimes.⁴³

⁴⁰ Indictment, para. 51.

⁴¹ Prosecution Pre-Trial Brief, paras 174-180.

⁴² Indictment, paras 27 and 30.

⁴³ Judgement on Motions for Acquittal, p. 24. The Trial Chamber also dismissed a number of factual allegations.

II. PRELIMINARY FACTUAL FINDINGS

A. General Considerations regarding the Evaluation of Evidence

17. The Trial Chamber has assessed and weighed the evidence in this case in accordance with the Tribunal's Statute and its Rules of Procedure and Evidence ("Rules"). Where no guidance is given by these sources, it has assessed the evidence in such a way as will best favour a fair determination of the case and which is consistent with the spirit of the Statute and the general principles of law.⁴⁴

18. Article 21(3) of the Statute provides that the Accused shall be presumed innocent until proved guilty.⁴⁵ The Prosecution therefore bears the burden of establishing the guilt of the Accused, and, in accordance with Rule 87(A) of the Rules, the Prosecution must do so beyond reasonable doubt.⁴⁶ In determining whether the Prosecution has done so with respect to each particular Count in the Indictment, the Trial Chamber has carefully considered whether there is any reasonable interpretation of the evidence admitted other than the guilt of the Accused. Any ambiguity or doubt has been resolved in favour of the Accused in accordance with the principle of *in dubio pro reo*.⁴⁷

19. Article 21(4)(g) of the Statute provides that no accused shall be compelled to testify against himself. In the present case, both Accused exercised their right to remain silent; no adverse inferences were drawn from the fact that they did not testify.⁴⁸

20. Rule 89(C) of the Rules provides that the Trial Chamber "may admit any relevant evidence which it deems to have probative value." Given that this is a joint trial of two accused, the Trial

⁴⁴ Rule 89(B). *See also* Guidelines on the Standards Governing the Admission of Evidence, 23 April 2003, with Annex ("Guidelines").

⁴⁵ This provision is in accordance with all major human rights instruments. *See* European Convention on Human Rights, Art. 6(2); International Covenant on Civil and Political Rights, Art. 14(2).

⁴⁶ *Krnjelac* Trial Judgement, para. 66. 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 proved. The burden of proof remains with the Prosecution for each allegation. The Trial Chamber interprets the standard "beyond reasonable doubt" to mean a high degree of probability; it does not mean certainty or proof beyond the shadow of doubt. *See* Criminal Evidence (4th Ed.), Richard May, London: Sweet & Maxwell, 1999, pp. 64-65.

⁴⁷ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Decision on Appellant's Motion for the Extension of the Time-Limit and Admission of Additional Evidence, dated 15 October 1998, filed 16 October 1998, para. 73, holding that: "[...] any doubt should be resolved in favour of the Appellant in accordance with the principle *in dubio pro reo*"; *Čelebići* Trial Judgement, para. 601: "at the conclusion of the case the accused is entitled to the benefit of the doubt as to whether the offence has been proved"; *Akayesu* Trial Judgement, para. 319: "[...] the general principles of law stipulate that, in criminal matters, the version favourable to the Accused should be selected."

⁴⁸ On the requests of Vidoje Blagojević to address the Trial Chamber, *see infra* Procedural History, Annex 2.

Chamber has carefully considered the charges against each of the Accused in light of the entire record, including all evidence put forth by the Prosecution and each of the Defendants.⁴⁹

21. As reflected in the Rules, there is a preference for witnesses to give evidence orally.⁵⁰ In addition to direct evidence, the Trial Chamber has admitted hearsay and circumstantial evidence. Hearsay evidence is evidence of facts not within the testifying witness' own knowledge.⁵¹ In evaluating the probative value of hearsay evidence, the Trial Chamber has carefully considered indicia of its reliability and, for this purpose, it has evaluated whether the statement was "voluntary, truthful and trustworthy" and has considered the content of the evidence and the circumstances under which it arose.⁵² Circumstantial evidence is evidence of circumstances surrounding an event or offence from which a fact at issue may be reasonably inferred.⁵³ In some instances, the Trial Chamber has relied upon circumstantial evidence in order to determine whether or not a certain conclusion could be drawn. The Trial Chamber follows the Appeals Chamber when considering that "[s]uch a conclusion must be established beyond reasonable doubt. [...] It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is [as] consistent with the [innocence of an accused as] with his or her guilt], he or she must be acquitted."⁵⁴

22. Both the Prosecution and Defence made applications under Rule 92 *bis*, which permits parties to tender evidence of a witness through means other than *viva voce* testimony. The Trial Chamber permitted the Parties to tender certified written statements or former testimony of witnesses under Rule 92 *bis* in lieu of live testimony.⁵⁵

23. In evaluating the evidence given *viva voce*, the Trial Chamber has considered the demeanour, conduct and character (as far as possible) of the witnesses, and their knowledge of the facts upon which they gave evidence. It has also given due regard to the individual circumstances

⁴⁹ *Simić* Trial Judgement, para. 18.

⁵⁰ Rule 89(F) of the Rules. *See also Prosecutor vs. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-AR73.5, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000, para. 19.

⁵¹ *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999 ("*Aleksovski* Decision"), para. 14: "the statement of a person made otherwise than in the proceedings in which it is being tendered, but nevertheless being tendered in those proceedings in order to establish the truth of what that person says." *See also* United States Federal Rules of Evidence, Rule 801(c): "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

⁵² *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on Defence Motion on Hearsay, 5 August 1996, para. 16. *See also Aleksovski* Decision, para. 15.

⁵³ *Brdanin* Trial Judgement, para. 35, *citing* Criminal Evidence (3rd Ed.), Richard May, London: Sweet & Maxwell, 1995.

⁵⁴ *Čelibići* Appeal Judgement, para. 458; Blagojević Defence Final Brief, para. 169; Jokić Defence Final Brief, para. 18; Prosecution Final Brief, para. 5; Closing Arguments for Vidoje Blagojević, T. 12433.

⁵⁵ *See* Procedural History, Annex 2, paras 36, 41 and 43.

of a witness, including testifying with the status of ‘suspect’,⁵⁶ and testifying with protective measures.⁵⁷ The Trial Chamber has considered the internal consistency of each witness’s testimony and other features of their evidence, as well as whether corroborating evidence exists in the trial record. Recalling that the evidence presented in this case relates to events that occurred nine years ago, the Trial Chamber endorses the conclusion of the *Krnojelac* Trial Chamber such that it did not treat

minor discrepancies between the evidence of various witnesses, or between the evidence of a particular witness and a statement previously made by that witness, as discrediting their evidence where that witness had nevertheless recounted the essence of the incident charged in acceptable detail. [...] Although the absence of a detailed memory on the part of these witnesses did make the task of the Prosecution more difficult, the lack of detail in relation to peripheral matters was in general not regarded as necessarily discrediting their evidence.⁵⁸

However, in cases of repeated contradictions within a witness’s testimony, the Trial Chamber has disregarded his or her evidence unless it is sufficiently corroborated.

24. The Trial Chamber has heard the testimony of former co-accused, Momir Nikolić and Dragan Obrenović, who appeared as witnesses for the Prosecution after having been convicted by the Trial Chamber, following them pleading guilty.⁵⁹ As is the case for all witnesses, the Trial Chamber has assessed their evidence in light of the circumstances under which they gave their testimony and in particular, that they testified pursuant to a plea agreement; that they took the solemn declaration to speak the truth; that the charges dropped against them were dropped without prejudice; and that they had not yet been sentenced at the time of their testimony. Their testimony has been evaluated against the complete trial record.

⁵⁶ Rule 2 defines “suspect” as “a person concerning whom the Prosecutor possesses reliable information which tends to show that the person may have committed a crime over which the Tribunal has jurisdiction.” See Decision on Prosecution’s Motion for Clarification of Oral Decision Regarding Admissibility of Accused’s Statements, 18 September 2003, paras 24-27. The Trial Chamber has heard evidence from sixteen witnesses with the status of suspect. Twelve of those witnesses were witnesses for the Prosecution, three of those witnesses were witnesses for Vidoje Blagojević and one was a witness for Dragan Jokić.

⁵⁷ The Trial Chamber strongly supports the work of the Victim and Witness Unit of the Tribunal and the existence of protective measures for witnesses who appear before the Tribunal. See Decision On Prosecution’s Motion For Order Of Protection, 18 February 2003, paras 9-10. It observes that while many witnesses are more forthcoming and truthful when testifying with the protective measures such as a pseudonym, face distortion and voice distortion, this is not always the case. The Trial Chamber has endeavoured, to the extent possible given the limited background and circumstances about each witness known to it, to discern whether personal motivations may have improperly influenced a witness’s testimony.

⁵⁸ *Krnojelac* Trial Judgement, para. 69. See also *Kupreškić* Appeal Judgement, para. 31; Decision on Prosecution’s Notice of Filing Rule 92 *bis* Statements, 28 September 2004.

⁵⁹ Two other witnesses who appeared for the Prosecution had also pled guilty in other proceedings: Miroslav Deronjić appeared pursuant to a plea agreement in which he pled guilty to persecutions on political, racial and religious grounds, committed in the Bratunac Municipality (Glogova) in May 1992, and Dražen Erdemović had pled guilty to one count of violation of Article 3, murder, for his involvement in the killings at the Branjevo Farm on 16 July 1995. The testimony of Dražen Erdemović was admitted under Rule 92 *bis*. He had testified in the trial of Radoslav Krstić; the trial of Slobodan Milošević, as well as in proceedings against Radovan Karadžić and Ratko Mladić, held pursuant to Rule 61 of the Rules.

25. In some cases, only one witness has given evidence of an incident for which the Accused has been charged. The Appeals Chamber has held that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.⁶⁰ In such a situation, the Trial Chamber has carefully examined the evidence of the witness before making a finding of guilt against the Accused.⁶¹

26. Before admitting evidence pursuant to Rule 92 *bis*, the Trial Chamber found that each written statement or transcript did not go to the acts and conduct of the Accused; was relevant to the present case; had probative value under Rule 89(C) of the Rules; and was cumulative in nature.⁶² The Trial Chamber further decided whether it was necessary to call each witness for cross-examination, taking into consideration *inter alia* that the evidence admitted pursuant to Rule 92 *bis*(D) has already been subjected to cross-examination and questioning by a Trial Chamber in former proceedings before this Tribunal.⁶³ In its first decision pursuant to Rule 92 *bis*, the Trial Chamber recalled the observation of the Appeals Chamber in the *Galić* case that “where the witness who made the statement is not called to give the accused an adequate and proper opportunity to challenge the statement and to question that witness, the evidence which the statement contains may lead to a conviction only if there is other evidence which corroborates the statement,”⁶⁴ and reminded the Parties that such “other evidence” will be necessary to corroborate evidence put forward by a single Rule 92 *bis* witness who was not called for cross-examination in order to lead to a conviction on that charge in the Indictment.⁶⁵ Such evidence may include other witness’s testimony, documentary evidence or video evidence.

27. The Trial Chamber has also assessed and weighed the testimony of a number of expert witnesses. When assessing the probative value of the expert’s oral and written evidence, the Trial Chamber endorses the *Vasiljević* Trial Chamber’s view that the factors to consider are “the professional competence of the expert, the methodologies used by the expert and the credibility of the findings made in light of these factors and other evidence accepted by the Trial Chamber.”⁶⁶

⁶⁰ *Tadić* Appeal Judgement, para. 65; *Aleksovski* Appeal Judgement, para. 62; *Kupreškić* Appeal Judgement, para. 33.

⁶¹ *Krnjelac* Trial Judgement, para. 71.

⁶² In its “First Decision on Prosecution’s Motion for Admission of Witness Statements and Prior Testimony Pursuant to Rule 92 *bis*” rendered on 12 June 2003 (“First Decision pursuant to Rule 92 *bis*”), the Trial Chamber considered the jurisprudence in relation to Rule 92 *bis* of the Rules in detail.

⁶³ *Prosecutor v Duško Sikirica*, Case No. IT-95-8-T, Decision on Prosecution’s Application to Admit Transcripts under Rule 92 *bis*, 23 May 2001, para. 4.

⁶⁴ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal concerning Rule 92 *bis*, 7 June 2002, fn. 34, referring to Judgements of the European Court for Human Rights.

⁶⁵ First Decision pursuant to Rule 92 *bis*, para. 25.

⁶⁶ *Vasiljević* Trial Judgement, para. 20. For admission of expert witness evidence, see Decision on Prosecution’s Motions for Admission of Expert Statement, 7 November 2003 and *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philips, 3 July 2002, p. 2.

28. The Trial Chamber has evaluated and considered the agreed facts and documentary evidence from the *Krstić* Trial Judgement, which were admitted into evidence in this case on 19 December 2003.⁶⁷ The Trial Chamber decided to accept the agreed facts and documents under Rule 65 *ter*(H) of the Rules, and not to take judicial notice of them under Rule 94(B) of the Rules.⁶⁸ Agreed facts and documents were subjected, as all other evidence, “to the tests of relevance, probative value and reliability,” according to Rule 89 of the Rules.⁶⁹

29. In order to assess the authenticity of documents, the Trial Chamber considered evidence as to the source and chain of custody. The Trial Chamber did not consider unsigned, undated or unstamped documents, *a priori*, to be void of authenticity. Even 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.⁷⁰ The Trial Chamber evaluated this evidence within the context of the trial record as a whole.⁷¹

30. During the Prosecution’s case, the Jokić Defence questioned the validity and reliability of the intercept evidence.⁷² The Trial Chamber has found that the intercept evidence is relevant to the case at hand, as it relates directly in time and in place to the events alleged in the Indictment, and that the evidence has probative value within the meaning of Rule 89(C) of the Rules.⁷³ The Trial Chamber is convinced that the intercept-related evidence admitted is a reliable source of information.⁷⁴ The probative value of this evidence will be considered in light of the trial record as a whole.

⁶⁷ Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 December 2003.

⁶⁸ Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 December 2003, para. 24.

⁶⁹ *Simić* Trial Judgement, para. 21.

⁷⁰ Guidelines, Annex, para. 4.

⁷¹ Guidelines, Annex, para. 5.

⁷² The Defence of Dragan Jokić argued that the intercept transcripts were taken down by unknown personnel or personnel with a history of unreliable transcriptions lacking sufficient training, that substandard equipment was used, that by not providing original tape recordings the Prosecution was effectively submitting hearsay evidence, which ought not to be admissible. Dragan Jokić’s Objections to Intercept Evidence, 17 November 2003, to which the Prosecution submitted its Response to Jokić’s Submission on Admission of Intercepts, 24 November 2003; and Dragan Jokić’s Reply and Response to Prosecution’s Motions Related to Intercept Evidence, 12 December 2003, filed 15 December 2003.

⁷³ Decision on the Admission into Evidence of Intercept-related Materials, 18 December 2003, para. 19. The Trial Chamber reiterated, referring to its Guidelines on the Standards Governing the Admission of Evidence, that it would follow the Tribunal’s practice in such cases by admitting the relevant evidence and then decide what weight to afford it in light of the trial record as a whole. Guidelines, Annex, para. 5, referring to fn. 8, *Prosecutor v. Zejnil Delalić et al*, Case No. IT-96-21-T, Decision on the Motion of the Prosecution for the Admissibility of Evidence, 19 January 1998; *Prosecutor v. Dario Kordić and Mario Čerkez*, Decision on Appeal Regarding Statement of a Deceased Witness, Case No. IT-95-14/2-AR73.5, 21 July 2000; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Decision on the Defence Motion for Reconsideration of the Ruling to Exclude from Evidence Authentic and Exculpatory Documentary Evidence, 30 January 1998.

⁷⁴ See Decision on the Admission into Evidence of Intercept-related Materials, 18 December 2003.

31. Finally, the Trial Chamber and the Parties conducted an on-site visit to various locations in the Srebrenica, Bratunac and Zvornik municipalities in the Republika Srpska, Bosnia and Herzegovina on 14 and 15 September 2004.⁷⁵ The purpose of this visit was to assist the Trial Chamber in assessing the evidence admitted in the case. The Trial Chamber did not take or admit any evidence during the site visit.

B. Military and Civilian Structures relevant to this Case

32. The Trial Chamber finds it necessary to provide an overview of the various military units and other structures involved in the events in and around Srebrenica in July 1995 before discussing the allegations at issue in this case.

1. Armed Forces of the Republika Srpska

33. As President of the Republika Srpska (“RS”), Radovan Karadžić was the commander-in-chief of the Army of the Republika Srpska.⁷⁶ In times of an imminent threat of war or state of war, the Armed Forces included both the VRS and the MUP.⁷⁷

34. Command and control within the VRS was based on the principle of “unity of command.”⁷⁸ The JNA Manual for the Work of Command and Staffs articulates:

the command relationship is based on the principle of unity, unity of command and subordination; it is defined in the relationship between the superior and the subordinate.⁷⁹

Dragan Obrenović, the Chief of Staff of the Zvornik Brigade, testified that ‘unity of command’ is one of the basic principles of the army.⁸⁰ This principle results in the situation that the brigade commander has “the exclusive right of commanding and issuing orders to all the subordinates in the brigade” and that he is responsible for “everything that happens within his unit and in the area

⁷⁵ Joint Motion for On-Site Visit, 2 June 2004.

⁷⁶ Ex. P375, Official Gazette No. 7, Item No. 158: RS Law on the Army, Article 174.

⁷⁷ Ex. P384, Official Gazette, Vol III, No. 1: RS Law on the implementation of Law of the Army during threat of war, Article 3: “The President of the Republic is the commander-in-chief of the Armed Forces”, and Article 2: “The Armed Forces of Republika Srpska [...] shall consist of the Army of Republika Srpska [...] and the units of the Ministry of the Interior of Republika Srpska [...]”. See also Ex. D61/1, Law on the Implementation of the Law on Internal Affairs during an Imminent Threat of War or State of War, dated 29 November 1994, Article 4: “The Ministry [of the Interior] shall be considered a part of the Armed Forces of Republika Srpska and its forces shall be under the command of the President of the Republic as the commander-in-chief.”

⁷⁸ According to Dragoslav Lacković, the military expert testifying for Dragan Jokić, all regulations of the JNA were adopted by the VRS. Dragoslav Lacković, T. 12130-31. See also Ex. P375 Official Gazette No. 7, Item No. 158: RS Law on the Army, Article 173, which articulates that “Command in the army should be founded on principles of unified command regarding the use of forces and means, single authority, obligations to enforce decisions, command and orders issued by superior officers.

⁷⁹ Ex. D84/1, Manual for the Work of Command and Staff, 1983. Chapter 1 (5). The RS Law on the Army articulates that “Command in the army should be founded on principles of unified command regarding the use of forces and means, single authority, obligations to enforce decisions, command and orders issued by superior officers.”

⁸⁰ Dragan Obrenović, T. 3024.

of defence of that particular unit.”⁸¹ Presence of superior officers in the brigade zone of responsibility does not negate the brigade commander’s responsibility for his subordinates.⁸²

(a) Structure of the Main Staff of the VRS

35. The Main Staff was the supreme military command organ of the VRS. In July 1995, the Commander of the Main Staff was General Ratko.⁸³ The Main Staff’s headquarters were in Han Pijesak and the forward command post (“IKM”) was in Bijeljina.⁸⁴ As of 11 July 1995, the IKM of the Main Staff was co-located with that of the Drina Corps in the Bratunac Brigade command post.⁸⁵ The Main Staff was composed of two staff branches⁸⁶ and six departments.⁸⁷

36. General Zdravko Tolimir was the Assistant Commander for security and intelligence affairs and headed the department for Security and Intelligence Affairs. This department was composed of two units: the intelligence administration, headed by Colonel Petar Salapura;⁸⁸ and the security administration, under the direction of Colonel Ljubiša Beara.⁸⁹

37. Subordinated to the Main Staff were six regional Corps: the 1st and 2nd Krajina Corps, the East Bosnia Corps, the Herzegovina Corps, the Sarajevo-Romanija Corps,⁹⁰ and the Drina Corps.⁹¹ In addition, two independent units were directly subordinated to the Main Staff: the 65th Protective Regiment,⁹² and the 10th Sabotage Detachment.⁹³ Parts of the 10th Sabotage Detachment were re-subordinated to the Drina Corps in early July 1995.⁹⁴

⁸¹ Dragan Obrenović, T. 2447.

⁸² Dragan Obrenović testified about his responsibility as Deputy Commander of the Zvornik Brigade for the prisoners who were held in the Zvornik Brigade’s area of responsibility. Dragan Obrenović, T. 3025-26.

⁸³ The Chief of the Main Staff was General Manojlo Milovanović. Agreed Facts, para. 62; Richard Butler, T. 4242; Ex. P358, Report titled, “Srebrenica Military Narrative (Revised) Operation Krivaja 95, by Richard Butler, 1 November 2002 (hereinafter “Butler Military Narrative”), para. 2.20; Ex. P362, Main Staff VRS Structure – July 1995.

⁸⁴ Petar Salapura, T. 10598; Ex. P402, Directive for Further Operations, Operations no. 7/1, 31 March 1995, signed by Ratko Mladić. Richard Butler testified that the Main Staff also established an IKM at Banja Luka, to control the 1st and 2nd Krajina Corps. Richard Butler, T. 4242.

⁸⁵ Richard Butler, T. 5012.

⁸⁶ Ex. P362, Main Staff VRS Structure – July 1995. The two branches were: the operations and training branch and the combat services branch.

⁸⁷ Ex. P362, Main Staff VRS Structure – July 1995. The six departments were: development and finance; rear services; mobilisation and personnel affairs; air force and anti-aircraft defence; moral, religion and legal affairs, and security and intelligence affairs.

⁸⁸ Ex. P362, Main Staff Structure - July 1995. Petar Salapura, T. 10487-88, Colonel Radislav Janković was an analyst with the VRS Main Staff Intelligence Administration, Petar Salapura, T. 10508-09.

⁸⁹ Ex. P362, Main Staff VRS Structure – July 1995. Richard Butler, T. 4244; Dragomir Keserović, T. 10625; Petar Salapura, T. 10487-88.

⁹⁰ The 2nd Romanija Motorised Brigade, commanded by Colonel Mirko Trivić, was based in Sokolac. Mirko Trivić, T. 7472-73. Mirko Trivić originally testified regarding this meeting in private session. However, on 10 and 11 June 2004 all protective measures were lifted.

⁹¹ Agreed Facts, para. 60, Ex. P362, Main Staff VRS Structure – July 1995.

⁹² “The 65th Protective Regiment [...] was one of the best equipped and best trained units of the army.” Richard Butler, T. 4240.

(b) Structure of the Drina Corps

38. The Drina Corps was formed in November 1992 and had its headquarters first in Han Pijesak and, by July 1995, in Vlasenica.⁹⁵ In July 1995, the IKM for the Drina Corps was in Pribićevac.⁹⁶ The Drina Corps also used the Bratunac Brigade headquarters as its IKM on 12 July.⁹⁷ The Corps Commander was General Milenko Živanović until 13 July, at which time General Radislav Krstić, the Chief of Staff, assumed the position of Corps Commander.⁹⁸ The Drina Corps staff consisted of three sections: the operations and training section; the section for reinforcement and personnel matters; and the intelligence section, which was commanded by Lieutenant Colonel Svetozar Kosorić.⁹⁹ In addition, and subordinated directly to the Corps Commander, were three departments:¹⁰⁰ the department for security, which was commanded by Lieutenant Colonel Vujadin Popović; the department for moral, legal and religious affairs; and the department for rear services,¹⁰¹ which was commanded by Colonel Lazar Aćamović.¹⁰²

39. The main combat force of the Drina Corps laid in its nine subordinate infantry brigades, two of which were the Bratunac Brigade and the Zvornik Brigade.¹⁰³ The Drina Corps also had four separate battalions: the 1st Skelani Separate Infantry Battalion, the 5th Military Police

⁹³ Agreed Facts, para. 61; Momir Nikolić, T. 2202; The 10th Sabotage Detachment was an infiltration and sabotage unit. Dražen Erdemović, KT. 3077-78; Ex. P362, Main staff VRS Structure – July 1995, “It was commanded by Lieutenant Milorad Pelemiš “It was an independent unit attached to the Main Staff. Like all other independent units, it was directly subordinated to the Commander”. Petar Salapura, T. 10521-22. In July 1995 the 10th Sabotage Detachment consisted of approximately 60 men, divided into the “Vlasenica platoon” and the “Bijeljina platoon”. Dražen Erdemović, KT. 3078-79. *See also* Petar Salapura, T. 10546.

⁹⁴ Ex. P362, Main Staff VRS Structure – July 1995. Petar Salapura, T. 10493-94, 10521-24; Dražen Erdemović, KT. 3080-81 and 3157. Dražen Erdemović, KT. 3081-82 and 3156-57. Whenever the 10th Sabotage Detachment was engaged in operations in the area of responsibility of a particular Corps, the Corps Commander would be informed on their presence in the area. This was a measure to ensure the safety of both the Corps and the Sabotage Detachment. If necessary, pioneers of the local brigade provided assistance in guiding the 10th Sabotage Detachment through the terrain. The pioneers would then be attached to the Detachment and received their orders from Lieutenant Pelemiš.

⁹⁵ Agreed Facts, para. 55 and Ex. D209/1a, Report titled, “Assessment of the Analytical Shortcomings of Richard Butler’s Srebrenica Military Narrative and Testimony” by Marc Schifanelli, 24 May 2004 (hereinafter “Schifanelli Report”), p. 16.

⁹⁶ Richard Butler, T. 4252; Ex. P410, Drina Corps Order, 4/95 to continue attack, 5 July 1995.

⁹⁷ Richard Butler, commenting on Ex. P185, an intercept from 11:56 hours on 12 July 1995 of a conversation between “Badem” (Bratunac Brigade) and “Zlatar” (Drina Corps). Richard Butler, T. 4388-89; Mirko Trivić also testified that on 12 July the Drina Corps had its IKM at the Bratunac Brigade headquarters, Mirko Trivić, T. 7483. It is unclear until what date the Drina Corps continued using the Bratunac Brigade Headquarters as their IKM.

⁹⁸ Agreed Facts, para. 56; After the change of commander, the Chief of Staff/Deputy Commander was Colonel Svetozar Andrić, Richard Butler, T. 4251.

⁹⁹ RS Drina Corps Structure July 1995; Richard Butler, T. 4252.

¹⁰⁰ Ex. P365, VRS Drina Corps Structure – July 1995.

¹⁰¹ The terms “rear services” and “logistics” are both used to indicate the same function within the army units. Both terms will be used interchangeably in this Judgement.

¹⁰² Agreed Facts, para. 58.

¹⁰³ The following Brigades were also subordinated to the Drina Corps: the Milići Brigade, the 1st Birač Brigade (also known as the Šekovići Brigade), the 1st Vlasenica Brigade, the 1st Rogatica Brigade, the 5th Višegrad-Goražde Brigade, the 2nd Romanija Motorised Brigade and the 4th Drinski Brigade. Ex. P358, Richard Butler Narrative, para. 2.6; Ex. P365, VRS Drina Corps Structure – July 1995.

Battalion, the 5th Engineering Battalion, and the 5th Communication Battalion.¹⁰⁴ Lastly, the Drina Corps included one regiment, the 5th Mixed Artillery Regiment.¹⁰⁵

40. The area of responsibility of the Drina Corps included the Bosnian Serb-controlled areas west of the Drina River, located in the north-east part of Bosnia and Herzegovina.¹⁰⁶

(c) Structure of the Bratunac Brigade

41. The Bratunac Brigade was formed on 14 November 1992, as a light infantry brigade within the Drina Corps.¹⁰⁷ Between November 1992 and May 1995, the Bratunac Brigade experienced a high turnover of commanders, with estimates of between six and twelve different people serving as commander during that period.¹⁰⁸ Colonel Blagojević was appointed as Commander of the Bratunac Brigade on 25 May 1995, replacing Lieutenant Colonel Slavko Ognjenović.¹⁰⁹

42. The Bratunac Brigade had three infantry battalions.¹¹⁰ In July 1995, the brigade also included one infantry battalion that was re-subordinated from the Zvornik Brigade.¹¹¹ In addition, the following units formed part of the Bratunac Brigade: a reconnaissance unit called the Red Berets;¹¹² a Pioneer Platoon;¹¹³ a Mixed Artillery Group;¹¹⁴ a Rocket unit;¹¹⁵ and a Military Police

¹⁰⁴ Ex. P358, Richard Butler Narrative, para. 2.6.

¹⁰⁵ Ex. P365, VRS Drina Corps Structure - July 1995; Ex. P358, Richard Butler Narrative, para. 2.6.

¹⁰⁶ Ex. D209/1a, Schifanelli Report, p. 16.

¹⁰⁷ Ex. P358, Richard Butler Narrative, para. 1.11. *See also* Ljubisav Simić, T. 7650; Mićo Gavrić, T. 8474-75.

¹⁰⁸ Zlatan Čelanović, T. 9468; Momir Nikolić, T. 1867-68; Radenko Zarić, T. 6007; Ljubisav Simić, T. 7637-38, 7648.

¹⁰⁹ Ex. P397, Bratunac Brigade Combat Report, 25 May 1995, signed by Vidoje Blagojević. Ljubisav Simić is listed as being present at the hand-over ceremony, but he does not remember being present. Ljubisav Simić, T. 7653.

¹¹⁰ Ex. D209/1, Schifanelli Report, p. 21; Ex. P368, 1st Bratunac Light Infantry Brigade Structure – July 1995.

¹¹¹ The Zvornik Brigade's 8th Infantry Battalion had been resubordinated to the Bratunac Brigade. As a resubordinated unit, this battalion became the Bratunac Brigade's 4th Infantry Battalion. *See, e.g.*, Momir Nikolić, T. 1598-99; Dragan Obrenović, T. 2455; Ex. P406, Order for Active Combat Operations, Operational Number 1, dated 5 July 1995, signed by Colonel Vidoje Blagojević.

¹¹² Dragomir Zekić, T. 8917-19. As discussed below, the Red Berets were temporarily attached to the 3rd Battalion of the Bratunac Brigade from June-July 1995. Dragomir Zekić, T. 8872. *See also* Sreten Petrović, T. 8971, 8991; Ex. D141/1, Handover of supplies from the *Crvene Beretke* unit warehouse to the 3rd Infantry Battalion warehouse, dated 31 January 1996.

¹¹³ "Pioneers" are combat engineers who are involved in laying and clearing mines. Richard Butler, T. 4496; Brano Đurić, T. 11966; Ex. P159, Combat Report created by Ljubisa Borovčanin, dated between 10 July and 20 July 1995, para. 4; Ex. D90/1 (under seal), Order No. 73, Commander Bratunac Brigade, 1 July 1995, in which Colonel Blagojević appoints a commander of the pioneers platoon. Mićo Gavrić is listed as the head of the pioneer platoon.

¹¹⁴ Mićo Gavrić testified that he was both the chief of artillery in the brigade command as well as commander of the Mixed Artillery Group. The unit had this name because it included different calibre weapons; however, strength-wise it was a battery. Mićo Gavrić, T. 8537-39. The Mixed Artillery Group consisted of around 80 soldiers and had six 82mm mortars, four 120mm mortars, two 105mm howitzers, two Russian cannons, and four 86mm artillery pieces, which were all in relatively good condition. Mićo Gavrić, T. 8470, 8474-75.

¹¹⁵ The commander of the rocket unit was Miloš Lončarević in July 1995. Miloš Lončarević, T. 9518; Mićo Gavrić, T. 8493. Mićo Gavrić claims that he was ultimately responsible for this platoon, but Miloš Lončarević testified that he did not receive any orders from Mićo Gavrić. Mićo Gavrić, T. 8493; Miloš Lončarević, T. 9158.

In July, the rocket unit was located in the *Javor* Company, a construction material warehouse in Bratunac, about one kilometre from the town centre and four kilometres from the frontline. The unit consisted of seven soldiers.

Platoon.¹¹⁶ Each of the four infantry battalions had approximately 450-500 men; the total number of men in the Bratunac Brigade in July 1995 was approximately 2,100.¹¹⁷

43. The headquarters of the Bratunac Brigade was located in the town of Bratunac in the former *Kaolin* factory.¹¹⁸ As of 12:00 on 5 July through 11 July, the Bratunac Brigade IKM was located in Pribićevac.¹¹⁹

(i) Brigade command

44. In July 1995, the command structure of the Bratunac Brigade consisted of the following officers and elements. Subordinated to the brigade commander were Captain First Class¹²⁰ Momir Nikolić, head of both the security and intelligence departments;¹²¹ Major Dragoslav Trišić, assistant commander for rear services; and Major Ratomir Jevtić, assistant commander for morale, legal and religious affairs.¹²² Major Novica Pajić was Chief of Staff and in this capacity he oversaw the work of the brigade's staff.¹²³ The brigade staff under Major Pajić consisted of four

Miloš Lončarević, T. 9159-60. The unit only had two trucks. Miloš Lončarević, T. 9165, T.9184. When shown Ex. P406, Order for Active Combat Operations, Operational Number 1, dated 5 July, signed by Colonel Blagojević, p. 4, para. 6.2, Miloš Lončarević denied that his unit had a 128mm rocket. He suggested that perhaps the commander did not realise that the 128 mm launchers no longer existed. Miloš Lončarević, T. 9201-03. On one truck, there were launchers for 57 mm rockets, which were out of order. Miloš Lončarević, T. 9160, T.9162. Two launchers for 70mm rockets were mounted on a trailer on the truck. Those launchers could shoot 12 rockets but the unit only had a small amount of 70mm rockets. On the other truck, there was a grenade launcher for 50-kilo grenades, of which the unit had seven. Miloš Lončarević, T. 9160-62.

¹¹⁶ See e.g. Momir Nikolić, T. 1602-03; Witness P-138, T. 3500 (private session).

¹¹⁷ Ex. P391, Bratunac Brigade Report, analysis of combat readiness in the first half of 1995, p. 17; Momir Nikolić, T. 1598-99. On 30 June 1995, the Bratunac Brigade had 2,153 conscripts of whom 253 were listed as being only partially fit for military service or who were placed in rear services.

¹¹⁸ Ex. D152/1, Blueprint of the Bratunac Brigade Headquarters, "Kaolin" Factory, marked by witness in Court on 12.05.04; Ex. D152.1/1, Legend for the Blueprint of the Bratunac Brigade Headquarters, "Kaolin factory". See also Miloš Lončarević. The offices of Momir Nikolić and Vidoje Blagojević were located on opposite ends of the building. Due to a partition in the hallway, in order to go from one office to the other, one would have to exit the building and re-enter through the entrance on the opposite side of the building. The duty officer's room and the operations room were both located on the ground floor, while Vidoje Blagojević and Momir Nikolić's offices were located on the first floor. The Trial Chamber toured the former Bratunac Brigade headquarters during the Site Visit in September 2004, Miloš Lončarević, T. 9155-57 and 9191-98.

¹¹⁹ Ex. P406, Order for Active Combat Operations, Operational Number 1, dated 5 July 1995, signed by Vidoje Blagojević, p. 7. See also Milan Drakula, T. 9036. Ex. P391, Bratunac Brigade Report, analysis of combat readiness in the first half of 1995, shows that the Bratunac Brigade established three IKMs, one of which was located at the command post of the 3rd Battalion at Pribićevac.

¹²⁰ The Trial Chamber will generally refer to military positions in their basic form, *i.e.*, a Captain First Class will be referred to as Captain.

¹²¹ Momir Nikolić's title as head of security was assistant commander for security. His title as head of the intelligence department was assistant chief of staff for intelligence. For reasons of simplicity, the Trial Chamber will in the following refer to Momir Nikolić as chief of security and intelligence.

¹²² Momir Nikolić, T. 1600-01; Nikola Gajić, T. 3350; Zlatan Čelanović, T. 9479; Ex. P368, 1st Bratunac Light Infantry Brigade Structure – July 1995. There is evidence that on the night of 10 July, General Krstić appointed a lieutenant colonel from the JNA to a position of some authority in the Bratunac Brigade. He did not get any written letter of appointment; he was told to report the next morning to the Brigade command by General Krstić. Witness DP-106, T. 10364-65.

¹²³ In a light infantry brigade, the Chief of Staff also serves as the deputy commander. See Ex. P83, JNA Brigade Rules (For Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades), 1984, Article 116; Momir Nikolić, T. 1600, 2370. See also Zoran Jovanović, T. 9897-99; Witness DP-106, T. 10372-73, 10392. Lieutenant Milorad Mićić was the operations officer for the Bratunac Brigade, and as such, would take over the responsibilities of the

organs: the organ for organisation, mobilisation and personnel under Major Dragomir Eškić; the artillery organ under Captain Mićo Gavrić;¹²⁴ the communications organ; and the operations and training organ.¹²⁵

a. Security and Intelligence

45. Captain Momir Nikolić was assigned to the combined post of assistant commander for Security and assistant chief of staff Intelligence in the Bratunac Brigade soon after its formation.¹²⁶ His work was governed by certain regulations and rules.¹²⁷ For his security work, Momir Nikolić used the “Rules of Service of Security Organs in the Armed Forces in SFRY”.¹²⁸ For his intelligence work, Momir Nikolić relied on two publications, namely “Intelligence Security for Combat Operations” and “Intelligence Support of the Armed Forces”.¹²⁹ Momir Nikolić wrote proposals on measures relating to security and intelligence.¹³⁰

46. In relation to security, Captain Nikolić’s tasks related mostly to planning and proposing security measures for the protection of the brigade’s troops and equipment.¹³¹ Captain Nikolić was also responsible for the training, preparation and, to a certain extent, tasking of the Military Police Platoon.¹³² Captain Nikolić’s duties in relation to intelligence included gathering, monitoring and processing information related to the Bosnian Muslim forces.¹³³ In this respect, he assessed the strength, equipment and weapons at the enemy’s disposal, and analysed the movements and

Chief of Staff when he was absent. Momir Nikolić, T. 1703; Witness DP-106, T. 10362-63; Richard Butler, T. 4479.

¹²⁴ Mićo Gavrić testified that he was personally subordinated to the Brigade Commander, as he was part of the Brigade Command. Mićo Gavrić, T. 8476. However, the Trial Chamber notes that he also testified that he was a staff officer, which would make him subordinated to the Chief of Staff. Mićo Gavrić, T. 8538.

¹²⁵ Ex. P368, 1st Bratunac Light Infantry Brigade Structure – July 1995.

¹²⁶ Momir Nikolić had previously worked as the assistant commander for intelligence in the Territorial Defence in Bratunac. Momir Nikolić, T. 1596-97, 1860-64, 1866. While the post of assistant commander for security and intelligence was a combined position in the Bratunac Brigades, infantry brigades generally had separate officers for each function: for example in the Zvornik Brigade, Captain Duško Vukotić was the Chief of Intelligence Affairs and Lieutenant Drago Nikolić was the assistant commander for Security. Duško Vukotić, T. 11419; Dragan Obrenović, T. 2423-24, 2802.

¹²⁷ See e.g. Ex. P83, JNA Brigade Rules (For Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades), 1984. Article 118 details the functions of the intelligence organ and Article 122 details the functions of the security organ.

¹²⁸ Ex. P84, JNA Rules of Service of Security Organs in the Armed Forces of the Socialist Federative Republic of Yugoslavia, 1984; Momir Nikolić, T. 1612-13.

¹²⁹ Momir Nikolić, T. 1613, 1879-81. The “Intelligence Security for Combat Operations” was not tendered into evidence. Ex. D14/1, Intelligence Support of the Armed Forces, JNA Manual, 1987.

¹³⁰ The Brigade Commander then either accepted, adjusted or rejected the proposals. Momir Nikolić, T. 1606-09. See also *infra* section III. A. 1.

¹³¹ Momir Nikolić, T. 1606-07.

¹³² Momir Nikolić, T. 1607-08; 1890. Momir Nikolić ensured that the military police platoon was given all forms of professional aid and assistance to carry out the orders issued by the commander. Momir Nikolić, T. 1908-10. See *infra* section II. B. 1. (c)(iii).

¹³³ The questioning of prisoners was one way in which information about the enemy forces was gathered. Momir Nikolić, T. 2056-59; Ex. D14/1 Intelligence Support of the Armed Forces, JNA Manual, 1987, Art. 198.

intentions of the Bosnian Muslim forces.¹³⁴ Momir Nikolić also provided intelligence information to the brigade commander and the battalion commanders to assist them in making decisions. Lastly, he provided “military and professional assistance on a continuous basis to subordinate intelligence security organs in the battalions.”¹³⁵

47. The Trial Chamber will consider in detail the particular workings of the security functional chain of command within the VRS during July 1995 below.¹³⁶

b. Rear Services (Logistics)

48. The assistant commander for logistics was Major Dragoslav Trišić, who had been with the brigade from its inception.¹³⁷ The logistics department supplied material and technical equipment, ammunition, fuel, food and clothing for the brigade’s units and troops.¹³⁸ The Bratunac Brigade’s logistics company came under the responsibility of Major Trišić as well.¹³⁹

49. Requests for supplies went to the Drina Corps directly. In case the Drina Corps was unable to provide the requested supplies, Major Trišić would make a request to the Executive Board of Bratunac municipality, specifying the brigade’s needs.¹⁴⁰ In regards to the storage of fuel, the

¹³⁴ Momir Nikolić, T. 1606. See testimony of Duško Vukotić for a comparative description on the role and responsibilities of the Chief of Intelligence in the Zvornik Brigade. Duško Vukotić, T. 11324-29.

¹³⁵ Momir Nikolić, T. 1904. Momir Nikolić also maintained a logbook of intelligence reports and the diary of the intelligence department. *Id.* Assistant commanders for security and intelligence in battalions would inform the commander of their battalion of all information. The battalion commander is their direct superior; the commander of the brigade is the superior of the battalion commander and he must be kept informed of all the intelligence. Momir Nikolić, T. 2280-81.

¹³⁶ See *infra* section III. A. 2.

¹³⁷ Dragoslav Trišić, T. 9318-19. See also Momir Nikolić, T. 1604, 1695. Dragoslav Trišić’s assistants included Bozo Momčilović as chief of quartermaster supplies; Pavle Lončarević as chief of transport service; and Ljubomir Beatović as chief of medical services. Before the start of combat in July 1995, Colonel Aćamović, head of the department for rear services of the Drina Corps, assigned Bozo Momčilović to be the logistics officer at the IKM of the Drina Corps. Dragoslav Trišić does not know if Colonel Aćamović asked Colonel Blagojević before reassigning Bozo Momčilović to the Drina Corps. Colonel Aćamović did not ask Dragoslav Trišić’s permission for this. From 6 July onward Bozo Momčilović was in the Pribićevac sector and Colonel Aćamović gave him his orders. Bozo Momčilović did not prepare any reports informing Dragoslav Trišić of what he was doing when working under Colonel Aćamović’s orders. Dragoslav Trišić, T. 9346-51.

¹³⁸ Dragoslav Trišić, T. 9320. When the material was issued, it would be crossed out of the Brigade records. A document stating that the material had been issued was kept by the logistics department, a copy of which was given to the person taking the material. No verification was required to confirm that the fuel or other materials distributed had been consumed. Dragoslav Trišić, T. 9323-25.

¹³⁹ Dragoslav Trišić, T. 9410. The logistics company was commanded by Captain Radosavljević and had its headquarters in the centre of Bratunac town. The company consisted of 20 soldiers and included a quartermaster staff as well as transport staff. *Id.*

¹⁴⁰ Major Trišić and the municipal staff in charge of logistics would decide which civilian company should provide the needed supplies. Any supplies received would be recorded, and Trišić verified and signed the lists prepared by his assistant. Dragoslav Trišić, T. 9320-21. See also Dragoslav Trišić, T. 9424 and D171/1, Conversation between Dean Manning and Dragoslav Trišić, 26 November 2001, p. 18.

brigade used primarily the *Vihor* Transport Company's facilities, although the Brigade did keep smaller supplies of petrol in barrels in its own warehouse.¹⁴¹

c. Morale, Legal and Religious Affairs

50. Major Ratomir Jevtić was the assistant commander for the morale, legal and religious affairs department in the Bratunac Brigade.¹⁴² The department dealt with *inter alia* breaches by brigade members of military discipline¹⁴³ as well as with interviewing prisoners of war for the purpose of identifying the prisoners and gathering enemy-related intelligence.¹⁴⁴ With regard to the latter, the procedure was that after a statement had been taken, a report would be forwarded from the department to the brigade commander. Together with Captain Nikolić, as chief of the security organ, the brigade commander would adopt a joint decision on what action to take.¹⁴⁵

51. The Trial Chamber will discuss the evidence related to interrogations of prisoners of war during the Indictment period under the relevant charges below.

(ii) Infantry Battalions

52. Captain Lazar Ostojić was commander of the 1st Infantry Battalion ("1st Battalion") in July 1995 and held this position until 1998.¹⁴⁶ The command post location of the 1st Battalion on 6 July was at Božići in the Magasići area, approximately 500-1,000 metres from the Bratunac-Konjević Polje road.¹⁴⁷ By order of Vidoje Blagojević on 14 July the command post moved to Čizmići.¹⁴⁸ The 1st Battalion consisted of infantry companies, an intervention platoon¹⁴⁹ and a reconnaissance platoon.¹⁵⁰ While the 1st Battalion had mortars, it did not have a separate firing group.¹⁵¹

¹⁴¹ Dragoslav Trišić, T. 9322-23, 9327.

¹⁴² Zlatan Čelanović, T. 9479. *See also* Ex. D143/1, Roster of the Bratunac Brigade for July 1995.

¹⁴³ Zlatan Čelanović, T. 9466-67. In addition to gathering information about the enemy, in his capacity as the person in charge of morale, he also monitored the troops to determine whether there were complaints or desertions. Zlatan Čelanović, T. 9478.

¹⁴⁴ Zlatan Čelanović, T. 9475.

¹⁴⁵ Zlatan Čelanović, T. 9468; D168/1, Report by Zlatan Čelanović on investigations and interrogations of captured prisoners of war. After the statements had been taken, the prisoners of war were generally either sent to Batković to be exchanged, or handed over to international organisations, such as the ICRC or UNHCR. Zlatan Čelanović, T. 9474-77.

¹⁴⁶ Nikola Gajić, T. 3349, who testified that the 1st Battalion was often called the Kravica Battalion.

¹⁴⁷ Witness DP-105, T. 10119-32. Nikola Gajić, T. 3350, 3367; Ex. P162, marked with "B"; Ex. D186/1, Map of 1st Battalion positions (under seal).

¹⁴⁸ Ex. P483, Ground Search Order, signed by Colonel Blagojević, 14 July 1995.

¹⁴⁹ Nikola Gajić, T. 3350, 3378.

¹⁵⁰ Ex. P406, Bratunac Brigade Order for active combat operations, 5 July 1995, para. 5; Ex. P391, Bratunac Brigade Report, analysis of combat readiness in the first half of 1995, p 6; Ex. P863; Bratunac Brigade Order regarding the deployment of troops in the defence area of the 3rd Battalion, 4 July 1995, signed by Colonel Blagojević, p. 2.

¹⁵¹ Witness DP-105, T. 10236.

53. The 2nd Infantry Battalion (“2nd Battalion”) was commanded by Goran Stakić and the deputy commander was Zoran Jovanović.¹⁵² The 2nd Battalion’s command post was located near the Bratunac/Srebrenica road by Borići¹⁵³ and its IKM was located at Čauš.¹⁵⁴ The battalion command maintained communications with the Bratunac Brigade command in Bratunac, the 2nd Battalion command and the companies of the 2nd Battalion.¹⁵⁵

54. The 2nd Battalion was comprised of five companies¹⁵⁶ and a reconnaissance platoon.¹⁵⁷ The battalion had an 82-mm calibre mortar, a Zis 70 mm anti-tank cannon, and a 120-mm cannon.¹⁵⁸ Slobodan Ostojić commanded the 2nd Company of the 2nd Battalion,¹⁵⁹ which had between 50 and 75 members¹⁶⁰ and was located from March 1993 to July 1995 on either side of the road from Bratunac towards the VRS check-point at Žuti Most, also called “Yellow Bridge” which was near the UN base in Potočari.¹⁶¹

55. The 3rd Infantry Battalion of the Bratunac Brigade (“3rd Battalion”) was commanded by Dragomir Zekić in July 1995.¹⁶² Sreten Petrović was the deputy commander.¹⁶³ The IKM of the 3rd Battalion was located in Kula, which is the hill adjacent to the IKM of the Drina Corps and the Bratunac Brigade at Pribićevac in July 1995.¹⁶⁴ The 3rd Battalion consisted of six companies, each containing 70-75 soldiers.¹⁶⁵ However, during the attack on Srebrenica, there were only four companies in the Srebrenica area; the two remaining companies were deployed at Trnovo and Stublic.¹⁶⁶

¹⁵² Zoran Jovanović, T. 9856; Milan Milinković, T. 3118; Rodoljub Trisić, T. 8148; Zoran Cvjetinović, T. 8828.

¹⁵³ Zoran Kovačević, T. 8627.

¹⁵⁴ Ex. P406, Bratunac Brigade Order for active combat operations, 5 July 1995. Čauš is a hill located to the east of the Srebrenica-Bratunac road near Potočari.

¹⁵⁵ Zoran Jovanović, T. 9862.

¹⁵⁶ Ex. D143/1, Bratunac Brigade Roster for July 1995. Peter Dimitrić was the commander of the 1st Company of the 2nd Battalion. Zoran Spajić, Ex. D228/1, p 1.

¹⁵⁷ Ex. P406, Bratunac Brigade Order for active combat operations, 5 July 1995, para. 5.2.

¹⁵⁸ Zoran Kovačević, T. 8668-69. The 1st Company had a ZIS 70mm artillery piece and the 3rd Company had a mortar. Zoran Cvjetinović, T. 8842.

¹⁵⁹ Slobodan Ostojić, T. 8826-27; Miladin Vuksić, T. 8846. Zoran Cvjetinović, the deputy commander of the 2nd Company, testified that Slobodan Ostojić was in Pjenovać from 3 July until 18 July. Zoran Cvjetinović, T. 8826-27.

¹⁶⁰ Cvjetin Stević, T. 9295-97; Zoran Cvjetinović, T. 8814-15. Some of the 2nd Company members were elderly men or disabled soldiers. Zoran Cvjetinović, T. 8826.

¹⁶¹ Cvjetin Stević, T. 9271; Zoran Jovanović, T. 9858. According to Zoran Kovačević, the 4th Company was located under the Čauš hill, towards the village of Voljevica. Voljevica lies to the east of Bratunac. Zoran Kovačević, T. 8623-24. Zoran Cvjetinović testified that the 2nd Company of the 2nd Battalion was located west of the road towards Žuti Most, towards the village of Zagoni. Zoran Cvjetinović, T. 8814-15.

¹⁶² Zoran Kovačević, T. 8625-26, 8629; Dragomir Zekić, T. 8865-66; Sreten Petrović, T. 8967-68.

¹⁶³ Sreten Petrović, T. 8967, 8977-78.

¹⁶⁴ Ex. P406, Order for Active Combat Operations, Operational Number 1, dated 5 July 1995. The Trial Chamber toured the Pribićevac area during the Site Visit in September 2004 and identified the hill at Kula.

¹⁶⁵ See Ex. P165, list of members of the 3rd Battalion and companies.

¹⁶⁶ Dragomir Zekić, T. 8868. The 2nd Company of 3rd Battalion of Bratunac Brigade was located at the defence line at Kula near Pribićevac, Milan Drakula, T. 9036.

56. The Bratunac Brigade included a company-strength a reconnaissance unit,¹⁶⁷ called the Red Berets.¹⁶⁸ The unit was divided into two platoons, one of which was commanded by Rade Petrović;¹⁶⁹ this unit and was attached to the 3rd Battalion in June and July 1995.¹⁷⁰ There is conflicting evidence about the level of training and discipline among members of the Red Berets: one witness testified that this unit was well disciplined¹⁷¹ while another testified that its members were young men without training.¹⁷² Dragomir Zekić, the commander of the 3rd Battalion, emphasised that the Red Berets remained an independent autonomous unit that had its own command and its own warehouse during its attachment to the 3rd Battalion. Dragomir Zekić denied that he was the commander of the Red Berets,¹⁷³ testifying that in July 1995 only the brigade command had control over the Red Berets.¹⁷⁴ The roster of the members of the Bratunac Brigade in July 1995 lists individuals as being members of both the Red Berets and the 3rd Battalion.¹⁷⁵ However, the roster for the 3rd Battalion for July 1995 does not contain any of the names listed in the brigade roster as members of the Red Berets.¹⁷⁶ The Trial Chamber can conclude that regardless of who was in command of the Red Berets in July 1995, Colonel Blagojević, as commander of the Bratunac Brigade, was responsible for this unit.

57. On 22 September 1993, the 8th Battalion of the Zvornik Brigade, commanded by Captain Radika Petrović,¹⁷⁷ was re-subordinated to the Bratunac Brigade and became its 4th Infantry Battalion (“4th Battalion”).¹⁷⁸ The 4th Battalion command post was originally at Kajići, about 1.5 kilometres from the Bratunac-Konjević Polje road,¹⁷⁹ but was in 1994 moved closer to a line

¹⁶⁷ Sreten Petrović, T. 8971-72, describing the unit as a reconnaissance platoon; Ex. D145/1, Report, The war history of the reconnaissance platoon the “Red Berets”.

¹⁶⁸ Dragomir Zekić, T. 8914-16, 8919.

¹⁶⁹ Dragomir Zekić, T. 8914-19, 8872-73, testifying that Petrović’s platoon consisted of 25 soldiers; Sreten Petrović, T. 8971-72, 8990, testifying that Petrović’s platoon consisted of 20 soldiers. Dragomir Zekić also testified that the second platoon was commanded by a man called Prodanović. Dragomir Zekić, T. 8915. Prodanović was also known as “Mungo”. Sreten Petrović, T. 8972. Ex. P391, Bratunac Brigade Report, Analysis of combat readiness for the first half of 1995, p. 6 shows that the platoon lead by Prodanović was transferred to the MUP.

¹⁷⁰ Dragomir Zekić, T. 8869-73, 8915, 8943. The other platoon was not in the area at that time.

¹⁷¹ Zoran Kovačević, T. 8664-65.

¹⁷² Dragomir Zekić, T. 8873.

¹⁷³ Dragomir Zekić, 8917-19; Ex. D141/1, Handover of weapons and ammunition from the “Crvene Beretke” (Red Berets) warehouse to the 3rd Infantry Battalion warehouse, dated 18/31 January 1996, signed by Dragomir Zekić. According to Dragomir Zekić, the document shows that the Red Berets were not within the composition of the 3rd Battalion that means they were not under his command. They had their own warehouse. Dragomir Zekić, T. 8917-19.

¹⁷⁴ Dragomir Zekić, 8943.

¹⁷⁵ Ex. D143/1, Roster of the members of the Bratunac Brigade in July 1995. *See* Dragomir Zekić, T. 8942-43.

¹⁷⁶ Ex. P165, roster of the Bratunac Brigade 3rd Battalion (under seal), *see* Dragomir Zekić, T. 8944.

¹⁷⁷ Radika Petrović, T. 8696; Ex. D139/1, Roster for the 8th Infantry Battalion for the month July, listing Radika Petrović as the battalion commander.

¹⁷⁸ Dragan Obrenović, T. 2455; Radika Petrović, T. 8697-98.

¹⁷⁹ Radika Petrović, T. 8699, as shown on D138/1, map marked by Radika Petrović; Duško Vukotić, T. 11451. The distance to the Bratunac Brigade headquarters was about 12 kilometres and the Zvornik Brigade headquarters was about 35 kilometres away. Radika Petrović, T. 8700-01.

between trig point 651 and trig point 555.¹⁸⁰ The battalion held territory in the rear of the Bratunac Brigade's area.¹⁸¹ The 4th Battalion included 218 soldiers, although in July 1995 only 80 men were available at the lines.¹⁸² The unit was split into two companies, each of which had 40 members.¹⁸³

58. During the re-subordination, the Bratunac Brigade and the Zvornik Brigade were in charge of different aspects of this battalion. Rotation of its members continued to be decided by the Zvornik Brigade, which also provided food, clothing and transportation.¹⁸⁴ While Captain Petrović testified that the Bratunac Brigade did not provide "anything" during the re-subordination period, Major Obrenović, chief of staff of the Zvornik Brigade, testified that the Bratunac Brigade was in charge of the ammunition and the combat equipment.¹⁸⁵ According to his testimony, the 4th Battalion "was completely under the command of the Bratunac Brigade".¹⁸⁶ Captain Petrović testified that he:

respected both commanders, the commander of the Bratunac Brigade and the commander of the Zvornik Brigade. I carried out the orders of both, as far as I was able to. But I was oriented more towards the Zvornik Brigade. [...] I was simultaneously a member of the 4th Battalion of the Bratunac Brigade and a member of the 8th Battalion of the Zvornik Brigade. I was duty-bound to carry out the tasks given to me by both of these brigades.¹⁸⁷

He further testified that when he received orders from the Zvornik Brigade, he would not inform Colonel Blagojević and would not ask for his permission before carrying out these orders.¹⁸⁸ Moreover, Captain Petrović testified that he always gave orders as the commander of the 8th Battalion of the Zvornik Brigade and never as the commander of the 4th Battalion.¹⁸⁹

¹⁸⁰ Radika Petrović, T. 8699; Ex. D138/1.

¹⁸¹ Radika Petrović, T. 8696. Radika Petrović denies that Kravica and Sandići fell within the area of the 4th Battalion, T. 8766-67.

¹⁸² Radika Petrović, T. 8697. Ex. P390, Report on the combat readiness of the Zvornik Infantry Brigade for the period 1 January - 31 December 1994, p. 7 shows that in 1994 the 8th battalion had a strength of 205 conscripts. It also shows that 190 conscripts were dependant on the Zvornik Brigade for quartermaster support. Ex. P390, p. 9.

¹⁸³ Radika Petrović, T. 8694.

¹⁸⁴ Radika Petrović, T. 8702. That the Zvornik Brigade was in charge of food and clothing is confirmed by Dragan Obrenović, T. 2630-32. *See also* Ex. P390, Report on combat readiness of the Zvornik Brigade, 1994, p. 7: "This battalion has not been counted in the total strength of the [Zvornik Brigade], but relies on the Brigade's logistical support."

¹⁸⁵ Dragan Obrenović, T. 2631.

¹⁸⁶ Dragan Obrenović, T. 2632. *See* Ex. P406, Order for active combat operations, signed by Colonel Blagojević and dated 5 July 1995, and Ex. P483, Order for ground search, signed by Colonel Blagojević, dated 14 July 1995, both of which refer to, and order, the 4th Battalion as a unit within the Bratunac Brigade.

¹⁸⁷ Radika Petrović, T. 8702-03.

¹⁸⁸ Radika Petrović, T. 8702.

¹⁸⁹ Radika Petrović, T. 8770.

59. According to Radika Petrović the re-subordination to the Bratunac Brigade ceased on the morning of 19 July, pursuant to the orders of Colonel Vinko Pandurević, Commander of the Zvornik Brigade. Radika Petrović's battalion returned to the Zvornik Brigade.¹⁹⁰

(iii) Military Police of the Bratunac Brigade

60. In July 1995, Staff Sergeant Mirko Janković commanded the Military Police Platoon.¹⁹¹ His deputy was Mile Petrović.¹⁹² The Bratunac Brigade Military Police Platoon had approximately 30 members,¹⁹³ who were divided into three squads.¹⁹⁴ The Military Police Platoon headquarters was located next to the Bratunac Brigade headquarters.¹⁹⁵

61. The regular duties of the Military Police included providing security for facilities and persons, traffic control, capturing military conscripts who were absent without permission and arresting people who failed to respond to the military call-up.¹⁹⁶ In July 1995, the Military Police Platoon patrolled areas around the Srebrenica enclave, including securing roads between Bratunac, Sase and Pribićevac, and manned the Žuti Most checkpoint near Potočari. The platoon also provided security at the gate of the Bratunac Brigade headquarters and for officers and commanders, when necessary.¹⁹⁷

(d) Structure of the Zvornik Brigade

(i) Command Structure and Units

62. The Zvornik Brigade was established as part of the Drina Corps in 1992.¹⁹⁸ In July 1995, Lieutenant Colonel Vinko Pandurević was the Commander The Chief of Staff and Deputy Brigade

¹⁹⁰ Radika Petrović, T. 8703. *See also* Ex. D135/1, Bratunac Brigade Daily combat report, 19 July, under item 2" We do not know by whose order the 4th [battalion] was attached to the [Zvornik Brigade]."

¹⁹¹ Mile Janjić, T. 9762-63; Momir Nikolić, T. 1603; Nikola Popović, T. 11073; Nenad Đokić, T. 5431-32; Mile Petrović, Ex. D220/1, August statement p. 2, October 2003 p. 41.

¹⁹² Mile Petrović, Ex. D220/1, October 2003 p. 44, stating that he was appointed orally to this position by Momir Nikolić. Milan Gvozdrenović confirms the positions of Mirko Janković and Mile Petrović, Milan Gvozdrenović, Ex. D225/1, p. 2. Radenko Zarić gave evidence that Mirko Janković was the deputy commander of the Military Police Platoon and Dragiša Jovanović was the commander, and that he received his orders from these two men. Radenko Zarić, Ex. P685, pp. 4-5. When called for cross-examination, however, Zarić testified that he was not sure who the deputy commander was at the time of the fall of Srebrenica. Radenko Zarić, T. 6024.

¹⁹³ Momir Nikolić, T. 1997; Witness P-138, T. 3500 (private session). The Bratunac Brigade Roster for July 1995 lists 35 men as Military Police. Ex. D143/1.

¹⁹⁴ Momir Nikolić, T. 1602.

¹⁹⁵ Momir Nikolić, T. 1997. The Trial Chamber saw the former headquarters of the Bratunac Brigade Military Police from the outside during its site visit to Bratunac in September 2004.

¹⁹⁶ Momir Nikolić, T. 1603; Witness P-138, T. 3500-01 (private session); Petar Salapura, T. 10611; Borivoje Jakovljević, T. 9926-28.

¹⁹⁷ Momir Nikolić, T. 1602-03; Witness P-138, T. 3500-01(private session); Nikola Popović, T. 11070-71.

¹⁹⁸ Ex. P395, Publication, Drinski "On the road to victory, June 1995.

Commander was Major Dragan Obrenović.¹⁹⁹ Three departments were directly subordinate to the Commander: the security department, headed by Lieutenant Drago Nikolić; the logistics department, headed by Captain Sreten Milošević; and the department for morale, legal and religious affairs, headed by Major Nenad Simić.²⁰⁰

63. The Brigade Commander was further assisted by his staff, which consisted of the operations and training organ; the intelligence organ; the personnel affairs organ; the communications organ; the engineering organ; the air defence organ; and the artillery organ.²⁰¹ The engineering organ was headed by the Chief of Engineering, the Accused Major Dragan Jokić. The work of which was organised and directed by the Chief of Staff.

64. The Zvornik Brigade contained eight infantry battalions of approximately 450-550 men each; one logistics battalion; one mixed artillery “division;”²⁰² and one light anti-aircraft rocket artillery battalion.²⁰³ The brigade also had a unit of infantry battalion-strength called “the Podrinje Special Detachment”, known as “the Drina Wolves.”²⁰⁴ The Drina Wolves were commanded by Captain Milan Jolović, nicknamed “Legenda,”²⁰⁵ and were considered a particularly well trained and disciplined reconnaissance unit.²⁰⁶ While the unit was functioning within the Zvornik Brigade, it acted as a reserve for the Drina Corps, which used it frequently.²⁰⁷

65. There were also three separate companies within the Zvornik Brigade: an Engineering Company, commanded by Captain Dragan Jevtić as of 23 June 1995;²⁰⁸ a Military Police Company; and a Communications Company.²⁰⁹ Lastly, the brigade had two platoons: a Nuclear, Biological and Chemical Defence Platoon, and a Reconnaissance Platoon.²¹⁰

¹⁹⁹ Duško Vukotić, T. 11421 Witness P-130, T. 6664, 6686, 6702, 6713-14, 6727, 6783; Ex. P367, Zvornik Brigade Structure – July 1995.

²⁰⁰ Dragan Obrenović, T. 2424. Each head of these organs was called ‘assistant commander’ for the respective organ. The Commander and the Chief of Staff together with these three assistant commanders were referred to as the “inner command”. Duško Vukotić, T. 11421-22.

²⁰¹ Dragan Obrenović, T. 2422-24. A head of such an organ was called either “assistant chief of staff” (for the operations and training, intelligence, and personnel organs) or “chief” (for the remaining organs). *See also* Ex. P367, 1st Zvornik Infantry Brigade - July 1995.

²⁰² The Trial Chamber notes that the term “division” is normally reserved for units above a brigade.

²⁰³ Dragan Obrenović, T. 2666.

²⁰⁴ Ex. P367, 1st Zvornik Infantry Brigade Structure –July 1995.

²⁰⁵ Dragan Obrenović, T. 2667; Duško Vukotić, T. 11415-18; Dražen Erdemović, KT. 3085.

²⁰⁶ Ex. P390, Report on the combat readiness of the Zvornik infantry brigade for the period 1 January -31 December 1994; Dragan Obrenović, T. 2667; Duško Vukotić, T. 11418.

²⁰⁷ Dragan Obrenović, T. 2667.

²⁰⁸ Minja Radović, T. 11919-20; Ex. P514, Zvornik Brigade engineering company attendance roster for July 1995.

²⁰⁹ Ex. P367, 1st Zvornik Infantry Brigade Structure - July 1995.

²¹⁰ *Id.*

66. In January 1995, the Zvornik Brigade was reported to be comprised of 5,248 officers, non-commissioned officers, and soldiers.²¹¹ The brigade headquarters was located at the “Standard” factory in Karakaj, three kilometres north of the town of Zvornik along the Drina River.²¹² The brigade also manned an IKM at Kitovnice near the village of Orahovac.²¹³ The Zvornik Brigade secured an area of approximately 40 kilometres along the river Drina around Zvornik town.²¹⁴ In July 1995, the brigade also had units deployed outside this area. The 4th Infantry Battalion²¹⁵ and the 8th Infantry Battalion, known in July 1995 as the 4th Battalion of the Bratunac Brigade, were deployed in the Bratunac Brigade’s area, south of the Zvornik Brigade’s area.²¹⁶

67. In July 1995, the Zvornik Brigade always had a duty officer on duty at the command as well as at the IKM.²¹⁷ In addition, the brigade had a barracks duty officer at the brigade command, in charge of the internal duties of the barracks, such as guard duty and cleanliness of the barracks.²¹⁸

(ii) Structure of the Engineering Company

68. The Zvornik Brigade Engineering Company Commander during the relevant period was Captain Dragan Jevtić. His deputy was Slavko Bogičević.²¹⁹ The Engineering Company headquarters was located in Glinica approximately one kilometre from the Zvornik Brigade headquarters.²²⁰ The Engineering Company had approximately 90 members divided into three platoons: a pioneer or combat engineers platoon, a fortification or general engineering platoon, and a road platoon.²²¹ The main tasks of the pioneer platoon was to map and lay mine fields or to dismantle them.²²²

²¹¹ Ex. P390, Report on the combat readiness of the Zvornik infantry brigade for the period 1 January -31 December 1994. This figure does not include the 8th Infantry Battalion, as it was resubordinated to the Bratunac Brigade by order of the Drina Corps, Ex. P390, p. 6. The break-down of this figure, which was valid for 1 January to 31 December 1994, is as follows: 72 officers (32% of the strength as per establishment of 227), 243 non-commissioned officers (243% of the strength as per establishment of 137), and 4,933 soldiers (139% of the strength as per establishment of 3,550), Ex. P390, p. 6.

²¹² Dragan Obrenović, T. 2429. The Trial Chamber toured the former Zvornik Brigade headquarters during the Site Visit in September 2004.

²¹³ Dragan Obrenović, T. 2613. The Trial Chamber visited the former Zvornik Brigade IKM during the Site Visit in September 2004.

²¹⁴ Ex. P390, Report on the combat readiness of the Zvornik infantry brigade for the period 1 January -31 December 1994, p. 1.

²¹⁵ Duško Vukotić, T. 11451; Ex. P367, 1st Zvornik Infantry Brigade Structure -July 1995. The commander of the 4th Battalion was Lieutenant Pero Vidaković.

²¹⁶ See *supra* para. 42 on the resubordination of 8th Battalion to the Bratunac Brigade.

²¹⁷ Witness P-130, T. 6730-31. Dragoslav Lacković, T. 12141, 12145; Ljubo Bojanović, T. 11720; Milan Marić, T. 11568.

²¹⁸ Dragan Obrenović, T. 2618.

²¹⁹ Dragan Obrenović, T. 2585, Minja Radović, T. 11922-23.

²²⁰ Minja Radović, T. 11923.

²²¹ Ex. P514, Log of troop presence of the Engineering Company for July of an unspecified year. The Engineering Company also had a unit of guards, The Trial Chamber notes that certain information in the log namely the

69. The relationship between the Chief of Engineering, Dragan Jokić, and the Engineering Company Commander will be discussed below.²²³

70. The Engineering Company had heavy equipment and vehicles. It could also requisition engineering equipment from civilian sources if the need arose.²²⁴ In July 1995, the following heavy equipment and vehicles were available to, and used by, the Engineering Company:²²⁵ two trucks,²²⁶ two ULT loaders,²²⁷ a loader,²²⁸ and two excavators.²²⁹

company and platoon commanders matches that in other evidence concerning July 1995. The log lists Dragan Jevtić as company commander, Stevo Čvorić as commander of the pioneer platoon, Damjan Lazarević as commander of the road platoon, and Spasoje Tomanić as commander of the fortification platoon. Minja Radović, T. 11926-27; Richard Butler, T. 5232-33.

²²² Brano Đurić, T. 11966-67. The members of this platoon would often be resubordinated in groups of two to three soldiers to other units of the Zvornik Brigade, particularly the infantry battalions. Brano Đurić, T. 11966-67. In July 1995, for instance, platoon commander Čvorić was deployed with the 3rd Infantry Battalion. *Id.* In such cases, the work of the pioneers would be coordinated by the respective battalion commander. Brano Đurić, T. 11968.

²²³ See *infra* section IV. B. 1.

²²⁴ Ex. D12/3, Zvornik Brigade Engineering Summary Report, 20 December 1995, contains three types of vehicles and heavy equipment: belonging to the VRS proper ("Army contingent"), mobilised into the VRS from civilian sources ("Requisition fund"), or obtained as "war booty", *ibid.* p. 5.

²²⁵ As Ex. D12/3, Zvornik Brigade Engineering Summary Report, 20 December 1995 does not specify for which time period the vehicles listed were in use by the Engineering Company, and as there is no other evidence corroborating the precise use of these vehicles during the relevant time period of 1995, the Trial Chamber is unable to find that all these vehicles were in use by the Engineering Company in July 1995.

²²⁶ The two trucks were a FAP 1921 with 8 tonne load capacity and a TAM 75. Ostoja Stanojević, T. 5676, 5695; Ex. D12/3, Zvornik Brigade Engineering Summary Report, 20 December 1995, p. 5; Ex. P517, Zvornik Brigade vehicle log for TAM 75 for July 1995. There is evidence that two additional TAM trucks - a TAM 75 and a TAM 80 - were in use by the Zvornik Brigade during the relevant time period, *see* fuel logs in Ex. P523, Zvornik Brigade vehicle log for TAM 75 for July 1995 and Ex. P524 Zvornik Brigade vehicle log for TAM 80. The Trial Chamber concludes that these two trucks belonged to the 6th Infantry Battalion rather than to the Engineering Company, on the basis of: (a) the names of the drivers mentioned in these fuel logs who, according to Prosecution Military Expert Butler, were members of the 6th Infantry Battalion (Richard Butler, T. 4596); and (b) the log listing the "6 PB", *i.e.* the 6th Infantry Battalion, as the unit for which the vehicles were worked. The Trial Chamber notes in this context that the Engineering Summary for the year 1995, submitted by Colonel Pandurević to the Drina Corps on 21 December 1995, only lists one TAM 75 truck, which further supports this conclusion, *see* Ex. D12/3 Zvornik Brigade Engineering Summary Report, 20 December 1995.

²²⁷ One was an ULT-220 loader with a bucket in front. Richard Butler, T. 4595. According to Ex. P522, a vehicle work log, this machine was owned by the *Birač* Holding Company. Ex. P521, Zvornik Engineering Brigade Order dated 15 July 1995 signed by Dragan Jevtić, a page of the Engineering Company commander's order of the day book for 15 July 1995, indicates that there were two ULTs within the Engineering Company. Minja Radović, Engineering Company Commander until 23 June 1995, also testified that ULT machines were loaned through requisition channels. Minja Radović, T. 11940-42.

²²⁸ This was a backhoe loader with a bucket in the front for loading and a smaller bucket in the rear for digging canals. Miloš Mitrović, T. 5623.

²²⁹ These were a BGH-700 and a G-700 backhoe excavator with large buckets in the front. Ex. P516, vehicle log for a *Torpedo* excavator for the month of July 1995; Miloš Mitrović, T. 5592 (clarifying that this vehicle had been mobilised into the Zvornik Brigade in 1992); Ex. P515, vehicle log for backhoe excavator with registration number C-3117 for the month of July 1995; Cvijetin Ristanović, T. 5365-66, testifying that this piece of equipment was owned by the civilian company *Zvornik Putevi*.

(c) The MUP

71. The civilian police of the Republika Srpska was organised under the Ministry of Interior (“MUP”).²³⁰ In July 1995, Tomislav Kovač was the acting Minister of Interior. The civilian police was organised in two sections: the regular police force and the special police brigade.

(i) Regular Police Force

72. Public Security Centres (“CJBs”) co-ordinated the activities of local Public Security Stations (“SJBs”), *i.e.* police stations, within their region. In the Srebrenica area, the SJBs were subordinated to the Zvornik CJB, of which Dragomir Vasić was the chief.²³¹

73. In addition to ordinary police duties relating to law and order, some members of the regular police force also had duties within special police forces or PJP companies.²³² PJP companies were trained for combat operations and were set up when needed.²³³ Members of the PJP Companies generally wore blue camouflage uniforms and were issued standard military weapons.²³⁴

74. In July 1995, the Zvornik CJB activated several PJP Companies and deployed them in the Srebrenica area.²³⁵ Documentary evidence shows that on 12 July a platoon of the 2nd PJP Company was involved in laying ambushes near Ravni Buljim, to the north-west of the Srebrenica enclave.²³⁶ According to Nenad Deronjić, a member of the 2nd PJP Company, his platoon was sent to Srebrenica town on 12 July to establish a police station.²³⁷ In July 1995, the police checkpoint

²³⁰ Dragan Obrenović, T. 2761.

²³¹ Momir Nikolić, T. 1645; Dragan Obrenović, T. 2460-61; Nenad Deronjić, T. 8204; Witness DP-102, T. 8243; Predrag Krstić, Ex. D215/1, Statements of Predrag Krstić dated 23 April 2004 and 13 March 2001, p. 2.

²³² Witness DP-102, T. 8243-44. Momir Nikolić testified that the PJP companies were composed of men “from men of the territory where that unit was formed”. Momir Nikolić, T. 1645.

²³³ Dragan Obrenović, T. 2460-62; Nenad Deronjić, T. 8201; Ljubisav Simić, T. 7652.

²³⁴ Dragan Obrenović, T. 2460-62, testifying that the PJP formations were called “special police forces” or “blue police”; Nenad Deronjić, T. 8179-81, testifying that the 2nd PJP Company was recognisable as being a part of the MUP.

²³⁵ Momir Nikolić, T. 1645. Ex. P665, MUP Report dated 12 July 1995, paras 5-7. This report shows that the 1st, 2nd and 4th PJP Company were deployed. Witness P-134 testified that the 6th PJP Company was deployed in that period. Witness P-134, T. 6517. Ex. P159, Borovčanin’s Combat report, entry for 13-15 July, shows that the 5th PJP Company was engaged on 13 July. Svetlan Stanišić stated that in July 1995 the 1st PJP Company was stationed in Milići and that a unit of the Company was deployed from 11 to 13 July in the area around Srebrenica and Potočari. Ex. D214/1 Statements of Svetlan Stanišić dated 23 April 2004 and 14 March 2001, pp 2-3, 44-16, 18-21. *See also*. Predrag Krstić stated that on 14 and 15 July his unit of the 1st PJP Company was deployed around Zvornik. Ex. D215/1, Statements of Predrag Krstić, pp. 2, 3-7, 9-10, 22-26.

²³⁶ Ex. P665, MUP Report dated 12 July, para. 5; Nenad Deronjić, when confronted with this evidence, testified that his group was not called to lay ambushes. Nenad Deronjić, T. 8218.

²³⁷ Nenad Deronjić, T. 8187-89; Ex. P159, Borovčanin combat report for 10-20 July 1995, p. 2. The 2nd PJP Company consisted of 35 to 40 men. Nenad Deronjić, T. 8206. *See also* Ex. D124/1, Log book page for July 1995. Nenad Deronjić testified that the letters “BD”, which normally stand for combat activity, in this instance mean that the PJP Company was engaged in Srebrenica for nine days. Since the men of the company were not engaged in regular police activities, their duties would be listed as combat activities. Nenad Deronjić, T. 8198-99, 8223.

at Konjević Polje was manned by policemen from the 6th PJP Company.²³⁸ They were tasked with traffic and goods control.²³⁹

(ii) Special Police Brigade

75. The Special Police Brigade was a combat unit of the MUP.²⁴⁰ Colonel Goran Sarić was the commander and Colonel Ljubiša Borovčanin was the deputy commander.²⁴¹ The normal activities of this brigade included securing airports and providing security for important events.²⁴² The Special Police Brigade consisted of approximately eight detachments, including the 2nd Detachment from Šekovići²⁴³ commanded by Miloš Stupar,²⁴⁴ and a Training Centre at Jahorina, commanded by Duško Jević.²⁴⁵ Members of the detachments were armed with automatic and semi-automatic weapons and were trained differently than the regular police force.²⁴⁶ The detachments also had heavy weapons and vehicles, such as tanks, armoured personnel carriers (“APCs”) and Pragas.²⁴⁷

(iii) Re-subordination to the VRS in July 1995

²³⁸ Witness P-134, T. 6543-44. Witness P-134 testified that the 6th Company was stationed at the police checkpoint from 4 to 16 July. Witness P-134, T. 6517. *See also* Nenad Deronjić, who testified that the Konjević Polje checkpoint was usually manned by policemen from the SJB in Bratunac, doing regular police duties. According to Nenad Deronjić, the Bratunac policemen at the checkpoint did not have anything to do with the Bratunac Brigade. They could only communicate directly with the Bratunac SJB. Nenad Deronjić testified that the 2nd PJP Company was organised around noon of 12 July. Nenad Deronjić, T. 8179-82; 8205.

²³⁹ Nenad Deronjić, T. 8201-02; Witness P-134, T. 6517-18. Both witnesses testified that the 6th Company consisted of older men, compared to the men of the 1st and the 2nd PJP Companies.

²⁴⁰ Momir Nikolić, T. 1643. *See also* Ex. P853, RS MUP Special Police report, 5 July 1995.

²⁴¹ Dragan Obrenović, T. 2461; Duško Jević, T. 3208; Milos Stupar, T. 8327; Ex. D216/1, statement of Mendeljev Đurić, 22 April 2004, p 2.

²⁴² Ex. D216/1, interview of Mendeljev Đurić, 18 October 2000, pp. 6-7; According to Duško Jević, the men were primarily trained to do police work, but in case of need the men could be sent to the front. Duško Jević T. 3208.

²⁴³ According to Miloš Stupar, the 2nd Detachment from Šekovići wore light brown camouflage uniforms with the insignia “Special Police Brigade”. The Detachment consisted of approximately 80-100 members. Miloš Stupar, T. 8327. Miloš Stupar also testified that the 2nd Šekovići Detachment was subordinated to the Special Police Brigade, but that it had two chains of command; one chain of command through the Special Police Brigade; and one through the Zvornik CJB. Miloš Stupar, T. 8369.

²⁴⁴ Miloš Stupar testified that he was the commander of the 2nd Šekovići Detachment up until 15 July 1995. On that day he received an oral order by Tomislav Kovač, the acting Minister of the Interior, that he was to be transferred to the anti-terrorist unit. This testimony is contradicted by documentary evidence, indicating that he remained detachment commander until 22 August 1995. Miloš Stupar also testified that on 16 July he was ordered to remain the commander of the detachment, as his successor, who was the detachment’s deputy commander Rado Čuturić (nicknamed “Oficir”), had been injured at the Kravica Warehouse on 15 July. Miloš Stupar, T. 8366-69, 8423-25, 8445-53; Ex. P850, RS MUP Personal Questionnaire, for Miloš Stupar, indicating that he was the deputy commander of the 2nd Šekovići Detachment until 22 August 1995; Ex. D130/1, RS MUP Decision to deploy Miloš Stupar to the post of Chief of the Zvornik Detachment of Anti-terrorist Administration, as of 21 August 1995.

²⁴⁵ Duško Jević, T. 3207; Dragan Obrenović, T. 2523; Miloš Stupar, T. 8327; Witness P-131, Ex. P683, Statement 14-18 December 1995, p. 8 (under seal).

²⁴⁶ Witness DP-102, T. 8244 (private session), testifying that the special police brigade was trained for combat; Witness P-131, Ex. P683, Statement 14-18 December 1995, pp. 4-5 (under seal), testifying that he received special training.

²⁴⁷ Momir Nikolić, T. 1754; Miloš Stupar, T. 8327-28. A Praga is a self-propelled gun of a large caliber. Momir Nikolić, T. 1643-44.

76. In accordance with the law in effect in the RS, MUP units could be re-subordinated to the VRS for various purposes, including to reinforce the VRS during combat activities.²⁴⁸ When re-subordinated, the MUP forces followed orders issued by the VRS.²⁴⁹ The commander of the VRS unit to which the MUP unit was re-subordinated and the commander of the MUP unit coordinated their work in carrying out the tasks assigned by the VRS.²⁵⁰

77. MUP forces were engaged in combat operations for a specific time to carry out a precisely described task.²⁵¹ During their resubordination, MUP forces retained their formation and could not be disintegrated or separated.²⁵²

78. Sometime between 7 and 9 July, Miroslav Deronjić went to speak with President Radovan Karadžić in Pale.²⁵³ After a visit to the Bratunac Brigade IKM in Pribićevec he had concluded:

the operation was going beyond the scope of routine activity. I knew most of the participants in that event and the bulk of the army in the area was constituted by the Bratunac Brigade. I know most of those men and I realised that it was highly risky for such serious operations to be undertaken with men, who in my opinion, were not sufficiently well trained for such operations. [...] My intention in going to Pale was to caution the president by saying that if there were any serious intentions regarding Srebrenica, which was the conclusion I had made, that it would be a good idea to involve in such an operation another well trained unit, and I had in mind at that point the unit of the Special Police. I knew the command officers of that unit of Special Police, and I knew personally Mr. Ljubiša Borovčanin, who was head in the staff of that special police unit. So my intention was, firstly, to see what the military intentions were of the activities around Srebrenica; and secondly, to suggest to President Karadžić what a well-trained unit should be brought to the area, one that would be of that type of an operation. [...] The Option B, as described to me by President Karadžić, was a conditional plan. As I understood, it was supposed to enable the entry of the army in Srebrenica if possible. [...] And I was happy to hear that in the sense that I was able to understand what the intentions of our army were regarding Srebrenica.²⁵⁴

On 10 July 1995, Tomislav Kovač, acting Minister of Interior, issued an order to create a MUP Task Force.²⁵⁵ This order reads, in relevant parts:

²⁴⁸ Ex. D61/1, Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War, 29 November 1994, Sect.IV, Article 14: "Police units assigned to combat operations by an order of the commander-in-chief of the Armed Forces shall be resubordinated to the commander of the unit in whose zone of responsibility they are performing combat tasks". Pursuant to Article 7 of this law, the President of the RS defined the organisation of the police force and issued orders for their deployment in times of war. *See also* Ljubisav Simić, T. 7652 . Dragan Obrenović testified that the resubordination would be decided upon on a case by case basis. Dragan Obrenović, T. 2764-65.

²⁴⁹ Duško Jević, T. 3216-17, 3281-85.

²⁵⁰ Ex. D61/1, Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War, 29 November 1994, Article 14 ; Duško Jević, T. 3309-15, 3248.

²⁵¹ Ex. D62/1, Order of President Karadžić, dated 22 April 1995, under item 2, as commented on by Duško Jević, T. 3286-87. *See also* Duško Jević, T. 3220-21, 3338-39. The responsibilities of the commanding MUP officers were precisely specified by the RS MUP

²⁵² Ex. D61/1, Article 14; Ex. D62/1, Order of President Karadžić, dated 22 April 1995.

²⁵³ Miroslav Deronjić, T. 6376-77.

²⁵⁴ Miroslav Deronjić, T. 106-111. *See also* Miroslav Deronjić, KAT T .6377-78. Miroslav Deronjić testified that by that time, he did not know the military aim of the attack on Srebrenica. Miroslav Deronjić, T. 7283.

²⁵⁵ Ex. P157, RS MUP Order regarding MUP assignment, 10 July 1995. According to the text of this order, it was issued pursuant to an order by Supreme Commander of the Republika Srpska Armed Forces, Radovan Karadžić.

Based on the order of the Supreme Commander of the Republika Srpska Armed Forces, [...] I hereby order:

1. Single out part of the RS MUP forces participating in combat operations on the Sarajevo front, and send them as an independent unit to the Srebrenica sector in the course of tomorrow, 11 July.

2. The unit will comprise of the following: 2nd Special Police Detachment from Šekovići, 1st company of the PJP of the Zvornik CJB, mixed company of MUP forces of the Republic of Serbian Krajina, Serbia and Republika Srpska and a company from the Jahorina training centre.

4. [...] Round up the unit by 1200 hours on 11 July 1995 in front of the SJB in Bratunac, except for the 2nd special police detachment, which will start out towards the destination in the afternoon of 11 July 1995.

5. On arrival at the destination, the unit commander shall contact General Krstić, the Corps Chief of Staff.²⁵⁶

79. Based on the fact that Colonel Borovčanin, appointed to be the commander of the Task Force, had to report to General Krstić to receive instructions, Duško Jević concluded that General Krstić was in charge of the operation.²⁵⁷ There is no evidence before the Trial Chamber that Ljubiša Borovčanin actually met with General Krstić in Bratunac.

80. According to Duško Jević, within the VRS only General Krstić and VRS officers of a higher rank than General Krstić could issue orders to Colonel Borovčanin.²⁵⁸ The Trial Chamber recalls that Colonel Borovčanin was ordered to report to General Krstić. A combat report by Colonel Borovčanin suggests that he has received orders directly from General Mladić.²⁵⁹

81. Based on the evidence before it, the Trial Chamber finds that while coordination of the Task Force activities occurred on the local level, the actual re-subordination occurred on a higher level – at least on the Corps level, if not on the level of the Main Staff.²⁶⁰

²⁵⁶ Ex. P157, RS MUP Order regarding MUP assignment, 10 July 1995. This order was addressed to "the Commander of the Special Police Brigade, the Trnovo Police Force Command Staff, the Vogošća Police Force Command Staff, the Bjeljina Police Force Command Staff, the Zvornik CJB, the Sarajevo CJB and the Jahorina Police Training site"

²⁵⁷ Duško Jević, T. 3216, 3288-89.

²⁵⁸ Duško Jević, T. 3219-21.

²⁵⁹ Ex. P159, Borovčanin combat report from 10-20 July 1995, pp 1-2.

²⁶⁰ Ex. P471, Drina Corps Regular combat report, 13 July 1995, p. 3, which reads: "Parts of the forces in coordination with MUP forces shall control the territory behind the lines, detect, block, capture and disarm dispersed Muslim forces, protect the population and property and at the same time secure the lines of defence from attacks from behind. Part of the forces in coordination with MUP forces will control and set up ambush operations along the Muslim group's axes of withdrawal, completely secure the Bratunac-Konjević Polje-Milići- Vlasenica and Zvornik-Šekovići-Vlasenica roads and make them passable around the clock." For coordination with the Bratunac Brigade in the search operations after 15 July, *see infra* section II. D. 2.

2. Civilian Structures in Bratunac

(a) Municipal Authorities

82. In 1995, the municipality of Bratunac was governed by the Municipal Assembly and the Executive Board. The Executive Board was responsible for the implementation of the decisions of the Municipal Assembly.²⁶¹ The President of the Municipal Assembly only had official contacts with the VRS through the Executive Board.²⁶²

83. The political situation in Bratunac in 1995 was such that the dominant political party was the Serbian Democratic Party (“SDS”).²⁶³ Miroslav Deronjić was the local president of the SDS and he led the Municipal Board of the SDS.²⁶⁴ The SDS offices were located immediately next to the Hotel Fontana in Bratunac.²⁶⁵ Miroslav Deronjić was considered to be the most important man in Bratunac.²⁶⁶ One witness testified that he, although not a member of the official municipal government, personally appointed the members of the Executive Board of the Municipality.²⁶⁷ In 1994, Miroslav Deronjić nominated Srbislav Davidović to be President of the Executive Board.²⁶⁸ Srbislav Davidović continued to hold this position in July 1995.²⁶⁹

(b) Department of Defence

84. The Ministry of Defence of the RS was represented at the municipal level through the Department of Defence.²⁷⁰ In Bratunac, the Department of Defence was located in the centre of town in the old municipal building.²⁷¹ Aleksander Tesić was the chief of the Department of Defence in Bratunac. The Department of Defence dealt with the mobilisation of conscripts and the provision of material and technical equipment for the VRS and Civilian Protection units.²⁷² The

²⁶¹ Ljubisav Simić, T. 7601. In July 1995 Ljubisav Simić was the President of the Bratunac Municipal Assembly. As President he was responsible for organising sessions of the Assembly, preparing agendas for those sessions and he was responsible for the implementation of the Assembly’s decisions through the Executive Board. Ljubisav Simić, T. 7600.

²⁶² Ljubisav Simić, T. 7647.

²⁶³ Miroslav Deronjić, T. 6375.

²⁶⁴ Aleksander Tesić, T. 7805; Witness DP-101, T. 7873 (closed session); Miroslav Deronjić, T. 6353.

²⁶⁵ Ex. P12.1, Aerial photograph of Bratunac town, with annotations. The Trial Chamber has viewed the SDS offices and Hotel Fontana during the Site Visit.

²⁶⁶ Srbislav Davidović, T. 7690, testifying that Miroslav Deronjić had the “highest rating” in Bratunac; Witness DP-101, T. 7875 (closed session); Miroslav Deronjić testified that as president of the SDS in Bratunac, he had influence over events in Bratunac, such as appointments and human resources. Miroslav Deronjić, T. 6375.

²⁶⁷ Witness DP-101, T. 7875 (closed session).

²⁶⁸ Srbislav Davidović, T. 7689-90.

²⁶⁹ Srbislav Davidović, T. 7690, testifying that he was president of the Executive Board from 1994 to 1997.

²⁷⁰ Aleksander Tesić, T. 7779. The Ministry of Defence was represented by Secretariats for Defence, which were responsible for a certain region, and Departments of Defence, which acted on the municipal level. The Departments of Defence were subordinated to the Secretariats of Defence, and to the Ministry of Defence.

²⁷¹ Aleksander Tesić, T. 7815.

²⁷² Aleksander Tesić, T. 7774. *See also* Ex. D114/1, Instructions by the Ministry of Defence, received by the Secretariat for the Ministry of Defence in Zvornik on 5 July 1995, and Ex. D60/1, RS Law on Defence.

Department of Defence had contacts with the Bratunac Brigade, including with Major Dragomir Eskić, the Assistant Chief of Staff for Reinforcement and Personnel Affairs of the Brigade.²⁷³

(c) Civilian Protection

85. Within the SFRY, the doctrine of “All People’s Defence” was based on the Constitution and various other laws, including the Law on All People’s Defence.²⁷⁴ The main features of the All People’s Defence were: “relying on one’s own forces, mass participation of the people in opposition to aggression, use of all financial resources and goods for the needs of war [...]”²⁷⁵ The organisation of defence of Republika Srpska was based on the same doctrine.²⁷⁶

86. In accordance with the Law on Defence, the Department of Defence organised civilian protection units in times of war to provide protection for the population and material resources to the inhabitants of the municipality.²⁷⁷ The army could also call upon Civilian protection units for assistance.²⁷⁸

87. The President of the Executive Board was the head of the Municipal Staff of the Civilian Protection.²⁷⁹ A representative of the Department of Defence served as the Chief of Staff of the Civilian Protection Municipal Staff.²⁸⁰ According to one witness, in practice all orders to the

²⁷³ Aleksander Tesić, T. 7780-81. Tesić did not have contacts with the Drina Corps, as the Drina Corps would contact the Secretariat of the Ministry of Defence in Zvornik. The Main Staff would contact the Ministry of Defence.

²⁷⁴ Mirko Trivić, T. 10725-26; Ex. D200/1, excerpts from book entitled “Strategy of Armed Combat” Centre for Strategic Research of the JNA, 1983, p 1. *See also* Čelebići Trial Judgement, paras 93-95.

²⁷⁵ Ex. D200/1, excerpts from book, pp 4, 6; According to Mirko Trivić, Special Forces had to be organized to “take part in the decisive factor of resisting the aggressor. Mass participation meant “all working people and citizens in an organised manner participate in war activities and give their full contribution to the overall effort of society to realize the goals of the All Peoples Defence war.” Mirko Trivić, T. 10726-27.

²⁷⁶ Mirko Trivić, T. 10726-27; Ex. D60/1, RS Law on Defence; Ex. P384, Law on the implementation of the Law on Defence in case of an imminent threat of war or state of war, Official Gazette of the RS, 29 November 1994. The Trial Chamber notes that Article 11 of the RS Law on Defence (Ex. D60/1) is a clear example of how the doctrine of the “All Peoples Defence” was included in the laws of the RS. The system integrated all citizens in the defence of the SFRY and aimed to utilise all resources.

²⁷⁷ Aleksander Tesić, T. 7778; Rajko Đokić, T. 11883; Witness DP-101, T. 7864 (closed session); Ex. D50/3 Legal Act on the Organizing and Functioning of Civilian Protection, Official Gazette of the Republika Srpska, 27 September 1992, Article 27; Ex. D60/1, RS Law on Defence, Article 36.

²⁷⁸ Witness DP-101, T. 7890 (closed session). According to Witness DP-101, the “civilian authorities” decided whether or not to grant such a request of the VRS. *See also* Ex. P384, The Law on the implementation of the Law on Defence in case of an imminent threat of war or state of war, which reads: “ Article 9: The obligation to participate in civil defence shall apply to all able-bodied citizens and all citizens liable for military service who have been assigned to the organs and units of civilian protection. Article 10: Compulsory work units shall be established in all municipalities to carry out occasional tasks to meet the needs of the Armed Forces and other defence needs. Civilian protection units may also be recruited to perform the tasks mentioned in the previous paragraph.”

²⁷⁹ Rajko Đokić, T. 11883; Witness DP-101, T. 7863 (closed session); Ex. D60/1, RS Law on Defence, Article 46. The Municipal Staff of Civilian Protection were under control of the Republican and Regional Civilian Protection Staffs. The Staffs consisted of representatives for specific tasks. Each Civilian Protection unit had its own unit commander.

²⁸⁰ Witness DP-101, T. 7863 (closed session); Ex. D60/1, RS Law on Defence, Article 46.

Civilian Protection came from Miroslav Deronjić, despite the fact that he was not the President of the Executive Board.²⁸¹

88. The Civilian Protection and the VRS coordinated their work.²⁸² A representative of the VRS was supposed to be present at meetings of the Municipal Staff of the Civilian Protection. One witness testified that the VRS representative regularly failed to attend the meetings; however, on several occasions Dragoslav Trišić, the Bratunac Brigade Assistant Commander for Logistics, attended the meetings.²⁸³

89. One of the civilian protection units that existed in Bratunac in 1995 was the Work Obligation Unit.²⁸⁴ The members of the Work Obligation Unit were employed and paid by the municipality and were deployed as skilled workers in enterprises in Bratunac.²⁸⁵ While these men were unfit for military service, they were still able to work.²⁸⁶ One of the tasks of the Bratunac Work Obligation unit was “*asanacija*.”²⁸⁷ *Asanacija* means the clearing of terrain, by removing waste, and removing and burying corpses.²⁸⁸ An “*asanacija* unit” was organised within the *Rad*

²⁸¹ Witness DP-101, T. 7896 (closed session). Witness DP-101 also testified that all records concerning the Civilian Protection would have been kept in the archives of the Ministry of Defence in Bratunac. Witness DP-101, T. 7897-98 (closed session).

²⁸² Rajko Đokić, T. 11885; Witness DP-101, T. 7891 (closed session). In wartime, the utilities company received orders from the President of the Executive Board. Their work was again coordinated with the work of the army through the civilian authorities. Dragan Mirković, T. 7965-66.

²⁸³ Witness DP-101, T. 7896-97 (closed session).

²⁸⁴ Witness DP-101, T. 7864, 7934 (closed session); Rajko Đokić, T. 11884; Aleksander Tesić, T. 7778; Ex. D60/1, Law on Defence. Apart from the Work Obligation unit, the law provided for General Purpose units and Special Purpose units. According to DP-101 the General Purpose units were not activated. The Special Purpose units were responsible for fire fighting, first aid, Veterinarian issues, flood rescue and “*asanacija*”. The Special Purpose units consisted of men who were unfit for military service or not liable for service because they were too old or had to take care of their family.

²⁸⁵ Witness DP-101, T. 7864 (closed session); Rajko Đokić, T. 11883. The members of the units assisted the local Red Cross, helped with loading and unloading vehicles and performed several other tasks. Đokić testified that the Civilian Protection also was staffed with volunteers.

²⁸⁶ Witness DP-101, T. 7934 (closed session).

²⁸⁷ Witness DP-101, T. 7864-65 (closed session). Other tasks included cutting fire wood, helping the Red Cross and loading or unloading of trucks.

²⁸⁸ Ex. D30/3, Article 21 of the Legal Act on the organising and functioning of civilian protection, defines *asanacija*: “With the view of preventing diseases, epidemics and other consequences of war actions, natural disasters, technical, technological and ecological accidents, as well as other dangers in time of war and peace, *asanacija* shall be organized and conducted by way of removing and burying corpses of perished animals, and removing waste and other matters which might be hazardous to lives and health of people. In the organising and conducting of *asanacija*, public utilities, civil engineering/ construction, transportation, healthcare and veterinarian companies/enterprises and organisations are engaged, as well as scientific and expert institutions, and, as needed, the units of civilian protection.” The Trial Chamber notes that this article only refers to the removal and burial of corpses of perished animals. The evidence shows that the term *asanacija* was also used for the removal and burial of human corpses. See also Momir Nikolić, T. 1763, including the removal of dead bodies in his definition of *asanacija*; Dragan Obrenović, T. 2592-93, testified in relation to Ex. P528, Zvornik Brigade Interim Combat Report, 15 July 1995, that *asanacija* in the context of that report means the burial of bodies of people whom had been shot.

Utilities Company.²⁸⁹ waste, and removing and burying corpses.²⁹⁰ An “*asanacija* unit” was organised within the *Rad* Utilities Company.²⁹¹

90. The Work Obligation Unit had a tractor and a funeral hearse. The *Rad* Utilities Company had a heavy-duty FAP tractor and a small vehicle that was used for digging and waste disposal. Both the Work Obligation Unit and the unit from the *Rad* Utilities Company regularly used a loader that was owned by *Gradina*, a state-owned company.²⁹² Whenever necessary, the Department of Defence ordered the mobilisation of that loader.²⁹³

91. Distinct from the Civilian Protection units, approximately 50-60 able-bodied men were deployed in companies in the Bratunac municipality including the *Vihor* bus company and the electrical Power Distribution Company.²⁹⁴ This contingent of men was called the Workers Battalion, and served as a reserve force for the Bratunac Brigade.²⁹⁵ Once mobilised to the Brigade, the members automatically became subordinated to the Bratunac Brigade.²⁹⁶

²⁸⁹ Witness DP-101, T. 7865-66 (closed session); Dragan Mirković, T. 7938, 7943. Both units had their own commander. The commander of the “*Rad* Utilities Company” unit was Dragan Mirković. According to Witness DP-101, the unit within the “*Rad* Utilities Company” was engaged only “from time to time”.

²⁹⁰ Ex. D30/3, Article 21 of the Legal Act on the organising and functioning of civilian protection, defines *asanacija*: “With the view of preventing diseases, epidemics and other consequences of war actions, natural disasters, technical, technological and ecological accidents, as well as other dangers in time of war and peace, *asanacija* shall be organized and conducted by way of removing and burying corpses of perished animals, and removing waste and other matters which might be hazardous to lives and health of people. In the organising and conducting of *asanacija*, public utilities, civil engineering/ construction, transportation, healthcare and veterinarian companies/enterprises and organisations are engaged, as well as scientific and expert institutions, and, as needed, the units of civilian protection.” The Trial Chamber notes that this article only refers to the removal and burial of corpses of perished animals. The evidence shows that the term *asanacija* was also used for the removal and burial of human corpses. See also Momir Nikolić, T. 1763, including the removal of dead bodies in his definition of *asanacija*; Dragan Obrenović, T. 2592-93, testified in relation to Ex. P528, Zvornik Brigade Interim Combat Report, 15 July 1995, that *asanacija* in the context of that report means the burial of bodies of people whom had been shot.

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²⁹² Dragan Mirković, T. 7947, Witness DP-101, T. 7866-67 (closed session). An ULT is a loader. Ex. P354, diagram of various machines and titles of relevant machines, shows an ULT in the bottom left corner.

²⁹³ Witness DP-101, T. 7866-67 (closed session). Aleksander Tesić testified that construction machinery for the Bratunac Brigade was not frequently replenished. The machinery would be mobilised from civilian companies for a couple of days, whenever the need for the machines arose. Aleksander Tesić, T. 7820-21. Ljubisav Simić testified that the Bratunac Brigade were “very demanding” in requesting material from the civilian society. Ljubisav Simić, T. 7647. Srblislav Davidović testified that on 11 or 12 July Ljubiša Borovčanin came to him and asked him for food from Bratunac’s stock. Davidović gave him 1,000 tins of canned food. Srblislav Davidović, T. 7726-27.

²⁹⁴ Witness DP-101, T. 7934 (closed session).

²⁹⁵ Witness DP-101, T. 7934 (closed session), Witness P-140, T. 3445 and Aleksander Tesić, T. 7786-87; Ex. P165, “list of persons in the reserve structure of the 3rd Battalion of the Bratunac Brigade” (under seal). The Trial Chamber has heard evidence from members of the Workers Battalion. These men were involved in the burial of Bosnian Muslims who were executed in the Kravica Warehouse. See *infra* section II. F. 1. (d)(ii).

²⁹⁶ Ex. D62/1, Order by President Karadžić, dated 22 April 1995, under item 3: “The workers battalions shall be placed by an act of command by a VRS unit for the execution of the given task as per place and time, by which they automatically become fully equal with other unit formations.”

C. Factual Background Relevant to this Case

1. 1991-1994

92. The history of the break-up of the Socialist Federal Republic of Yugoslavia has been described in previous judgements of this Tribunal.²⁹⁷ It will not be repeated in detail here.

93. After the break-up of the SFRY, the Bosnian Serb political leadership, pursuing the goal of creating a unified ethnically homogenous “Greater Serbia,” had proclaimed the autonomous Serbian Republic of Bosnia and Herzegovina, which later became known as the Republika Srpska, as early as January 1992.²⁹⁸ Tension mounted while the government of Bosnia and Herzegovina sought international recognition for the multi-ethnic republic as an independent State.²⁹⁹ This recognition came in early April 1992.³⁰⁰ Shortly thereafter, war broke out in Bosnia and Herzegovina.

94. The municipality of Srebrenica lies in a mountainous valley in eastern Bosnia and Herzegovina. With the Jadar River to its west, the municipality is located about fifteen kilometres from the Drina River and the border with Serbia.³⁰¹ The population in 1991 was 37,000 of which 73% were Bosnian Muslims and 25% were Bosnian Serbs.³⁰² Before the war, many people from Srebrenica were employed in the factories in Potočari or in the nearby bauxite and zinc mines, making the standard of living in Srebrenica relatively high.³⁰³ Relations between people from different ethnic groups were good,³⁰⁴ but in the months leading up to the war relations between the two groups deteriorated.³⁰⁵

²⁹⁷ See e.g. *Tadić* Trial Judgement and *Krstić* Trial Judgement.

²⁹⁸ Ex. D210/1, Report of the Netherlands Institute of War Documentation (NIOD), 10 April 2002 (“NIOD Report”) Part I, Ch. 5, sect. 1.

²⁹⁹ Ex. D210/1, NIOD Report, Part I, Ch. 5.

³⁰⁰ The European Union recognised the independent state of Bosnia and Herzegovina on 6 April 1992 and the United States recognised the independent state of Bosnia and Herzegovina on 7 April 1992. The Republic of Bosnia and Herzegovina became a member of the United Nations on 22 May 1992.

³⁰¹ Agreed Facts, para. 9; Ex. P 825, Secretary-General’s Report, para. 33.

³⁰² Ex. P825, Secretary-General’s Report, para. 33. See also Ex. D 210/1, NIOD Report, Part I, Ch. 10, sect. 7.

³⁰³ A Bosnian Muslim woman living in Srebrenica testified that before the war, “whatever you needed, you had everything ... All we had to do was enjoy life.” Witness P-205, KT. 5748.

³⁰⁴ Čamila Omanović, who later served as one of three “representatives” of the Bosnian Muslims from the Srebrenica enclave at the third meeting with General Mladić at the Hotel Fontana on 12 July 1995, describes the situation in the area before the war: “We lived together, we socialised together, we lived next to each other, we went to school together, we worked together, and we respected mutually our traditions, and it was very difficult to understand where all that hatred had come from on the part of the people who had lived together with us.” Čamila Omanović, KT. 1138.

³⁰⁵ Witness P-175, KT. 3282-83.

95. In the first month of the war, the Srebrenica municipality came under the control of Bosnian Serb paramilitaries, only to be retaken by Bosnian Muslim forces weeks later.³⁰⁶ In April and May 1992, Bosnian Serb forces together drove the Bosnian Muslims out of much of eastern Bosnia, including from the towns of Bijeljina, Bratunac and Zvornik. The Bosnian Muslim population sought refuge in enclaves around Srebrenica, Žepa and Goražde.³⁰⁷

96. On 12 May 1992, Momčilo Krajišnik, the President of the National Assembly of the Serbian People of Bosnia and Herzegovina, signed the “Decision on Strategic Objectives of the Serbian People,” which includes one objective relating to the area of Srebrenica, namely, to “establish a corridor in the Drina river valley, that is, eliminate the Drina as a border separating Serbian States.”³⁰⁸

97. In November 1992, General Ratko Mladić issued Operational Directive 4, which outlined further operations of the VRS.³⁰⁹ Included in the Directive are orders to 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.”³¹⁰

98. By March 1993, Bosnian Serb forces were advancing rapidly, causing more civilians to flee. During this offensive, the Žepa enclave was separated from the Srebrenica enclave. Bosnian Muslims from neighbouring villages sought refuge in an area of approximately 150 square kilometres around Srebrenica town. At one point the population in this area reached 50,000 to 60,000 people.³¹¹ As the Bosnian Serbs advanced, they destroyed Srebrenica’s water supply and the town’s electricity supply; the population increased, while the supplies of food and water ran low and public hygiene and living conditions deteriorated rapidly.³¹²

99. In March and April 1993, UNHCR was able to bring a number of humanitarian aid convoys into the Srebrenica enclave and to evacuate large numbers of vulnerable people. The Bosnian Muslim Government in Sarajevo objected to these evacuations, asserting that the

³⁰⁶ Agreed Facts, paras. 14-15; Ex. P825, Secretary-General’s Report, paras 33-34. The Bosnian Muslim forces in Srebrenica then linked up with Žepa in September 1992. *Ibid*, para. 36; Agreed Facts, para. 16.

³⁰⁷ Ex. D 210/1, NIOD Report, Part I, Ch. 5, sect. 6.

³⁰⁸ Ex. P686, Official Gazette of the Republika Srpska, Vol. II, No. 22, Article 386, “Decision on Strategic Objectives of the Serbian People in Bosnia and Herzegovina”, dated 12 May 1992.

³⁰⁹ Ex. P400, VRS Main Staff Order 02/5-210, Operational Directive Four, 19 November 1992.

³¹⁰ Ex. P400, VRS Main Staff Order, Operational Directive Four, p. 5.

³¹¹ Agreed Facts, para. 19; Ex. P825, Secretary-General’s Report, para. 37.

³¹² Agreed Facts, para. 20; Ex. P825, Secretary-General’s Report, para. 38.

evacuations contributed to the “ethnic cleansing” of the territory. The Bosnian Serbs, on the other hand, were reluctant to allow humanitarian aid into the enclave.³¹³

100. In response to the developing humanitarian emergency in the area and growing concern that Bosnian Serbs would take the enclave over, on 16 April 1993 the UN Security Council passed Resolution 819 in which it declared Srebrenica and its surroundings to be a “safe area which should be free from any armed attack or any other hostile act.”³¹⁴ Resolution 819 further called for “the immediate cessation of armed attacks by Bosnian Serb paramilitary units against Srebrenica and their immediate withdrawal from the areas surrounding Srebrenica.”³¹⁵

101. While “large-scale evacuation of the endangered population” had been proposed as an alternative way to “save the lives of the people trapped in Srebrenica” by the UNHCR,³¹⁶ this course of action was rejected. The Security Council stated in Resolution 819 that it: “condemns and rejects the deliberate actions of the Bosnian Serb party to force the evacuation of the civilian population from Srebrenica and its surrounding areas [...] as part of its abhorrent campaign of ethnic cleansing.”³¹⁷

102. When the “safe area” of Srebrenica was established, the Security Council called upon the Secretary-General to “take immediate steps to increase the presence of the United Nations Protection Forces in Srebrenica and its surroundings.”³¹⁸ At the same time, a ceasefire agreement was signed between the Army of the Republic of Bosnia and Herzegovina (ABiH) and the VRS, in which the parties agreed that Srebrenica would be demilitarised.³¹⁹ The first UNPROFOR troops³²⁰ were deployed on 18 April 1993 to assist with the evacuation of the wounded, to monitor the ceasefire in Srebrenica and to establish a liaison with authorised military leaders from both sides.³²¹ Efforts to ensure the safety of the population in the safe areas continued.³²²

³¹³ Agreed Facts, para. 21; Ex. P825, Secretary-General’s Report, para. 39.

³¹⁴ Ex. P817, United Nations Security Council Resolution 819 (1993) of 16 April 1993. In this resolution Srebrenica and its surrounding area were defined as safe area.

³¹⁵ Ex. P817, United Nations Security Council Resolution 819 (1993) of 16 April 1993.

³¹⁶ S/25519 cited in Ex. P825, Secretary-General’s Report, para. 52.

³¹⁷ Ex. P817, United Nations Security Council Resolution 819 (1993) of 16 April 1993.

³¹⁸ Ex. P817, United Nations Security Council Resolution 819 (1993) of 16 April 1993. The exact boundaries of the area were not articulated in the resolution.

³¹⁹ Agreed Facts, para. 24; Ex. P825, Secretary-General’s Report, para. 60. This agreement was signed on 18 April 1993.

³²⁰ The first contingent of troops was Canadian. A Nordic battalion was scheduled to replace the Canadians, but the Commander of the Nordic battalion, acting on one government’s instructions, refused. Therefore, the Canadians remained in Srebrenica until the Dutch battalion arrived in January 1994. *See* Ex. P825, Secretary-General’s Report, para. 104.

³²¹ Ex. P825, Secretary-General’s Report, paras 60-61.

³²² For example: United Nations Security Council Resolution 836, extending the mandate of the UNPROFOR; The Secretary-General’s Report pursuant to Resolution 836, in which the Secretary-General suggests that no extra troops would be needed in Srebrenica, if Member States would ensure air-strike availability. At a certain point

2. Plans to “Defeat” the Srebrenica Enclave

103. On 4 July 1994, Colonel Ognjenović, the then-commander of the Bratunac Brigade, sent a report to the units of the Bratunac Brigade. In this report, he outlined the “final goal” of the VRS: “[...] an entirely Serbian Podrinje. The enclaves of Srebrenica, Žepa and Goražde must be militarily defeated.”³²³ This report continued:

We must continue to arm, train, discipline and prepare the RS Army for the execution of this crucial task – the expulsion of Muslims from the Srebrenica enclave. There will be no retreat when it comes to the Srebrenica enclave, we must advance. The enemy’s life has to be made unbearable and their temporary stay in the enclave impossible so that they leave *en masse* as soon as possible, realising that they cannot survive there.³²⁴

104. A number of witnesses who were members of the Bratunac Brigade in 1994, testified that they did not consider this report to be an order.³²⁵ Testimony of other witnesses and documentary evidence show that the strategy was in fact implemented.³²⁶

105. At a meeting between the UNPROFOR Commander and General Mladić on 7 March 1995 in Vlasenica, General Mladić expressed dissatisfaction with the safe area regime and indicated that he might take military action against the eastern enclaves. He gave assurances, however, for the safety of the Bosnian Muslim population of those enclaves.³²⁷

106. On 8 March 1995, the Supreme Commander of the RS Armed Forces, President Karadžić, issued Directive for Further Operations 7: “Planned and well-thought-out combat operations” were to create “*an unbearable situation of total insecurity with no hope of further survival or life*

there were proposals to exchange Srebrenica for Bosnian Serb-held territory around Sarajevo. See Ex. P825, Secretary-General’s Report, paras 78-79, 96-98, 114-116; See also United Nations Security Council Resolution 836 (1993) of 4 June 1993, in which the Security Council “decides to extend [...] the mandate of the United Nations Protection Force in order to enable it, in the safe areas referred to in resolution 824 (1993), to deter attacks against the safe areas, to monitor the ceasefire, to promote the withdrawal of military or paramilitary units other than those of the Government of the Republic of Bosnia and Herzegovina and to occupy some key points on the ground [...] and] authorises [...] acting in self-defence, to take necessary measures, including the use of force, in reply to bombardments against the safe areas by any of the parties or to armed incursion into them or in the event of any deliberate obstruction in or around those areas to the freedom of movement of the Force or of protected humanitarian convoys.”

³²³ Ex. D132/1, Report for the Bratunac Brigade members, No. 04-1738-1/94, dated 4 July 1994, para. 2

³²⁴ Ex. D132/1, Report for the Bratunac Brigade members, No. 04-1738-1/94, dated 4 July 1994, para. 2.

³²⁵ Dragoslav Trišić, T. 9397-98. Dragoslav Trišić testified that this report was an internal memorandum to boost morale, but that no one believed in it in 1994; Mićo Gavrić, T. 8527-29. Mićo Gavrić considers the purpose of this document to be self promotion of Ognjenović. He claims never to have received orders from Ognjenović.

³²⁶ See *supra* section II. C. 3 and Ex. D173/1, Main Staff note of agreement with the Realisation of the Request of made by the Coordinating Board of the RS for Humanitarian Aid, dated 2 April 1995; Ex. D174/1, Notice of Agreement with the UNHCR, Belgrade, Weekly Plan, dated 26 May 1995 and Ex. D177-1/1, Main Staff, Plan on Realisation of Approved Project, dated 19 May 1995, show that there was a structured effort to “make the enemy’s life unbearable” through a system of permits and checks for the convoys. For testimony regarding the permits and checks of convoys, See *e.g.* Jovan Ivić, T. 9618-33.

³²⁷ Ex. P825, Secretary-General’s Report, para. 180.

for the inhabitants of both enclaves.”³²⁸ The separation of the Srebrenica and Žepa enclaves became the task of the Drina Corps.³²⁹ As a result of this directive, General Ratko Mladić on 31 March 1995 issued Directive for Further Operations, Operative No. 7/1, which further directive specified the Drina Corps’ tasks.³³⁰

3. Events in and around Srebrenica from January to July 1995

107. The Dutch Battalion (“DutchBat”) mandate was to secure the safe area, to demilitarise the enclave and to provide humanitarian assistance.³³¹ On 18 January 1995, approximately 600 personnel were deployed in the Srebrenica “safe area”, of whom approximately 300 were infantry soldiers.³³²

108. Lieutenant Colonel Thomas Karremans was the commander of DutchBat-3 and Major Robert Franken was the deputy commander. DutchBat consisted of two infantry companies: the Bravo Company, located at the UN base in Srebrenica town, and the Charlie Company, located at the DutchBat headquarters in Potočari.³³³ DutchBat was armed with light infantry arms and APCs with limited armour.³³⁴

109. Initially DutchBat had eight observation posts (“OPs”) around the perimeter of the enclave; four additional OPs were added between February and July 1995.³³⁵ Each OP was manned with eight soldiers who reported activities “from outside and inside the enclave”.³³⁶ DutchBat soldiers patrolled the borders of the enclave, trying to ensure that the truce between “the two warring parties” was respected.³³⁷

³²⁸ Ex. P401, Republika Srpska Supreme Command Directive Seven, signed by Radovan Karadžić, forwarded to the 1st Krajina Corps on 17 March 1995, p. 10 (emphasis added).

³²⁹ *Id.*

³³⁰ Ex. P402, Main Staff Order, Directive for Further Operations, Operative No. 7/1, 31 March 1995.

³³¹ See e.g. Thomas Karremans, T. 11134-35; Robert Franken, T. 1466; Pieter Boering, T. 883. Under the UN’s mandate, DutchBat was authorised to move around freely throughout the enclave. The ABiH however refused access to an area known as the Bandera triangle, located in the northwest of the enclave. Ex. D211/1, map of the Srebrenica area, marked to show the Bandera triangle. In January 1995, Colonel Karremans attempted to reactivate an OP in that region and the ABiH captured DutchBat soldiers on duty there. Thomas Karremans, T. 11148-60 and Ex. D210/1, NIOD Report, Part II, Ch. 6, sect. 19. The hostages were released on or about 31 January 1995.

³³² On this day DutchBat 3 replaced DutchBat 2. Ex. P825, Secretary-General’s Report, paras 178, 226.

³³³ Agreed acts, para. 26; Pieter Boering, T. 883; Ex. P825, Secretary-General’s Report, para. 227.

³³⁴ Pieter Boering, T. 883.

³³⁵ Ex. P825, Secretary-General’s Report, paras 228-29. The observation posts were painted white and marked with the United Nations flag; Ex. D210/1, NIOD Report, Part II, Ch. 6, sect. 20.

³³⁶ Pieter Boering, T. 884.

³³⁷ Paul Groenewegen, T. 1015-16. Corporal Groenewegen noticed shooting back and forth between the VRS and the ABiH while he was on duty.

110. United Nations Military Observers (“UNMO”) were also deployed in the Srebrenica enclave.³³⁸ The UNMO were tasked with monitoring violations of the ceasefire agreement.³³⁹

111. By February 1995, the movement of international convoys of humanitarian aid and supplies to Srebrenica and the other enclaves was being restricted by the VRS, through elements of the Bratunac Brigade,³⁴⁰ affecting both the delivery of humanitarian supplies and the rotation of DutchBat troops.³⁴¹ Throughout the spring of 1995, access to the enclaves was further restricted by the VRS,³⁴² causing a further deterioration of the living conditions for the population and a weakening of the military capability of UNPROFOR.³⁴³ Colonel Karremans testified that DutchBat and “the population during a prolonged period have been strangled and were cut off from everything a population and a unit need in human terms.”³⁴⁴ The military capability of DutchBat was further hampered by the VRS refusal to allow soldiers re-entry into the enclave after their leave. This caused the number of soldiers to drop by at least 150 soldiers.³⁴⁵ In July 1995, DutchBat also had an extreme shortage of ammunition, again due to the blockade of supplies by the VRS.³⁴⁶

112. It was estimated that without new supplies almost half of the population of Srebrenica would be without food after mid-June.³⁴⁷ No fresh food, dairy products, flour products or meat had

³³⁸ Ex. P825, Secretary-General’s Report, para. 232.

³³⁹ Joseph Kingori, KT. 1799.

³⁴⁰ Momir Nikolić, T. 1634-35, Jovan Ivić, T. 9614-18, 9655. The Main Staff set up a system of permits. The Bratunac Brigade MP unit that was guarding the Žuti Most bridge could check the content of each convoy and refuse entry into the enclave. Žuti Most was the only entry into the enclave from the north. Momir Nikolić testified that the aim was to ensure that DutchBat would not be ready for combat and not be able to carry out its task in the enclave. The second aim was to make life within the enclave impossible for the civilian population. For checks of the convoys, *see* Zlatan Čelavonić T. 9468 and Ex. D210/1, NIOD Report, Part II, Ch. 6, sect. 17.

³⁴¹ Colonel Karremans testified: “Everything a military man needs to perform his military duty was not present there and was intentionally kept behind. At General Mladić’s staff, they knew exactly what our applications were and what our needs were with regard to fuel, food, ammunition, communication materials, and bandaging and drugs. And for a long period, none of that all ever arrived.” Thomas Karremans, T. 11214-15, 11223-34. Leendert van Duijn testified to the lack of food and medical supplies following Bosnian Serb forces denying clearance to DutchBat convoys. Leendert van Duijn, T. 1158; Ex. P825, Secretary-General’s Report, paras 180, 233-35; Ex. P391, Bratunac Brigade Analysis of combat readiness in the first half of 1995, 4 July 1995, p. 8.

³⁴² Jovan Ivić, T. 9621-33 and Ex. D 173/1, VRS Main Staff Notice of Agreement with the Realisation of the Request made by the Co-ordinating Board of the RS for Humanitarian Aid, dated 2 April 1995; Ex. D174/1, Main Staff Notice of Agreement with the UNHCR, Belgrade, Weekly Plan, dated 26 May 1995; Ex. D175/1, Main Staff, Notice of Agreement with the UNHCR, Belgrade, Weekly Plan, dated 30 June 1995 and Ex. D177.1/1, Main Staff Plan on Realisation of Approved, dated 19 May 1995.

³⁴³ Leendert van Duijn, T. 1158; Vincentius Egbers, KT. 2206. *See also* Agreed Facts, para. 44; Witness DP-104, T. 10024-25 (closed session); Ex. P825, Secretary-General’s Report, para. 184, Ex. P391; Joseph Kingori, Ex. 782 tab 10; Ex. P831, ABiH Situation Report, 30 June 1995; Ex. P832, ABiH Combat Report, 5 July 1995, Ex. P834, ABiH Combat Report, 6 July 1995; Ex. P21A, Transcript of video compilation, p. 20. First meeting at Hotel Fontana, 11 July 1995. Colonel Karremans tells General Mladić that there is a need for medicine and food, because of the rejections of all clearances in the last four months.

³⁴⁴ Thomas Karremans, T. 11221.

³⁴⁵ Agreed Facts, para. 40. *See also* Ex. P825, Secretary-General’s Report, para. 235; Ex. D 210/1, NIOD Report, Part II, Ch. 6, sect. 20; Ex. P851, Report based on debriefing on Srebrenica, p. 17.

³⁴⁶ Ex. P851, Report based on debriefing on Srebrenica, p. 17.

³⁴⁷ Ex. D210/1, NIOD report, Ch. 4, sect. 9.

been permitted into the enclave since May.³⁴⁸ Due to the lack of produce, DutchBat could no longer keep its soup kitchen open to feed the most vulnerable in the population.³⁴⁹ As fuel supplies for DutchBat were halted, patrols were carried out by foot,³⁵⁰ and in some instances, on horseback.³⁵¹

113. DutchBat had regular meetings with representatives from both the ABiH and the VRS.³⁵² Shortly after their arrival in January 1995, DutchBat officers met with VRS officers in the Hotel Fontana in Bratunac. Captain Momir Nikolić,³⁵³ who in the spring of 1995 became the principal contact within the VRS for DutchBat,³⁵⁴ proved to be a difficult contact; he would show up as he pleased and was hard to reach when DutchBat had received complaints about VRS activities.³⁵⁵ Major Franken never saw the commander of the Bratunac Brigade during any of his contacts with the VRS.³⁵⁶ The issues discussed included VRS complaints about ABiH actions outside the enclave, trade of goods and VRS activities related to a DutchBat OP.³⁵⁷ The representatives of the ABiH were more readily available for contact with DutchBat, because they were located within the enclave itself.³⁵⁸

114. There also were complaints by the VRS to DutchBat that the ABiH was attacking Bosnian Serbs from within the enclave. The ABiH had carried out several attacks on Bosnian Serbs. Colonel Karremans testified that:

from time to time Muslims fighters left the enclave and returned the same night. Sometimes one could hear fire exchanges taking place outside the enclave and usually one or two days later one was informed by the other party that something had happened.³⁵⁹

³⁴⁸ Ex. P825, Secretary-General's Report, paras 235; Ex. D210/1, NIOD Report, Part III, Ch. 4, sect. 9.

³⁴⁹ Ex. D210/1, NIOD Report, Part III, Ch. 4, sect. 9.

³⁵⁰ Thomas Karremans, T. 11235-36; Ex. P825, Secretary-General's, para. 229.

³⁵¹ Vincentius Egbers, KT. 2205; Ex. D210, NIOD Report, Part II, Ch. 6, sect. 20.

³⁵² There also were contacts between Dutchbat soldiers at the OPs and ABiH forces close to the OPs. Leendert van Duijn, T. 1085, 1105-06.

³⁵³ DutchBat soldiers sometimes refer to Captain Nikolić as Major Nikolić. *See e.g.* Robert Franken, T. 1471.

³⁵⁴ Rober Franken, T. 1471-73; Witness P-201, KT. 836 (under seal); Jovan Ivić, T. 9646-48. Major Franken was at times surprised to have to deal with Major Nikolić. Nikolić would act as the spokesperson, even when the higher ranking Colonel Vukota Vuković was present at the negotiations. Robert Franken, T. 1473-74, 1541-42.

³⁵⁵ Robert Franken, T. 1478; Pieter Boering, T. 921. According to Pieter Boering, Momir Nikolić acted like a chief of staff or deputy commander rather than as an assistant commander; Momir Nikolić was very unclear in presenting his exact position and referred to himself as a Major rather than a Captain. Pieter Boering, T. 923-27, 939-40. Colonel Karremans, the Commander of DutchBat-3, identifies Nikolić as a "contact" person rather than as a person in charge. Thomas Karremans, T. 11329, 11333-34.

³⁵⁶ Robert Franken, T. 1473. Major Pieter Boering also never met the commander of the Bratunac Brigade and, according to Momir Nikolić, he was not allowed in the vicinity of the Bratunac Brigade headquarters. Pieter Boering, T. 941.

³⁵⁷ Robert Franken, T. 1473; Pieter Boering, T. 927-28.

³⁵⁸ Thomas Karremans, T. 11148-51. Pieter Boering testified that they had weekly meetings with the Muslim military. Pieter Boering, T. 936.

³⁵⁹ Thomas Karremans, T. 11165.

On occasion, the ABiH laid ambushes or started firing at VRS positions from within the enclave.³⁶⁰

115. It is not disputed that the Srebrenica enclave was never fully demilitarised and that elements of the ABiH continued to conduct raids of neighbouring Bosnian Serb villages from within the enclave.³⁶¹ The 8th Operational Group of the ABiH, later renamed the 28th Division of the ABiH, operated in the enclave.³⁶² The international community perceived the ABiH to have some principle of military organisation, but no proper line of command.³⁶³ Colonel Karremans testified that there was a build-up of Muslim forces, especially in the month of June 1995.³⁶⁴ However, the ABiH soldiers in the enclave did not have heavy weapons and were poorly trained.³⁶⁵

116. While the arrival of new troops and supplies for DutchBat was blocked,³⁶⁶ the VRS started increasing and strengthening their own forces in the Srebrenica area.³⁶⁷ By April 1995, DutchBat

³⁶⁰ Thomas Karremans, T. 11193-97, 11203-09; Robert Franken, T. 1475-77; Pieter Boering, T. 927-28; Ex. D210/1, NIOD Report, Part III, Ch. 5, sect. 4. DutchBat received many complaints about Muslim fighters positioning themselves near the DutchBat OPs and firing at VRS positions. This would cause the VRS to fire back in the direction of the DutchBat OPs.

³⁶¹ See e.g. Leendert van Duijn, T. 1085, 1103; Thomas Karremans, T. 11140-44; Pieter Boering, T. 938; Witness P-103, KT. 1491. The demilitarisation process had been predominantly carried out by DutchBat-3's predecessors. Among the confiscated weapons were small arms, mortars, artillery pieces, and tanks. In the months leading up to the fall of Srebrenica, the number of weapons in the area increased. Robert Franken, T. 1468-69. The fact that Dutchbat was not allowed to perform searches in houses was a factor that affected the success of the demilitarisation operation. Ex. P825, Secretary-General's Report, paras 61-62.

³⁶² The Division headquarters were at the Post and Telegraph office in Srebrenica, which had no communication facilities. Robert Franken, T. 1469-70.

³⁶³ Paul Groenewegen, T. 1043; Robert Franken, T. 1469-70; Pieter Boering T. 884-85; Witness P-201, KT. 833 (closed session), who considered the ABiH to be "not really a standing army" and Joseph Kingori, KT. 1814, who testified that the ABiH command structure "existed, but it was not fully established." Witness DW-1, a Bosnian Muslim member of the ABiH, testified to the contrary. According to him, the 28th Division was organised in the same manner as all divisions of the 2nd Corps of the ABiH, with a clear structure. Witness DW-1, T. 11788-89 (closed session).

³⁶⁴ Thomas Karremans, T. 11190-92. Vincentius Egbers did not see anybody carrying weapons until late June or early July. Even then, Egbers describes the men as "refugees carrying weapons." Vincentius Egbers, KT. 2206-09. Bosnian Serb intelligence information shows that the Bosnian Serbs also noticed this build-up and were expecting a Muslim offensive. Ex. D194/1, Intelligence information, dated 8 February 1995; Ex. D195/1, Intelligence information, dated 18 May 1995 and Ex. D196/1, Intelligence information, dated 10 June 1995; Petar Salapura, T. 10529-35; Witness DP-105, T. 10068. Milan Drakula, a soldier of the 2nd Company of the Bratunac Brigade did not think that the enclave could fall, because he had heard that there were 15,000 Muslim soldiers in the enclave. Milan Drakula, T. 9093.

³⁶⁵ Ex. P825, Secretary-General's Report, paras 230-231; Leendert van Duijn, T. 1085, 1105, testifying that the Muslim forces had rifles and some rocket launchers; Joseph Kingori, KT. 1813; Witness P-107, KT. 2499-2500. Pieter Boering estimated that there were about 1,000 ABiH soldiers in the enclave. Pieter Boering, T. 946-47. UNMO estimated that there were 4,000 ABiH soldiers in the enclave. Ex. D4/1, UNMO, Postscript to Srebrenica, 26 July 1995.

³⁶⁶ Colonel Karremans testified that the VRS were strangling the entire enclave, creating a "total blockade" for both the refugees and DutchBat. Thomas Karremans, T. 11221.

³⁶⁷ Leendert van Duijn, T. 1084-85; Ex. D219/1, Dragan Josipović, statement, p. 2, stating that five or six days before the fall of Srebrenica he saw an increased number of officers at the Bratunac Brigade who did not belong to that brigade; Ex. D217/1, Milan Pavlović, statement p. 2, stating that a mixed artillery unit arrived in early 1995; Ex. P391, analysis of combat readiness in the first half of 1995, signed by Colonel Blagojević. Colonel Blagojević notes that the Brigade is at 128% strength in relation to its establishment numbers. The ordered level of combat readiness was achieved. However, the report shows many serious problems within the Bratunac Brigade. Colonel

began noticing the arrival of new, better equipped, Bosnian Serb soldiers; these soldiers had new rifles, complete uniforms, were younger and “clean shaven”.³⁶⁸

117. In the spring of 1995, there were many skirmishes between VRS soldiers and ABiH soldiers.³⁶⁹ Generally, the VRS was shelling the western part of the enclave and the village of Slatina was targeted many times throughout the period leading up to July 1995.³⁷⁰ The Bratunac Brigade opened sniper fire on the enclave and entered the enclave on two occasions.³⁷¹ It also opened fire on Srebrenica on 25 May 1995.³⁷² When Colonel Blagojević became the commander of the Bratunac Brigade in May 1995, the policy towards the safe area adopted by his predecessor did not change.³⁷³

118. In early June 1995 the VRS attacked OP Echo at Zeleni Jadar.³⁷⁴ The attack was conducted by the Bratunac Brigade using machine guns, hand grenades, and mortars.³⁷⁵ DutchBat withdrew from OP Echo, taking its equipment with it; two new observation posts were then established nearby.³⁷⁶ After the take-over of OP Echo, the VRS added troops around that area.³⁷⁷

4. Srebrenica in July 1995

119. Srebrenica town is one kilometre wide and two kilometres long. Large numbers of people lived in and around Srebrenica town.³⁷⁸ Within the Srebrenica enclave there were also a number of “settlements”, including the Swedish Shelter Project in Slapovići, which housed thousands of

Blagojević states that the food supply was insufficient and that there were problems with the extra troops: many of the new conscripts were over 40 or were in bad health. He also mentions that there were difficulties with the exercise of command and control, but considered these problems not to directly endanger the command and control. Ex. P391, pp. 4, 14 and 17.

³⁶⁸ Leendert van Duijn, T. 1084-1085, 1108.

³⁶⁹ Ex. P825, Secretary-General’s Report, paras 221-22.

³⁷⁰ Robert Franken, T. 1478.

³⁷¹ Momir Nikolić, T. 1626-27, testifying that: “After Srebrenica had been proclaimed a protected zone on the 18th of April, 1994, the VRS units – I can talk about the units of the Bratunac Brigade in particular – they also opened sniper fire from their positions. They fired at members of the army and civilians in the enclave. And during that period, the units of the Bratunac Brigade on two occasions entered the demilitarised zone, and on one occasion, that was in the zone of responsibility of the 1st infantry battalion, and on the second occasion it was the responsibility of the 3rd infantry battalion.”

³⁷² Mićo Gavrić, T. 8605-06; Ex. P855, Bratunac Brigade Order by Gavrić, 25 May 1995 and Ex. P856, Interim Combat Report, signed by Colonel Blagojević, 25 May 1995. Mićo Gavrić testified that the order to fire was given by Colonel Lazić of the Drina Corps Operations and Training section. Mićo Gavrić, T. 8604-05.

³⁷³ Momir Nikolić, T. 1629-34; Ex. D175/1, Main Staff Notice of Agreement with UNHCR, 30 June 1995; Ex. D176.1/1 Regular Combat report from the Zvornik Brigade to the Drina Corps, 4 July 1995.

³⁷⁴ Agreed Facts, para. 47; Sreten Petrović, T. 9017-18, Thomas Karremans, T. 11203-05.

³⁷⁵ Dragomir Zekić, T. 8923-25; Sreten Petrović, T. 9017-18.

³⁷⁶ Ex. P825, Secretary-General’s Report, para. 223.

³⁷⁷ Ex. D210/1, Part III, NIOD Report, Ch. 5, sect. 3. This included the Skelani Brigade, which after the take-over was in control of the communication lines near the OP. Sreten Petrović, T. 9020 and Ex. D144/1, Order from the Bratunac Brigade IKM, 4 June 1995.

³⁷⁸ Witness DP-104, T. 10024 (closed session).

Bosnian Muslim refugees.³⁷⁹ In July 1995, the population of the enclave was approximately 40,000 people, of whom approximately 80% were refugees.³⁸⁰

(a) 2 July – 6 July 1995

120. On 2 July, General Živanović, the commander of the Drina Corps, issued the Drina Corps order for active combat operations, code named “Krivaja 95”.³⁸¹ The stated objective of the attack on the Srebrenica enclave was to reduce “the enclave to its urban area”. The order included specific orders to Drina Corps subordinate units: the Bratunac Brigade, the Zvornik Brigade, the Milići Brigade and parts of the Skelani Brigade.³⁸² General Krstić, the Chief of Staff of the Drina Corps, was to command the operation.³⁸³ Preparations for the attack started immediately.³⁸⁴

121. Colonel Blagojević held a meeting with members of the subordinate units of the Bratunac Brigade on 3 July.³⁸⁵ According to Radika Petrović, commander of the 4th Battalion, Colonel Blagojević told them that there was a large number of Bosnian Muslim men in the Srebrenica enclave. Radika Petrović further testified that Colonel Blagojević told the men that there was a possibility that these Bosnian Muslim men would attack the Bosnian Serb lines in an attempt to break through to Tuzla.³⁸⁶ At this meeting, Colonel Blagojević tasked the various battalions.³⁸⁷ The Bratunac Brigade was on full combat readiness.³⁸⁸

³⁷⁹ Richard Butler, T. 4354-55; Witness P-201, KT. 847 (under seal). Ljubisav Simić testified that in 1995 the only Muslims in the area (near and around Bratunac municipality) were living in Srebrenica. Ljubisav Simić, T. 7643.

³⁸⁰ Ex. P851, Report based on DutchBat debriefing, 1995, p. 12. *See also* Witness DP-104, T. 10024. (closed session)

³⁸¹ Ex. P543, Drina Corps Order, Krivaja 95, Attack plan, 2 July 1995.

³⁸² *Id.* The Skelani Brigade, along with units of the Zvornik Brigade, the Bratunac Brigade 3rd Battalion and the Drina Corps Mixed Artillery Regiment was stationed at Pribičevac. Ex. D229/1, Božo Momčilović, statement, p. 3.

³⁸³ Dragomir Zekić, T. 8940.

³⁸⁴ For instance, Dragomir Zekić, commander of the 3rd Battalion of the Bratunac Brigade, got an order from General Živanović, to clear a passage through the minefields. Dragomir Zekić, T. 8867. However, Ljubomir Beatović, an orderly with the Bratunac Brigade, testified that the medical unit was not notified of any upcoming activity and did not receive additional medical supplies. Earlier he had stated to the OTP that he had heard of the operation a few days before and that people were talking about it in town. Ljubomir Beatović, T. 9697-98, 9720-21. Dragoslav Trišić had already requested extra materiel and ammunition. He did not receive everything he requested. Trišić also testified that a earlier request for ammunition was not made because of the imminent attack on Srebrenica. Dragoslav Trišić, T. 9327-29, 9333-38, and Ex. D149/1, Request for equipment and materiel, dated 3 July 1995; Ex. P862, Preparatory order allocating equipment, dated 2 July 1995; Ex. D166/1, Series of materiel sheets listing received materiel and equipment, dated 5 July 1995 to 12 July 1995.

³⁸⁵ Radika Petrović, T. 8707; Zoran Jovanović, T. 9860. *See also* Ex. P403, Bratunac Brigade minutes of meetings, section for 3 July 1995, p. 6, and Ex. D179/1, Working Notebook of Jovanović, entry for 3 July 1995.

³⁸⁶ Radika Petrović, T. 8707.

³⁸⁷ Zoran Jovanović, T. 9861. Witness DP-105 did not consider the orders he received to be orders to attack, rather orders to prepare for defence. Witness DP-105, T. 10251-54. Radika Petrović received the order to hold firmly the defence line. Radika Petrović, T. 8708.

³⁸⁸ Witness DP-105, T. 10068. *See also* Zoran Jovanović, T. 9857. Dragoslav Trišić was the Assistant commander for Logistics with the Bratunac Brigade. He testified that he knew what the extra provisions he ordered were for. Dragoslav Trišić, T. 9327-28.

122. The Bratunac Brigade daily combat report, dated 4 July, states that Colonel Blagojević was visiting the Brigade's artillery firing positions.³⁸⁹ This report also states that a UNHCR Russian convoy entered the enclave with a cargo of food. The convoy consisted of 8 trucks.³⁹⁰

123. The Trial Chamber has heard evidence that on 5 July, General Krstić also assembled all commanding officers who were to receive assignments and take part in the Srebrenica operation at the Bratunac Brigade Headquarters. The commanders received their assignments at this meeting.³⁹¹ Among those present were Colonel Pandurević, commander of the Zvornik Brigade, and Colonel Trivić, commander of the 2nd Romanija Motorised Brigade.³⁹² It remains unclear whether or not Colonel Blagojević was present at this command meeting.³⁹³

124. On 5 July, Colonel Blagojević had two meetings with his staff at which he presented the 2 July Drina Corps Order and issued specific orders to the units of the Bratunac Brigade.³⁹⁴ Colonel Blagojević's instructions to his subordinated units were written in an order for active combat operations.³⁹⁵ In this order, Pribićevac was designated as the Bratunac Brigade IKM.³⁹⁶ It also includes orders for the Mixed Artillery Group and the Rocket Platoon of the Bratunac Brigade to open fire on targets in the Potočari sector.³⁹⁷ The start of the attack was scheduled for 04:00 on 6 July.³⁹⁸

(b) 6 to 11 July 1995

125. On 6 July, the attack on Srebrenica commenced.³⁹⁹ Early in the morning five rockets exploded near the DutchBat headquarters in Potočari.⁴⁰⁰ Due to poor weather conditions, 7 and

³⁸⁹ Ex. P405, Bratunac Brigade daily combat report, 4 July 1995, signed for Colonel Blagojević, under item 2.

³⁹⁰ Ex. P405, Bratunac Brigade daily combat report, 4 July 1995, signed for Colonel Blagojević, under item 8.

³⁹¹ Mirko Trivić, T. 7474-75. General Krstić was in charge of the operation; Dragomir Zekić, T. 8940.

³⁹² Mirko Trivić, T. 7474-76.

³⁹³ Mirko Trivić, T. 7474-76. Mirko Trivić is not sure that Colonel Blagojević was also present at this meeting, but he assumes he was "in view of the fact that that was his command post."

³⁹⁴ Ex. P403, Bratunac Brigade minutes of meetings and reports, first and second entry for 5 July 1995. *See also* Dragoslav Trišić, T. 9406. Witness DP-105 confirms that the Chief of Staff visited the 1st Battalion in order to "arrange the firing system", which included directing the weapons. Witness DP-105, T. 10166.

³⁹⁵ Ex. P406, Order for active combat operations from the Bratunac Brigade Command, 5 July 1995 ("Blagojević Order for active combat"). Mirko Trivić testified that the order is in compliance with VRS Rules and Regulations. Mirko Trivić, T. 10751-54. Dragomir Keserović noted that, unlike ordered in Ex. P 406, prisoners of war should not be held close to the frontline. On other aspects he also believes the order to be in compliance with VRS Rules and Regulations. Dragomir Keserović, T. 10647-49.

³⁹⁶ Ex. P406, Blagojević Order for active combat operations, para. 12. *See also* Momir Nikolić, T. 1967.

³⁹⁷ Ex. P406, Blagojević Order for active combat operations, paras 5.3, 6 and 6.2. The Bratunac Brigade was also supported by the Corps Artillery Group from Corps Command in Vlasenica. Dragomir Zekić testified that the support of the Corps Artillery Group proved unnecessary. Dragomir Zekić, T. 8875.

³⁹⁸ Ex. P406, Blagojević Order for active combat, para. 4. Mićo Gavrić affirmed that combat readiness was achieved at that time. Mićo Gavrić, T. 8482.

³⁹⁹ Ex. P825, Secretary-General's Report, para. 239.

⁴⁰⁰ Ex. P825, Secretary-General's Report, para. 239.

8 July were relatively quiet⁴⁰¹ but the shelling intensified around 9 July.⁴⁰² During the attack, units of the VRS shelled the Srebrenica enclave, and specifically Srebrenica town, Potočari and DutchBat positions⁴⁰³ including “from the direction of Bratunac.”⁴⁰⁴ On 9 July, DutchBat observed a Bosnian Serb tank firing on Srebrenica town.⁴⁰⁵ Srebrenica remained under fire until the enclave fell on 11 July.⁴⁰⁶ Contrary to the expectations of the VRS,⁴⁰⁷ the ABiH showed very little resistance.⁴⁰⁸

126. As the attack continued, extra VRS forces were called in. Pursuant to an order by Radovan Karadžić, Tomislav Kovač, the Acting Minister of Interior, ordered units of the Special Police Brigade to go to Bratunac and report to the Bratunac Public Security Station on 11 July.⁴⁰⁹ The Bratunac Brigade mobilised the conscripts engaged in compulsory work on 10 July, pursuant to an order by General Mladić.⁴¹⁰

127. During this period, the DutchBat OPs were attacked and eventually taken by the VRS.⁴¹¹ At least one of the OPs was taken by Bosnian Serb soldiers wearing insignia with a howling wolf, the insignia of the Drina Wolves of the Zvornik Brigade.⁴¹² The soldiers at the OPs were detained

⁴⁰¹ Ex. P851, Report based on DutchBat debriefing, 1995, p. 22-25.

⁴⁰² Dragomir Zekić, T. 8874-77.

⁴⁰³ Ex. P825, Secretary-General’s Report, paras 239 and 241; Ex. D210, NIOD Report, Part III, Ch. 6, sect. 5; Ex. P820, UNMO report 8 July 1995; Ex. P821, UNMO Report 8 July 1995 and Ex. P822, UNMO Report 10 July 1995.

⁴⁰⁴ Pieter Boering, T. 887; Witness P-201, KT. 842-43, 851. (under seal). Zoran Jovanović testified that the 2nd Company did fire at the defence lines in front of it, but that the Company did not fire at Srebrenica town, because their weapons did not have a sufficient range for that. Zoran Jovanović, T. 9905. Vincentius Egbers testified that on 9 July he saw a VRS tank firing on Srebrenica, killing and injuring people. Vincentius Egbers, KT. 2213.

⁴⁰⁵ Vincentius Egbers, KT, 2213-14.

⁴⁰⁶ Čamila Omanović, KT. 1078-80; Ex. P825, Secretary-General’s Report, paras. 302-304.

⁴⁰⁷ Dražen Erdemović, KT. 3087; Milan Drakula, a soldier of the 2nd Company of the Bratunac Brigade did not think that the enclave could fall, because he had heard that there were 15,000 Muslim soldiers in the enclave. Milan Drakula, T. 9093.

⁴⁰⁸ Milan Pavlović, Ex. D217/1 p. 2, stated that he was with the Drina Wolves during the attack. They did not encounter the 28th Division of the ABiH during the attack. On 11 July, the Bosnian Muslim men, including members of the 28th Division, began to go to the woods. Witness P-103, KT. 1495. At the end of the day, no Bosnian Muslim soldiers were seen in the area. Joseph Kingori, KT. 1834.

⁴⁰⁹ Ex. P157, MUP Order regarding MUP assignments, Tomislav Kovač, 10 July 1995; *see infra* section II. B. 1. (e) (iii). Desimir Bučalina testified that a unit – of which he later learned that were MUP special police – passed Žuti Most. He recognized one of the soldiers as being Ljubiša Borovčanin. Desimir Bučalina, T. 10291-92. *See also* Ex. P159, Combat Report of Borovčanin, entry for 10 and 11 July 1995.

⁴¹⁰ Ex. P417, Bratunac Brigade Order to mobilise men who are engaged in compulsory work, 10 July 1995. A copy of this order was sent to the Departement of Defence in Bratunac. The Trial Chamber notes that the two orders Ex. P157 and P417 are very similar in their wording. Ex. P157 states “Based on the order of the Supreme Commander of the Republika Srpska Armed Forces, and in order to crush the enemy offensive from the Srebrenica protected zone...” and Ex. P417 states “Pursuant to the order of the Main Staff of the VRS aimed at breaking the enemy offensive in the Bratunac and Srebrenica Municipalities areas...”

⁴¹¹ The OPs were shot at using small calibre, large calibre and mortar shells. Paul Groenewegen, T. 1017; Andere Stoelinga testified that DutchBat of the OP where he was located was under artillery fire for six hours before DutchBat surrendered. Andere Stoelinga, KT. 2296. As DutchBat retreated from their OPs, Bosnian Muslim forces tried to prevent their departure, sometimes by force. Leendert van Duijn, T. 1107; Pieter Boering, T. 888-89; Witness P-201, KT. 843 (under seal); Vincentius Egbers, KT. 2260, 2267.

⁴¹² Ex. P22, video stills of video compilation Ex. P21, still of “Legenda” Jolović, commander of the Drina Wolves with the insignia of a howling wolf on his sleeve; The group of soldiers wearing the insignia of a howling wolf

and forced to hand over their equipment, including in one case an APC.⁴¹³ The equipment that had been taken from DutchBat was registered by the Bratunac Brigade.⁴¹⁴

128. The DutchBat soldiers who were detained by the VRS were taken to Bratunac and Milići.⁴¹⁵ In Bratunac, the Dutch soldiers were held at several locations,⁴¹⁶ including at the Hotel Fontana.⁴¹⁷ They were guarded by Bratunac Brigade Military Police and a special unit with trained dogs.⁴¹⁸

129. The refugees at the Swedish Shelter Project were among the first people to flee because of the shelling; ultimately, everyone in the enclave had to seek refuge elsewhere.⁴¹⁹ People took whatever they could carry with them.⁴²⁰ They tried to find shelter at the UN base in Srebrenica town and at the UNPROFOR headquarters in Potočari. By 10 July some 30,000 refugees from the surrounding area had gathered around these two locations. The people spent the night in the streets and buildings of Srebrenica and Potočari.⁴²¹ Other refugees and armed Bosnian Muslim men decided not to go towards Potočari, but took to the woods and the north-western part of the Srebrenica enclave.⁴²²

130. As the operation progressed its military object changed from “reducing the enclave to the urban area” to the taking-over of Srebrenica town and the enclave as a whole. The Trial Chamber has heard no direct evidence as to the exact moment the military objective changed. The evidence does show that President Karadžić was “informed of successful combat operations around

took the DutchBat weapons and then continued into the enclave. A second group of soldiers took the DutchBat to Bratunac. Martin van der Zwan, KT. 2311-16.

⁴¹³ Nikola Gajić claims that the DutchBat soldiers voluntarily traded their clothing with VRS soldiers. Nikola Gajić, T. 3358-59. This is contradicted by; Pieter Boering, T. 1003-04; Andere Stoelinga, KT. 2279; Daniel Bosch, Ex. P 755, statement 22 November 1999.

⁴¹⁴ Ex. D163/1, list of seized equipment, signed by Trišić, dated 24 July 1995. Dragoslav Trišić testified that some items were surrendered by DutchBat or collected from deserted DutchBat checkpoints. Dragoslav Trišić, T. 9388.

⁴¹⁵ Andere Stoelinga, KT. 2279-81. The crews of OP Kilo and OP Charlie were taken to Milići. There the approximately 20 men were held in an old police station. The crew was forced to give their flak jackets and blue helmets to the Bosnian Serb soldiers. The APC in which they arrived at the station was covered to avoid detection.

⁴¹⁶ Martin van der Zwan, KT. 2321-23; Daniel Bosch, Ex. P755, statement 22 November 1999. Daniel Bosch saw soldiers of OP Quebec, OP Romeo and OP Uniform. In total there were 21 soldiers at the school behind the Hotel Fontana.

⁴¹⁷ About 30 DutchBat soldiers were held at Hotel Fontana, where they were filmed. Boering saw the DutchBat soldiers when he entered the Hotel Fontana for the meeting held at 20:00. Pieter Boering, T. 899 *See* Ex. P 39, video showing the DutchBat soldiers; Ex. P415, Daily Combat Report, dated 9 July 1995.

⁴¹⁸ Daniel Bosch, Ex. P755, statement 22 November 1999. Martin Van der Zwan concluded that the 10 or 11 Bosnian Serb soldiers guarding him were a special purpose unit, because they had trained dogs and were better equipped than most other units. This unit went out to the field every day. One of the soldiers told Van der Zwan about an incident where a man had been killed and a woman abused and killed by a man nicknamed “Butcher”. Martin van der Zwan, KT. 2329-31, 2336-38 and 2348. On 15 July the DutchBat soldiers were taken to Zagreb and Belgrade where they were released. *See* Ex. P825, Secretary-General’s Report, para. 379.

⁴¹⁹ Witness P-111, T. 1381; Pieter Boering, T. 887-88.

⁴²⁰ Leendert van Duijn, T. 1051; Witness P-201, KT. 851 (under seal); Čamila Omanović, KT. 1077.

⁴²¹ Pieter Boering, T. 891; Nesib Mandžić, T. 779, Omanović, KT. 1076-77.

⁴²² Witness P-111, T. 1381, Witness P-201, KT. 924 (under seal).

Srebrenica [...] which enable them to occupy the very town of Srebrenica” on 9 July.⁴²³ According to Miroslav Deronjić, the President of the Executive Board of the Bratunac Municipality, President Karadžić told him on 9 July that there were two options in relation to the operation, one of which was the complete take-over of Srebrenica.⁴²⁴ Later on 9 July, President Karadžić “agreed with continuation of operations for the takeover of Srebrenica”.⁴²⁵ By the morning of 11 July the change of objective of the “Krivaja 95” operation had reached the units in the field;⁴²⁶ and by the middle of the afternoon, the order to enter Srebrenica had reached the Bratunac Brigade’s IKM in Pribićevac and Colonel Blagojević.⁴²⁷ Miroslav Deronjić visited the Bratunac Brigade IKM in Pribićevac on 11 July. He briefly spoke with Colonel Blagojević about the Srebrenica operation.⁴²⁸ According to Miroslav Deronjić, the VRS had just received the order to enter Srebrenica town.⁴²⁹

131. The shelling of Srebrenica town continued throughout the night of 10 July and into the next day.⁴³⁰ Mićo Gavrić, commander of the Mixed Artillery Group, received a written combat order from Colonel Blagojević on 5 July. He testified that this written order was sufficient authorisation to use artillery fire on the enclave, which he did on 11 July. He fired in the direction where the civilians were walking.⁴³¹ New soldiers, new material and higher-ranking officers arrived as the VRS advanced towards Srebrenica town.⁴³² To DutchBat soldiers, the objective of the shelling of Srebrenica town appeared to be to cause panic amongst the refugees in Srebrenica town or to kill those refugees.⁴³³ The VRS were seen entering the enclave from the south.⁴³⁴ VRS soldiers entered the houses, shooting and burning the houses.⁴³⁵ Some soldiers started looting.⁴³⁶

⁴²³ Ex. P414, Order of Main Staff to Drina Corps Command, dated 9 July 1995, at 23:50 hours.

⁴²⁴ Miroslav Deronjić, T. 6294, T. 6133-34. On cross-examination, Miroslav Deronjić testified that he did not speak with Colonel Blagojević “to find out what the plan was.” *Ibid*, T. 6430. *See supra* para 78.

⁴²⁵ Ex. P414, Order of Main Staff to Drina Corps Command, dated 9 July 1995, at 23:50 hours.

⁴²⁶ Mirko Trivić, T. 7518-19. Mićo Gavrić stated that he did not get the order to attack Srebrenica until 11 July. Mićo Gavrić, T. 8483. *See also* Ex. P21, video compilation, on which General Mladić, then located in the hills surrounding Srebrenica town, can be seen ordering VRS troops to continue onto Srebrenica.

⁴²⁷ Ex. P693, Miroslav Deronjić’s statement of 26 November 2003, para. 186.

⁴²⁸ Miroslav Deronjić, T. 6132-33.

⁴²⁹ Miroslav Deronjić, T. 6132.

⁴³⁰ Pieter Boering, T. 891-92; Čamila Omanović, KT. 1077-78; Witness P-201, KT. 854 (under seal); Ex. D131/1, Consumption of Material and Equipment for the period 10 to 12 July. Mićo Gavrić testified that his unit fired a howitzer and a M 31/30. He claims these shells hit the village of Studenac. Mićo Gavrić, T. 8499-8504.

⁴³¹ Mićo Gavrić, T. 8490. Mićo Gavrić had a radio with which he could communicate with his commander in Pribićevac, although he testified that he had no communication with Colonel Blagojević during the attack on Srebrenica. Mićo Gavrić, T. 8492.

⁴³² Witness P-103, KT. 1504. Witness P-134 testified that he noticed that buses, trucks, guns or howitzers were passing through the checkpoint at Konjević Polje as early as 7, 8 or 9 July 1995. He heard explosions and fighting on 11 July 1995. Witness P-134, T. 6519-20. Milan Drakula, a soldier of the 3rd Battalion of the Bratunac Brigade, set off for Srebrenica on 11 July. His company was ordered to go there by General Mladić. Milan Drakula, T. 9049. Davidović, President of the Executive Board of Bratunac, was mobilised on 11 July and was ordered to go to the Bratunac Brigade IKM. At the IKM he saw General Mladić and Deronjić along with Josipović. Davidović’s “labour unit” was handed over to General Krstić. Srbi Slav Davidović, T. 7691-93.

⁴³³ Robert Franken, T. 1479-1480; Pieter Boering, T. 894.

132. The people who were gathered in Srebrenica town were afraid and entered the UN base.⁴³⁷ In the course of 10 and 11 July, the refugees began to move to Potočari.⁴³⁸

133. In the afternoon of 11 July, General Mladić, General Živanović and General Krstić, accompanied by several other VRS officers, surveyed Srebrenica town.⁴³⁹ They were met by members of, amongst others, the 10th Sabotage Detachment,⁴⁴⁰ the Drina Wolves and the 2nd Romanija Motorised Brigade.⁴⁴¹ General Mladić repeatedly instructed the soldiers he came across to “go straight to Bratunac” and to go “straight to Potočari, Bratunac.”⁴⁴² General Mladić also announced that “the time has come for us to take revenge upon the Turks in this region.”⁴⁴³

(c) Srebrenica Following the Take-over

134. In the days after the fall of Srebrenica several Bratunac Brigade and other VRS soldiers went to Srebrenica town, where they celebrated.⁴⁴⁴ At the same time, a police station was set up to secure facilities of vital importance to the town and to prevent the looting which was taking place. The police set up checkpoints and conducted patrols.⁴⁴⁵ Civilian protection units were deployed to “clean up” Srebrenica town and Potočari.⁴⁴⁶

135. On 11 July, President Radovan Karadžić appointed Miroslav Deronjić as the Civilian Commissioner for the “Serbian Municipality of Srebrenica”.⁴⁴⁷ Miroslav Deronjić was notified of

⁴³⁴ Witness P-207, T. 6080.

⁴³⁵ Witness P-201, KT. 854-55 (under seal); Witness P-103, KT. 1499-1500.

⁴³⁶ Witness P-103, KT. 1503. These soldiers wore camouflage uniforms. Witness P-103 testified that he also saw soldiers dressed in black, who searched the houses. Then units of “Rambo types” arrived, undisciplined units, wearing different uniforms and bandanas. When his unit was surrounded, Witness P-103 also noticed VRS Police, wearing blue jumpsuits, black belts and pistols. Witness P-103, KT. 1503-06.

⁴³⁷ Nesib Mandžić, T. 780. Pieter Boering testified that there were 15,000-20,000 people moving towards Potočari on 11 July 1995. Pieter Boering, T. 895. *See also* Ex. P21, video compilation, showing a large crowd on the UN Base in Srebrenica town on 10 July 1995.

⁴³⁸ *See infra* section IID (a).

⁴³⁹ *See* Mirko Trivić, T. 7476-77; Dražen Erdemović, KT. 3103, 3162.

⁴⁴⁰ Dražen Erdemović, KT. 3104-07.

⁴⁴¹ *See* Ex. P22, Chapter 5, Still images of Ex. P21, video compilation, on which Mladić can be seen walking through Srebrenica town on 11 July 1995.

⁴⁴² Ex. P21A, transcript of Ex. P21, video compilation, pp. 8-12.

⁴⁴³ Ex. P21A, transcript of Ex. P 21, video compilation, p 11.

⁴⁴⁴ Milan Milinković, T. 3122 and 3142; Dražen Erdemović, MT. 25144; Witness P-188, T. 3165-66. Not only soldiers were looting. Civilians from Bratunac and allegedly even the MUP were looting in Srebrenica. *See* Ex. P480, Drina Corps IKM Report, 13 July; Witness DP-101, T. 7883-84 (closed session).

⁴⁴⁵ Nenad Deronjić, T. 8189 and 8213; Ex. P665, MUP report, dated 12 July 1995, under 5; Witness P-134, T. 6536-37.

⁴⁴⁶ Krsto Simić, T. 7336; Witness DP-101, T. 7885-86, 7925-26 (Closed Session); Witness P-188, T. 31667. Witness P-188 testified that Srebrenica town was fumigated on 15 July 1995. According to Witness DP-101 cleaning up Srebrenica town included checking houses for booby-traps.

⁴⁴⁷ Ex. P687, Decision on the Appointment of the Civilian Commissioner for the Serbian Municipality of Srebrenica, signed by Radovan Karadžić, 11 July 1995.

this appointment that same day.⁴⁴⁸ On 12 July in the afternoon “all the people with leadership positions in the [Bratunac] municipality” attended a meeting at the SDS offices in Bratunac.⁴⁴⁹ During this meeting, Miroslav Deronjić received a call from President Karadžić, who confirmed Deronjić’s appointment as Civilian Commissioner for Srebrenica.⁴⁵⁰ According to Jovan Nikolić, the director of the agricultural co-operative of Bratunac, prior to the President Karadžić’s telephone call, Miroslav Deronjić explained that there would be a “revitalisation of the territory of Bratunac and Srebrenica.”⁴⁵¹ Miroslav Deronjić testified that his tasks included:

As soon as conditions were ripe, after the evacuation of the Muslims, were to go into Srebrenica to establish the first government structures, with the primary task of protecting all types of properties, state, social, and all other property, and to make sure that Serbs may return to this area, Serbs who had been dislocated, and of course, to try to repair and restore the infrastructure in and around Srebrenica.⁴⁵²

5. Conclusions and Findings related to the Role of the Bratunac Brigade

136. The Trial Chamber recognises that the attack on the enclave is not charged in the Indictment. Furthermore, the crimes charged in the Indictment are alleged to have commenced on 11 July 1995 – after the fall of the Srebrenica enclave.⁴⁵³

137. The Trial Chamber finds, however, that while the attack on the Srebrenica enclave is not itself charged as a crime, it remains relevant to the Trial Chamber’s consideration of the crimes charged in the Indictment. The Trial Chamber cannot disregard a stated objective of the “Krivaja 95” operation, namely “to separate and reduce in size the Srebrenica and Žepa enclaves, to improve the tactical position of the forces in the depth of the area, *and to create conditions for the elimination of the enclaves*,”⁴⁵⁴ and the connection between this operation and the events which transpired following the fall of the Srebrenica enclave. It has been recognised in the jurisprudence of this Tribunal that events other than those charged in the Indictment, including issues generally

⁴⁴⁸ Miroslav Deronjić, T. 6323. He also received a faxed copy of the decision regarding his appointment as civilian commissioner on 11 July.

⁴⁴⁹ Aleksander Tesić, T. 7805; Witness DP-101, T. 7869-70 (closed Session); Jovan Nikolić, T. 8001. According to Witness DP-101 this meeting was also attended by some members of the police force.

⁴⁵⁰ Aleksander Tesić, T. 7806; Witness DP-101, T. 7869-70 (closed Session).

⁴⁵¹ Jovan Nikolić, T. 8002. J. Nikolić testified that Miroslav Deronjić told the participants of the meeting, before the telephone call, that he had been appointed Civil Commissioner.

Following the telephone call the men proceeded to discuss that the police should secure the exit roads of the town to prevent looting by Bosnian Serbs and they discussed that pest control, in order to get rid of fleas and rats, should be carried out in Srebrenica town. Witness DP-101, T. 7870 (closed session).

⁴⁵² Miroslav Deronjić, testimony before the Appeals Chamber in *Krstić*, T. 114.

⁴⁵³ See e.g. Indictment, para. 32: “The Joint Criminal Enterprise, of which Vidoje Blagojević and Dragan Jokić were members and key participants, was conceived and designed by General Ratko Mladić and others on 11 and 12 July, and administered and carried out by members of the VRS and MUP forces through the time period and by the means alleged in this Amended Indictment.” The “time period” is later defined as “between 11 July 1995 and 1 November 1995”. *Ibid.* para. 35 ff.

⁴⁵⁴ Ex. P543, Drina Corps Order No. 04/156-2, “Krivaja 95” Attack Plan, dated 2 July 1995, para. 4 (emphasis added).

referred to as “background issues,” can be used to prove an issue relevant to the charges such as motive, opportunity, intent, preparation, plan, or knowledge.⁴⁵⁵ For this reason, the Trial Chamber finds that it is necessary to consider the role of the Bratunac Brigade in the events which pre-date the start of the Accused’s criminal liability.

138. The Trial Chamber finds that elements of the Bratunac Brigade were involved before the attack in blocking humanitarian supplies and convoys from entering the Srebrenica enclave at Žuti Most.⁴⁵⁶ Additionally, the Trial Chamber finds that elements of the Bratunac Brigade were involved in blocking the return of DutchBat soldiers following the taking of leave, as well as blocking the delivery of supplies to DutchBat including ammunition, fuel and food.⁴⁵⁷

139. The Trial Chamber finds that elements of the Bratunac Brigade, including the 1st and 3rd Battalion, were involved in sniping and shelling of the Srebrenica enclave in the months before the enclave was attacked.⁴⁵⁸

140. The Trial Chamber finds that elements of the Bratunac Brigade were involved in the attack on Srebrenica. Colonel Blagojević authored the order to begin combat activities on 5 July and tasked his subordinate commanders and units to carry out this order.⁴⁵⁹ The Trial Chamber observes that the attack on the enclave itself is not the subject-matter of this case. The Trial Chamber therefore focuses its findings on the involvement of the Bratunac Brigade in relation to the effect of that attack on the civilians.

D. The Bosnian Muslims following the Fall of Srebrenica

1. Potočari

(a) Civilians Flee from Srebrenica to Potočari

141. The thousands of Bosnian Muslim refugees who were gathering in Srebrenica town were terrified and fled to the DutchBat Bravo Company compound.⁴⁶⁰ Around noon on 11 July, a

⁴⁵⁵ *Kupreškić* Appeal Judgement, para. 321, citing Archbold: *Criminal Pleadings, Evidence and Practice* 2000, paras 13-37 and John Strong, McCormick On Evidence, para. 190 at 797-812, 4th edition, 1992. See also *Prosecutor v. Strugar*, Case No. IT-01-42-T, Decision on the Defence Objection to the Prosecution’s Opening Statement Concerning Admissibility of Evidence, 22 January 2004.

⁴⁵⁶ See *supra* section II. C. 3.

⁴⁵⁷ See *supra* section II. C. 3, specifically para. 111.

⁴⁵⁸ See *supra* section II. C. 3, specifically para. 117.

⁴⁵⁹ See *supra* section II. C. 4. (a).

⁴⁶⁰ Nesib Mandžić, T. 780. Boering testified that there were 15,000-20,000 people moving towards Potočari on 11 July. Pieter Boering, T. 895; Ex. P851, Report based on DutchBat debriefing, p. 52. See also Ex. P21, video compilation, showing a large crowd on the UN Base in Srebrenica town on 10 July 1995. Witness P-104, a Bosnian Muslim refugee, testified about his fear as follows (Witness P-104, KT. 1682):

mortar shell fell within the compound, resulting in wounded refugees.⁴⁶¹ Bravo Company then started directing the refugees to the UNPROFOR headquarters in Potočari, which was deemed to be the only safe place for them.⁴⁶² As the route to Potočari was within range of VRS artillery, it was necessary to identify as safe a route as possible to the UNPROFOR base.⁴⁶³ The DutchBat members in the compound stayed at the end of the large group of refugees in order to protect them from the VRS.⁴⁶⁴ After all refugees had left Srebrenica town, DutchBat left their positions:⁴⁶⁵ Srebrenica town was effectively abandoned.⁴⁶⁶

142. Not all refugees went towards Potočari, but many of the Bosnian Muslim men decided to go to the woods in the north-western part of the Srebrenica enclave.⁴⁶⁷ Their plight will be discussed below.⁴⁶⁸

143. Several thousand refugees in Srebrenica town began a slow march towards Potočari in the hope that this would protect them.⁴⁶⁹ Many refugees also attempted to get onto DutchBat trucks and APCs to take them to Potočari.⁴⁷⁰ Čamila Omanović described:

It was a huge crowd; several thousand women, children, and old people and babies, and they all had one thing in mind: to escape, to flee to the UN base in Potočari. Because we believed that if we did reach that, that we would be saved.⁴⁷¹

Witness P-105, a Bosnian Muslim refugee, hoped that going to Potočari would enable him to leave the enclave to non-VRS held territory.⁴⁷² He testified:

Q. [...] But can you tell us why the people, why the Muslims, felt a need to either go through the woods or go to Potočari? Why were they fleeing?

A. They had to. There was no life for them there. We would have all been slain had we stayed in Srebrenica.

Q. And who were you afraid of?

A. We were afraid of the Serb troops.

⁴⁶¹ Ex. P825, Secretary-General's Report, para. 303; Pieter Boering, T. 892; Ex. P851, Report based on DutchBat debriefing, 1995, p. 52.

⁴⁶² Agreed Facts, para. 77; Witness P-201, KT. 857 (under seal). *See also* Robert Franken, T. 1481.

⁴⁶³ Robert Franken, T. 1482-83, testifying that this route was through the bus compound, under the cover of the Blue Factory.

⁴⁶⁴ Robert Franken, T. 1481.

⁴⁶⁵ Pieter Boering, T. 895 and Leendert van Duijn, T. 1052.

⁴⁶⁶ Leendert van Duijn, T. 1052.

⁴⁶⁷ Witness P-111, T. 1381, Witness P-201, KT. 923 (under seal).

⁴⁶⁸ *See infra* sections II. D. 2, II. E-F.

⁴⁶⁹ Bego Ademović, KT. 1584. Muniba Mujić testified about the situation in Srebrenica town on 11 July: "Shells falling, people crying, people are wounded, dead, lying on the ground, nobody paying any attention. Everyone is trying to get to Potočari in order to save their lives." Muniba Mujić, T. 1307-08.

⁴⁷⁰ Ex. P37, a video, taken in Srebrenica on 11 July 1995. *See also* Pieter Boering, T. 895.

⁴⁷¹ Čamila Omanović, KT 1082. *See also* Nesib Mandžić, T. 780: "I was not able to go through the wood. So I decided to go to the Potočari UN camp of the DutchBat, hoping that in that camp, like thousands of others, I would get protection considering that it was a demilitarised zone which would also include protection of civilian population."; Witness P-101, KT 1247-48: "I felt the need to leave because there had been so much hatred in Srebrenica during the war, and because of that hatred, it was obvious that people had become fearful. I wanted someone to offer me some kind of protection because I was wounded, and I expected that the Dutch Battalion would be able to do so."

Q: And why did you want your family and yourself to flee your home in Srebrenica to go to Potočari?

A. Because we tried to save our lives. We wanted to set off towards Tuzla to get to the free territory. Apart from that, we didn't think that -- it didn't happen as we thought it would. We got to Potočari. There was a mass of people there, well over 25-30,000 people. [...] It was completely packed with people. Everyone was fleeing to save their lives.⁴⁷³

144. Despite attempts to find a safe route to Potočari, the refugees were soon shelled and shot at with machine guns by the VRS,⁴⁷⁴ including by the Bratunac Brigade's 2nd Battalion.⁴⁷⁵ In the words of Nesib Mandžić:

There were tens of thousands of people who were moving in the direction of Potočari, mostly women, elderly people, people who were helpless. There was a lot [of] fear, panic, screaming in the course of that journey. Every single time a shell landed, there would be a mother throwing herself on the asphalt, with children crying.⁴⁷⁶

145. Upon their arrival in Srebrenica town, members of the 10th Sabotage Detachment were calling on the few people who remained there to leave their houses.⁴⁷⁷ The approximately 200 people whom they found were mostly civilians: "Elderly people, women, people who couldn't walk quickly."⁴⁷⁸ Some of these elderly people were brought from Srebrenica to Potočari by a member of MUP.⁴⁷⁹

146. The chaos that reigned in Potočari defies words. The crowd outside the UNPROFOR compound grew by the thousands during the course of 11 July. By the end of the day, an estimated 20,000 to 30,000 Bosnian Muslims were in the surrounding area⁴⁸⁰ and some 4,000 to 5,000 refugees were in the UNPROFOR compound.⁴⁸¹

(b) Conditions in Potočari

147. The standards of hygiene within Potočari had completely deteriorated.⁴⁸² Many of the refugees seeking shelter in the UNPROFOR headquarters were injured.⁴⁸³ Medical assistance was

⁴⁷² Witness P-105, T. 1176-77.

⁴⁷³ Witness P-105, T. 1177.

⁴⁷⁴ Nesib Mandžić, T. 781-82; Čamila Omanović, KT. 1082-83; Mirsada Malagić, KT. 1945-46.

⁴⁷⁵ Momir Nikolić, T. 1639-40 (a ZIS 70mm anti-tank cannon was among the weapons used). Mićo Gavrić testified that the 2nd Battalion of the Bratunac Brigade was firing on civilians who "were on the move" towards Potočari. As for the firing from the Bratunac Brigade's Mixed Artillery Group, which he commanded, Mićo Gavrić testified that he corrected his line of fire when he noticed that the group consisted of women and children, so that the shells would go beyond the civilians. Mićo Gavrić, T. 8485-88.

⁴⁷⁶ Nesib Mandžić, T. 781-82.

⁴⁷⁷ Dražen Erdemović, KT. 3083-84, 3090-91. The people were asked to move to "the football stadium."

⁴⁷⁸ Dražen Erdemović, KMT. 852 and KT. 3161. The Detachment did find at least one man of military age. That man was killed by a soldier from Vlasenica who acted upon orders of the commander of the 10th Sabotage Detachment, Miso Pelemis. Dražen Erdemović, KT. 3090-91 and KT. 3177-78.

⁴⁷⁹ Nenad Deronjić, T. 8189.

⁴⁸⁰ Agreed Facts, para. 115; Nesib Mandžić, T. 783, Srblislav Davidović, T 7701.

⁴⁸¹ Agreed Facts, para. 115; Leendert van Duijn, T. 1057.

⁴⁸² Ex. P851, Report based on DutchBat debriefing, 1995, p. 53-54.

given to the extent possible; however, there was a dramatic shortage of medical supplies.⁴⁸⁴ As a result of the VRS having prevented aid convoys from getting through during the previous months, there was hardly any fresh food in the DutchBat headquarters.⁴⁸⁵ There was some running water available outside the compound.⁴⁸⁶ From 11 to 13 July 1995 the temperature was very high, reaching 35 degrees centigrade⁴⁸⁷ and this small water supply was insufficient for the 20,000 to 30,000 refugees who were outside the UNPROFOR compound. The situation was only slightly better within the compound which had running water.⁴⁸⁸ According to a DutchBat witness, several women who entered the compound handed their malnourished babies to DutchBat members “because they just didn’t know anymore what to do and what their future would bring.”⁴⁸⁹ This witness also testified that several times babies were thrust into his arms “which were so swollen that they finally died.”⁴⁹⁰ Another DutchBat witness testified that a total of 11 people died in the DutchBat compound, among whom were children who died of dehydration.⁴⁹¹ It was estimated that the refugees would survive only three or four days under the prevailing conditions.⁴⁹²

148. The Trial Chamber has heard evidence that some efforts were made to assist the Bosnian Muslim refugees in Potočari. The Bratunac Municipal Assembly, acting on orders of General Mladić, together with its counterpart in the Ljubovija municipality in Serbia, organised an operation to gather food for the refugees.⁴⁹³ Ljubisav Simić testified that he contacted the UNHCR, after which UNHCR sent five trucks with supplies.⁴⁹⁴ These supplies were handed over for distribution to the local Red Cross distribution centre set up in Bratunac.⁴⁹⁵ Later on 12 July, a mini TAM truck from the Bratunac Brigade was sent to Potočari with a load of bread. This distribution was organised by the Bratunac Brigade Assistant Commander for Logistics, Major Dragoslav Trišić, upon the order of Colonel Aćamović, the Assistant Commander for Rear

⁴⁸³ Ex. P851, Report based on DutchBat debriefing, 1995, p. 52-53; Ex. P21, video compilation, shows that DutchBat transported wounded people into the DutchBat headquarters. During the first meeting he had with General Mladić, the DutchBat commander Colonel Karremans stated that DutchBat so far had counted 88 wounded people and that there were many sick people in Potočari. Ex. P21A, Transcript of video compilation, p. 39.

⁴⁸⁴ Ex. P21A, Transcript of video compilation, pp 20, 22, 34, 40-42; Joseph Kingori, Ex. P782, tab 10, UNMO reports, entry for 11 July: “DutchBat can’t give much help because their supplies haven not been coming in since the end of April. The only medical help that is available is coming from MSF, however that is also not enough for all the wounded people.”

⁴⁸⁵ Pieter Boering, T. 895-96, Ljubisav Simić, T. 7612-13.

⁴⁸⁶ Witness P-105, T. 1178; Mirsada Malagić, KT. 1954; Witness P-101, KT. 1255.

⁴⁸⁷ Ex. P851, Report based on DutchBat debriefing, 1995, p. 54.

⁴⁸⁸ Ljubisav Simić, T. 7618; Agreed Facts, para. 84.

⁴⁸⁹ Witness P-103, KT. 1509; *See also* Ex. P851, Report based on DutchBat debriefing, 1995, p. 53, in which it is described that “During the flight from Srebrenica to Potočari, women thrust babies into the arms of Dutchbat personnel assuming that they would be safe in their hands.”

⁴⁹⁰ Witness P-103, KT. 1509.

⁴⁹¹ Robert Franken, T. 1510.

⁴⁹² Witness P-103, KT. 1509-10; Robert Franken, T. 1507.

⁴⁹³ Ljubisav Simić, T. 76114.

⁴⁹⁴ Ljubisav Simić, T. 7615.

⁴⁹⁵ Ljubisav Simić, T. 7614-15, 7621-22. According to Ljubisav Simić, the UNHCR trucks first went to Potočari, but it was decided that the distribution should be done from the Red Cross distribution centre in Bratunac.

Services of the Drina Corps.⁴⁹⁶ Dragoslav Trišić went to Potočari with a truck carrying bread.⁴⁹⁷ The bread was distributed by Bratunac Brigade Military Police and the Bratunac Brigade Logistics Company.⁴⁹⁸ The Trial Chamber has also been furnished with evidence of a vehicle arriving with bread, accompanied by a camera crew.⁴⁹⁹ There was not a lot of bread to hand out and while the VRS soldiers threw it to the Bosnian Muslims, they shouted at them, mocking them and calling them names.⁵⁰⁰ Finally, in the early evening of 13 July, a convoy of humanitarian aid from the Russian Battalion arrived in Potočari, escorted by members of the Zvornik Brigade.⁵⁰¹

149. Ljubisav Simić, president of the Bratunac Brigade Municipal Assembly, who delivered food to the refugees in Potočari, testified:

The food was a drop in the sea, I must say. I was surprised when I realised what the situation was. I had never seen anything like it. It was shocking and remains shocking to me to this day.⁵⁰²

(c) Negotiations related to the Refugees in Potočari

150. On 11 July, a meeting was held at 20:00 at Hotel Fontana in Bratunac town to discuss the fate of the Bosnian Muslim civilians in Potočari.⁵⁰³ The DutchBat delegation, consisting of Colonel Karremans, Major Boering and other officers,⁵⁰⁴ was accompanied to the Hotel Fontana by Captain Nikolić of the Bratunac Brigade,⁵⁰⁵ who remained at the hotel organising security.⁵⁰⁶ Upon arrival at the hotel, the DutchBat delegation saw several of their own soldiers held as hostages in a room in the hotel.⁵⁰⁷ The VRS was represented at the meeting by General Mladić and Colonel Janković of the Main Staff, General Živanović and Lieutenant Colonel Kosorić of the

⁴⁹⁶ Dragoslav Trišić, T. 9362-64; Milan Gvozdernović, Ex. D225/1, pp. 2-3. According to Mile Janjić, the bread distribution in Potočari was organized by the quartermaster of the Bratunac Brigade and the bread was brought to Potočari in a TAM. Mile Janjić T. 9821.

⁴⁹⁷ Dragoslav Trišić, T. 9362-64.

⁴⁹⁸ On distribution of bread by the Military Police, *see* Nenad Đokić, T. 5433, 5472; Milan Gvozdernović, Ex. D225/1, pp. 2-3. On distribution of bread by the Bratunac Brigade Logistics Company, *see* Dragoslav Trišić, T. 9362-64.

⁴⁹⁹ Eelco Koster, KT 3404-05 ; Witness P-105, T. 1179.

⁵⁰⁰ Eelco Koster, KT. 3404-05 (testifying that the truck made deliveries of bread and that a fire engine came to provide water to the refugees).

⁵⁰¹ Witness P-130, T. 6594-95.

⁵⁰² Ljubisav Simić, T. 7612-13.

⁵⁰³ Witness P-138, T. 3504; Pieter Boering, T. 896-97, T. 980.

⁵⁰⁴ Pieter Boering, T. 900-01.

⁵⁰⁵ Witness P201/KT. 860-61.

⁵⁰⁶ Momir Nikolić, T. 1652-57 Momir Nikolić did not testify that he actually collected the delegation of Dutchbat, but he did acknowledge that he was at the Hotel Fontana while the meeting was going on. According to him, he was standing about three to five meters away from where the meeting was held. Momir Nikolić, T. 1657.

⁵⁰⁷ Pieter Boering, T. 899; Witness P-201, KT. 861 (under seal). *See also* Ex. P39, Video clip showing DutchBat soldiers held hostages at Hotel Fontana.

Drina Corps.⁵⁰⁸ A camera team was also present. Members of the Bratunac Brigade Military Police provided security for the Hotel Fontana.⁵⁰⁹

151. General Mladić took complete control of the meeting, despite Colonel Karremans having requested it.⁵¹⁰ General Mladić repeatedly asked Colonel Karremans who had ordered the NATO air strike⁵¹¹ and whether it was Colonel Karremans who had “ordered the UNPROFOR forces to open fire on [his] troops in the area of Srebrenica.”⁵¹² When Colonel Karremans thanked General Mladić for treating the detained DutchBat soldiers well, General Mladić replied: “But if you keep on bombing, they won’t be hosts [*sic*] for a long time”⁵¹³ and that the VRS knew “how to bomb too.”⁵¹⁴

152. Colonel Karremans said that he had come to negotiate the withdrawal of the refugees and asked for food and medicine for the refugees.⁵¹⁵ He sought assurances that the Bosnian Muslim population and DutchBat would be allowed to withdraw from the area.⁵¹⁶ General Mladić ordered DutchBat to bring representatives of the Bosnian Muslim population to the next meeting, which was to take place later that night.⁵¹⁷ General Mladić stated that the civilian population was not the target of his actions⁵¹⁸ and that the goal of the meeting was to work out an arrangement with the representatives. Immediately thereafter he stated “you can all leave, all stay, or all die here.”⁵¹⁹ General Mladić then asked for military representatives of the ABiH to be present at the meeting as

⁵⁰⁸ Pieter Boering, T. 897; Momir Nikolić, T. 1653-55; Ex. P22, booklet “still images, taken from the video compilation” section regarding “1st Fontana meeting”; Agreed Facts, para. 108-09.

⁵⁰⁹ Momir Nikolić, T. 1653-55; Borivoje Jakovljević, T. 9930; Mile Janjić, T. 9760; Nikola Popović, T. 11071.

⁵¹⁰ Pieter Boering, T. 898-99; Momir Nikolić, T. 1656-58; Ex. P38, Video clip of first Hotel Fontana meeting; Ex. P21A, Transcript of video compilation, pp 14-37, quoting what was said during the meeting.

⁵¹¹ On 11 July “at approximately 1440 hours, two NATO aircraft dropped a total of two bombs on what where thought to be Serb vehicles advancing towards the [Srebrenica] town from the south.” Ex. P825, Secretary-General’s Report, p. 68.

⁵¹² Ex. P21A, Transcript of video compilation, p. 15. *See also* Pieter Boering, T. 898; Witness P-201, KT. 865 (under seal).

⁵¹³ Ex. P21A, Transcript of video compilation, p. 21.

⁵¹⁴ Ex. P21A, Transcript of video compilation, p. 21; Witness P-201 KT. 866-67 (under seal).

⁵¹⁵ Ex. P21A, transcript of video compilation, pp 19-20. Colonel Karremans stated:

It’s a request because I’m not in a position to demand anything. We ... the Command in Sarajevo has said that the enclave has been lost and that I’ve been ordered by BH Command to take care of all the refugees. And now we are approximately 10,000 women and children within the compound of Potočari, and the request of the BH Command is to ... let’s say, to negotiate or ask for the withdrawal of the battalion and withdrawal of those refugees, and if there are possibilities to assist that withdrawal. There are some women who ...are now working to ...let’s say ease the pain for the population ... A lot of people, ... women said: “We are waiting for the buses and can we leave the enclave?” Because they are sick, they are tired, they are very scared. And I’ve been asked by General Nikolai [commander of the UNPROFOR troops, stationed in Sarajevo] asked for, let’s say, for a kind of humanitarian support like food and medicines. Because even in my battalion I don’t have fuel, almost nothing, fuel left and ... because of the rejection of all the clearances of [the] last four months. We have been situated in a very poor situation [the] last four months. That’s why I was not able to do the military job.”
Id.

⁵¹⁶ Agreed Facts, para. 110.

⁵¹⁷ Pieter Boering, T. 898-900; Witness P-201, KT. 865-66 (under seal); Agreed facts, paras 111, 113-114.

⁵¹⁸ Ex. P21A, Transcript of video compilation, p. 29; Agreed Facts, para. 110.

⁵¹⁹ Ex. P21A, Transcript of video compilation, p. 30

well.⁵²⁰ He said: “we can work out an agreement for all this to stop and for the issues of the civilian population, your soldiers and the Muslim military to be resolved in an peaceful way.”⁵²¹ After discussing the situation of the wounded in the enclave, General Mladić asked if UNPROFOR could provide buses to transport the refugees out of the enclave.⁵²² Colonel Karremans said he thought buses could be arranged.⁵²³

153. DutchBat started to look for representatives of the Bosnian Muslim population to attend the next meeting, but it appeared that most of the Bosnian Muslim leaders had already left the enclave with the column.⁵²⁴ Due to his contacts with DutchBat in 1994 and 1995, Nesib Mandžić, a secondary school principal, who had been a member of the Party for Democratic Action (“SDA”) in the Srebrenica Municipal Assembly, was known to DutchBat. He was asked by DutchBat to represent the Bosnian Muslim population.⁵²⁵ Under pressure to appear, Nesib Mandžić agreed to represent the Bosnian Muslims as he believed that the negotiations were “a precondition for the survival of the population.”⁵²⁶

154. The second Hotel Fontana meeting took place at approximately 23:00 on 11 July.⁵²⁷ The VRS delegation consisted of General Mladić, Colonel Janković, General Krstić, and Lieutenant Colonel Kosorić. The municipal authorities of Bratunac were represented by Ljubisav Simić, the President of the Bratunac Municipal Assembly. Colonel Karremans and Major Boering represented UNPROFOR.⁵²⁸ Captain Nikolić was in a room next to the one where the meeting took place and could overhear the conversation.⁵²⁹ Nesib Mandžić appeared as the representative of the Bosnian Muslim population. General Mladić introduced Colonel Janković as the next in command to take care of matters if General Mladić was absent. Colonel Kosorić of the Drina Corps was introduced as the officer responsible for the transport of the refugees out of the enclave.⁵³⁰

155. The untenable humanitarian situation in Potočari was discussed. Colonel Karremans indicated that there was a lack of food, that there were many sick and wounded civilians and that there was a shortage of medicine. During the meeting, one of the VRS representatives opened a

⁵²⁰ Ex. P21A, Transcript of video compilation, p. 31

⁵²¹ Ex. P21A, Transcript of video compilation, p. 31.

⁵²² Ex. P21A, Transcript of video compilation, pp 33-36; Agreed Facts, para. 111.

⁵²³ Ex. P21A, Transcript of video compilation, p. 36.

⁵²⁴ Robert Franken, T. 1506.

⁵²⁵ Nesib Mandžić, T. 778-79; Pieter Boering, T. 900.

⁵²⁶ Nesib Mandžić, T. 785-86. *See also* Pieter Boering, T. 900.

⁵²⁷ Agreed Facts, para. 116; Nesib Mandžić, T. 786; Pieter Boering, T. 901.

⁵²⁸ Agreed Facts, paras 117-120; Pieter Boering, T. 901-902; Witness P-201, KT. 884-85 (under seal); Nesib Mandžić, T. 787; Momir Nikolić, T. 1666-67.

⁵²⁹ Momir Nikolić, T. 1667.

⁵³⁰ Pieter Boering, T. 902. The Trial Chamber notes that this introduction has not been captured on tape by the camera.

window and the sound of a pig being slaughtered could be heard.⁵³¹ The noise went on for two or three minutes and when the slaughter was over the window was shut.⁵³² Nesib Mandžić understood the event as a metaphor of what would happen to the Bosnian Muslims.⁵³³ General Mladić put the plaque of the Municipal Assembly of Srebrenica building in front of Nesib Mandžić.⁵³⁴ The piece where it said “Bosnia-Herzegovina” was missing and according to Nesib Mandžić there was a message written across the plaque: “This is the end of Bosnia-Herzegovina, the end of the old forms of living together in Bosnia-Herzegovina”.⁵³⁵ The non-Serb participants interpreted the message to mean the end of religious and ethnic tolerance between Bosnian Serbs and Bosnian Muslims.⁵³⁶

156. When Colonel Karremans indicated that DutchBat had four to five thousand litres of fuel left, General Mladić wanted to know where the fuel was kept.⁵³⁷ After Colonel Karremans had finished his assessment of the situation and explained what he thought should be the course of action, General Mladić directed his attention fully to Nesib Mandžić. He soon started dictating his conditions.⁵³⁸ He stated:

Number one, you need to lay down your weapons and I guarantee that all those who lay down their weapon will live. I give you my word, as a man and a General, that I will use my influence to help the innocent Muslim population which is not the target of the combat operations carried out by the VRS. [...] In order to make a decision as a man and a Commander, I need to have a clear position of the representatives of your people on whether you want to survive.. stay or vanish. I am prepared to receive here tomorrow at 10am hrs a delegation of officials from the Muslim side with whom I can discuss the salvation of your people from [...] the former enclave of Srebrenica. [...] Nesib, the future of your people is in your hands, not only in this territory. [...] Bring the people who can secure the surrender of weapons and save your people from destruction.⁵³⁹

157. The Trial Chamber finds, based on General Mladić’s comments, that he was unaware that the Bosnian Muslim men had left the Srebrenica enclave in the column.

158. General Mladić also stated that he would provide the vehicles to transport the Bosnian Muslims out of Potočari.⁵⁴⁰ The Bosnian Muslim and the Bosnian Serb sides were not on equal terms and Nesib Mandžić felt his presence was only required to put up a front for the international

⁵³¹ Ex. P21, video compilation, on which the sound of a squealing pig can be heard.

⁵³² Witness P-201, KT. 885-86 (under seal); Nesib Mandžić, T. 790; Pieter Boering, T. 903; Agreed Facts, para. 121.

⁵³³ Nesib Mandžić, T. 790. *See also* Pieter Boering, T. 903.

⁵³⁴ Ex. P21, video compilation; Agreed Facts, para. 122; The Trial Chamber notes that General Mladić must have been asking for this plaque when he asked for “the sign.”

⁵³⁵ Nesib Mandžić, T. 790. Ex. P33, video still of the plaque of the Srebrenica Municipal Building.

⁵³⁶ Nesib Mandžić, T. 790-91; Pieter Boering, T. 903. *See also* Witness P-201, KT. 887 (under seal).

⁵³⁷ Ex. P21A, Transcript of video compilation, p. 44. There was some confusion, as Colonel Karremans initially said: “We have left diesel approximately 5 4 to 5 thousand litres. [sic]” General Mladić then asked where Dutchbat left the diesel.

⁵³⁸ Ex. P21A, Transcript of video compilation, p. 47: General Mladić says: “Please write down the following.”

⁵³⁹ Ex. P21A, Transcript of video compilation, pp. 47-48.

⁵⁴⁰ Agreed Facts, paras 124.

public.⁵⁴¹ Nesib Mandžić felt intimidated by General Mladić.⁵⁴² There was no indication that anything would happen the next day.⁵⁴³

159. On the morning of 12 July, at the third meeting organised in the Hotel Fontana, the Bosnian Serbs were represented by members of the VRS including General Mladić, General Krstić, Colonel Janković, Colonel Popović and Lieutenant Colonel Kosorić, as well as by political leaders including Miroslav Deronjić, the newly-appointed Civilian Commissioner for Srebrenica, Ljubisav Simić, President of the Bratunac Municipal Assembly, and Srbislav Davidović, President of the Executive Board of the Bratunac Municipality. In addition, Dragomir Vasić, Chief of the Zvornik CJB, was present. Nesib Mandžić again represented the Bosnian Muslims⁵⁴⁴ and was joined by Čamila Omanović, a Bosnian Muslim born in Srebrenica, and Ibro Nuhanović, a Bosnian Muslim from Vlasenica.⁵⁴⁵

160. As with the previous two meetings, General Mladić ran the third meeting at Hotel Fontana. He had brought a broken vase from the Srebrenica Municipal Assembly and described it as “the greatest trophy of his life”.⁵⁴⁶ After the Bosnian Muslim representatives had introduced themselves, General Mladić stated:

I want to help you, but I want absolute co-operation from the civilian population because your army has been defeated. There is no need for your people to get killed, your husband, your brothers or your neighbours. [...] As I told this gentleman last night, you can either survive or disappear. For your survival, I demand that all your armed men, even those who committed crimes, and many did, against our people, surrender their weapons to the VRS. [...] You can choose to stay or you can choose to leave. If you wish to leave, you can go anywhere you like. When the weapons have been surrendered every individual will go where they say they want to go. The only thing is to provide the needed gasoline. You can pay for it if you have the means. If you can't pay for it, UNPROFOR should bring four or five tanker trucks to fill up trucks [...].⁵⁴⁷

Čamila Omanović interpreted this to mean that if the Bosnian Muslim population left they would be saved, but that if they stayed they would die.⁵⁴⁸ General Mladić did not give a clear answer in relation to whether a safe transport of the civilian population out of the enclave would be carried out.⁵⁴⁹ General Mladić stated that the male Bosnian Muslim population from the age of 16 to 65 would be screened for the presence of war criminals. He indicated that after this screening, the men would be returned to the enclave.⁵⁵⁰ This was the first time that the separation of men from

⁵⁴¹ Nesib Mandžić, T. 809. *See also* Agreed Facts, para. 126.

⁵⁴² Nesib Mandžić, T. 789.

⁵⁴³ Witness P-201, KT. 888 (under seal); Pieter Boering, T. 902.

⁵⁴⁴ Ex. P42; Nesib Mandžić, T. 791-92; Pieter Boering, T. 908-09; Ljubisav Simić, T. 7608; Srbislav Davidović, T. 7697; Agreed Facts, para. 129.

⁵⁴⁵ Čamila Omanović, KT. 1094; Nesib Mandžić, T. 791; Ljubisav Simić, T. 766.

⁵⁴⁶ Čamila Omanović, KT. 1100-01, 1209.

⁵⁴⁷ Ex. P21A, Transcript of video compilation, pp.51-52.

⁵⁴⁸ Čamila Omanović, KT. 1100-01, 1209.

⁵⁴⁹ Nesib Mandžić, T. 793.

⁵⁵⁰ Pieter Boering, T. 908-09; Thomas Karremans, T. 11340; Agreed Facts, paras 134, 153.

the rest of the population was mentioned. The Bosnian Muslim representatives had the impression that “everything had been prepared in advance, that there was a team of people working together in an organised manner” and that “Mladić was the chief organiser.”⁵⁵¹

161. The third Hotel Fontana meeting ended with an agreement that the VRS would transport the Bosnian Muslim civilian population out of the enclave to ABiH-held territory, with the assistance of UNPROFOR to ensure that the transportation was carried out in a humane manner.⁵⁵² Captain Nikolić and Lieutenant Colonel Kosorić started planning the transportation just after the meeting concluded.⁵⁵³ The representatives of the Bosnian Serb civilian government were tasked by General Mladić to provide food and water for the people in Potočari.⁵⁵⁴

(d) Atmosphere in Potočari and Intimidation by VRS forces

162. During the night of 11 July people sought refuge in and around the buildings in Potočari.⁵⁵⁵ DutchBat soldiers patrolled the area where the refugees were in Potočari, while the VRS continued its offensive around Potočari and the wider Srebrenica area. Shelling and sniper fire was heard and flames from torched houses were seen from the compound in the night.⁵⁵⁶ Čamila Omanović described the conditions in which the refugees spent the night:

As we sat there, snipers would fire every now and then, and all this throng would then move to one side or the other, screaming. Above us was the Pećista village where the Serb soldiers were firing at houses. The sound of that shell, again we would simply dodge to one side or the other with frightened cries, and that is how we spent the night. Some were throwing up, some were scared. It was the area where you lived [...] that small tight space was everything to us, the bedroom, the bathroom, everything. We were simply all crowded there.⁵⁵⁷

163. In the early morning on 12 July, VRS soldiers with German Shepherd dogs in the northern direction of the enclave threw hand grenades into civilian houses in Potočari.⁵⁵⁸ According to a DutchBat soldier present in Potočari, this systematic “cleansing” of civilian houses was repeated many times.⁵⁵⁹ As a result, the inhabitants were forced to flee from their houses to the UN compound.⁵⁶⁰

⁵⁵¹ Čamila Omanović, KT. 1209.

⁵⁵² Robert Franken, T. 1488-89. General Mladić stated that he would provide the vehicles but that fuel should be provided by the UNPROFOR: Agreed Facts, para. 133.

⁵⁵³ Pieter Boering, T. 910, Witness P-201, KT. 894 (under seal).

⁵⁵⁴ Srbislav Davidović, T. 7700-02; Ljubisav Simić, T. 7610-11; Miroslav Deronjić, T. 6199-6202.

⁵⁵⁵ Čamila Omanović, KT. 1090; Bego Ademović, KT. 1585; Mirsada Malagić, KT. 1947.

⁵⁵⁶ Čamila Omanović, KT. 1090-91; Mirsada Malagić, KT. 1949-51; Agreed Facts, para. 98.

⁵⁵⁷ Čamila Omanović, KT. 1090-91.

⁵⁵⁸ Rene van Kujien, Ex. P577, p 3.

⁵⁵⁹ Rene van Kujien, Ex. P577, p 3.

⁵⁶⁰ Mirsada Malagić, KT. 1950-52.

164. As soon as the VRS and MUP had arrived to Potočari, their members began mixing with the Bosnian Muslim refugees.⁵⁶¹ The heavy presence in the area of Bosnian Serb forces⁵⁶² and their attitude was very intimidating to the Bosnian Muslims. Nesib Mandžić described:

there was only the authority of the army of the Republika Srpska and the power of the army of the Republika Srpska. On the other side, there was only the presence of the Dutch soldiers and officers, and we were completely helpless. We were at the mercy of the officers and soldiers of the army of the Republika Srpska and their superiors.⁵⁶³

Many VRS soldiers were cursing at the Bosnian Muslims, calling them names and saying that they would be slaughtered.⁵⁶⁴ The VRS encouraged the refugees to leave the area calling it “Serb country” and part of “Greater Serbia”.⁵⁶⁵

165. Before the end of the ceasefire at 10:00 on 12 July – and more or less coinciding with the third Fontana meeting – the VRS carried out an attack in the north of the enclave.⁵⁶⁶ Soon after the attack, which seemed like a demonstration of force,⁵⁶⁷ the VRS reached the red and white tape serving as a boundary for the area where the mass of refugees were.⁵⁶⁸ Meanwhile MUP units advanced on Potočari with the aim of “taking UNPROFOR personnel prisoner, surrounding the entire civilian population and cleansing the area of enemy troops”.⁵⁶⁹ On 11 July the MUP units that were to form the MUP Task Force, established by order of 10 July by Tomislav Kovač, arrived in Bratunac.⁵⁷⁰ Members of the 2nd Battalion of the Bratunac Brigade cleared mines so that part of the MUP Task Force could enter Potočari on 12 July.⁵⁷¹ Some members of the 2nd Company of the 2nd Battalion, located at Žuti Most, were ordered to follow the MUP which was

⁵⁶¹ Agreed Facts, para. 99. Nesib Mandžić, T. 795; Leendert van Duijn, T. 1070; Mile Janjić, T. 9779, 9827, Thomas Karremans, 11340, 11345-46; Witness P-201, KT. 899, 932; Čamila Omanović, KT. 1105; Mirsada Malagić, KT. 1951-52; René van Kuijen, Ex. P577, p. 4.

⁵⁶² The members of the VRS that were present in Potočari came from several different units, such as the VRS Main Staff 65th Protection Regiment and the Zvornik Brigade (including the Drina Wolves). Dragoslav Trišić, T. 9364-66, 9433-34; Ex. P823, UNMO Report for 11 July: “[VRS] infantry is all around in the enclave.”; Eelco Koster, MT. 40, stating that Dutchbat was outnumbered by the VRS forces.

⁵⁶³ Nesib Mandžić, T. 799.

⁵⁶⁴ Bego Ademović, KT. 1589-90.

⁵⁶⁵ Bego Ademović, KT. 1589-90.

⁵⁶⁶ Ex. P825, p. 73; Paul Groenenwegen, T. 1022-23; Leendert van Duijn, T. 1054; Robert Franken, T. 1487.

⁵⁶⁷ Witness P-104, KT. 1684, 1701. The attack was carried out by VRS soldiers wearing yellow and green multicoloured military clothes with round blue, white and red patches on their arms.

⁵⁶⁸ Robert Franken, T. 1487-88; Ex. P825, Secretary General’s Report, p. 73.

⁵⁶⁹ Ex. P439, dispatch from the Chief of the Zvornik CSB, Dragomir Vasić, dated 12 July 1995. Starting on 11 July and upon orders from Borovčanin, a MUP Task Force was deployed at Žuti Most, in and around Potočari, and along the Bratunac-Konjevic Polje road. Duško Jević, T. 3223-24, 3226, 3233-34; Witness DP-102, T. 8248-49; Ex. P159, Borovčanin Combat Report, pp. 1 and 2. *See also* Witness P-131, Statement 14-18 December 1995, p. 7 (under seal).

⁵⁷⁰ Ex. P159, Borovčanin combat report from 10-20 July 1995, p 1; Dusko Jević, T. 3212; Witness DP 102, T. 8247; Milos Stupar, T. 8333-35. Duško Jević had brought about 100 men from the 1st Company of the Jahorina Training Centre. In accordance with the order, the Second Special Police Detachment from Šekovići arrived in Bratunac in the night of 11 to 12 July.

⁵⁷¹ Witness DP-102, T. 8286; Ex. P159, Borovčanin combat report, p. 2.

on its way to Potočari.⁵⁷² At approximately this time, General Mladić, escorted by members of the Bratunac Brigade Military Police,⁵⁷³ arrived in Potočari together with several other VRS officers as well as journalists and television cameras.⁵⁷⁴

166. The Trial Chamber heard evidence of serious crimes committed by members of the Bosnian Serb forces, including the stabbing to death of a baby when the baby's mother said the child was a boy⁵⁷⁵ and the taking away of a girl from her family.⁵⁷⁶ One Bosnian Muslim man pretended he was disabled and insane in the hope that he would not be taken away – instead a VRS soldier cut him across the bridge of his nose with an implement that resembled scissors.⁵⁷⁷ As a consequence of the threatening atmosphere, several refugees committed suicide or attempted to do so.⁵⁷⁸

167. The mood among the refugees in Potočari in the evening and night of 12 July was “fearful”; “it was a night of horror.”⁵⁷⁹ Rumours spread quickly about murders and about women being raped by VRS soldiers.⁵⁸⁰ Bego Ademović described some of the events of that night:

[...] from all sides Chetniks were coming, carrying torches with them, flashlights. [...] They would pull the people up by the hair and look at their face. If they would like the face, they would take him away. If they didn't recognize him, they would leave him behind. But they mostly took them away. And people were screaming, people were distressed. It was awful.⁵⁸¹

The separation of men was carried out in this manner at least for a number of hours in that night.⁵⁸² The soldiers would move among the refugees, shouting and firing their weapons.⁵⁸³ Screams for help were heard from everywhere. Witnesses heard the screams of a man, and thought

⁵⁷² Zoran Cvjetinović, T. 8840-41. Zoran Cvjetinović testified that the company “transmissions man” told him that they were ordered to follow the police and that he later heard that they had to search the terrain towards Budak and Pale from Potočari. According to Cvjetinović, this route would not take the company through Potočari itself, since the turn toward Budak is 50 meters before Potočari. Zoran Cvjetinović, T. 8817, 8820, 8841. Cvjetin Stević confirmed that the 2nd Company got the order to search the terrain toward Budak. He testified that he did enter Potočari, out of curiosity. Cvjetin Stević, T. 9274-80. Duško Jević testified that he received orders in the morning of 12 July to go to Potočari, via Žuti Most. Duško Jević, T. 3221-22. For presence of members of the 2nd Battalion of the Bratunac Brigade, *see also* Cvjetin Stević, T. 9277-80; Brano Ilić, Ex. D231/1, pp. 7-8, 19-20; Zoran Kovačević, T. 8635, 8669-70. Radenko Zarić stated that members of the 1st, 2nd and 3rd Battalion were present in Potočari. Radenko Zarić, Ex. P685, pp. 8-9.

⁵⁷³ Bosko Lazić, Ex. D226/1, p. 2; Pero Andrić, Ex. D227/1, interview p. 6 and statement p. 2; Vidosav Gajić, Ex. D223/1, pp. 15, 17-18.

⁵⁷⁴ Paul Groenewegen, T. 1023-25; Leendert van Duijn, T. 1058; Ex. P825, Secretary General's Report, p. 73.

⁵⁷⁵ Bego Ademović, KT. 1590-92; Witness P-103, KT. 1526.

⁵⁷⁶ Bego Ademović, KT. 1588, 1599-1600.

⁵⁷⁷ Witness P-104, KT. 1686-87.

⁵⁷⁸ Leendert van Duijn, T. 1079; Robert Franken, T. 1510; Mirsada Malagić, T. KT. 1959-60; Witness P-103, KT. 1526; Čamila Omanović, KT. 1113; Eelco Koster, KT.3416; Witness P-201, KT. 914-15 (under seal).

⁵⁷⁹ Paul Groenewegen, T. 1028; Čamila Omanović, KT. 1111.

⁵⁸⁰ Čamila Omanović, KT. 1113; Witness P-105, T. 1179-80.

⁵⁸¹ Bego Ademović, KT. 1598-99.

⁵⁸² Witness P-104, KT. 1695.

⁵⁸³ Agreed Facts, para. 105; Čamila Omanović, KT. 1109-10.

it sounded as if he was being tortured.⁵⁸⁴ Also women were pleading for help as their men were being taken away.⁵⁸⁵ In the words of one witness: “You couldn’t really have a moment’s peace from fear and everything.”⁵⁸⁶ All this had the effect of making the remaining refugees want to leave the area as soon as possible.⁵⁸⁷

(e) Separations of Men from Women, Children and Elderly

168. The VRS and MUP, walking among the Bosnian Muslim refugees, were separating all Bosnian Muslim men aged 16 to approximately 60 or 70 from their families.⁵⁸⁸ The separations were frequently aggressive.⁵⁸⁹ DutchBat members protested, especially when the men were too young or too old to reasonably be screened for war criminals or to be considered members of the military, and when the soldiers were being violent.⁵⁹⁰ The separations continued throughout 12 and 13 July.

169. The Bosnian Muslim men were directed to various locations,⁵⁹¹ but most were sent to the White House near the UNPROFOR headquarters.⁵⁹² A DutchBat witness testified that Bosnian Muslim men were being interrogated in the White House.⁵⁹³ Shouts, and sometimes shots, were heard from the White House.⁵⁹⁴ At all times, the lawn in front of the White House held large numbers of visibly frightened men, who were taken into the White House at regular intervals.⁵⁹⁵ DutchBat patrols attempted to monitor the situation but the VRS did not allow them to enter the White House.⁵⁹⁶ DutchBat patrols also attempted to find out how many men went in and came out of the White House. This proved impossible, however, as the VRS soldiers stopped the DutchBat patrols and the UNMO from counting, and increased the bullying and threats against the Bosnian

⁵⁸⁴ Agreed Facts, para. 105; Čamila Omanović, KT. 1110-11; Witness P-105, T. 1179-80; Witness P-102, KT. 1348.

⁵⁸⁵ Witness P-104, KT. 1716.

⁵⁸⁶ Witness P-102, KT. 1348.

⁵⁸⁷ Čamila Omanović, KT. 1113-14.

⁵⁸⁸ See e.g. Agreed Facts, para. 99, 155-156; Nesib Mandžić, T. 798-99, 803; Leendert van Duijn, T. 1068-70; Miroslav Deronjić, T. 6400-01; Mile Janjić, T. 9779, 9797, 9827-30; Čamila Omanović, KT. 1105-06; Witness P-103; KT. 1511-12; Joseph Kingori, KT. 1857-58; Rene van Kuijen, Ex. P577, p. 4.

⁵⁸⁹ See e.g. Witness P-110, KT. 2796-97; Momir Nikolić, T. 1697; Rene van Kuijen, Ex. P577, p. 4.

⁵⁹⁰ Paul Groenwegen, T. 1026-27; Leendert van Duijn, T. 1069; Witness P-104, KT. 1686-87; Rene van Kuijen, Ex. P577, p. 4.

⁵⁹¹ Mile Janjić, T. 9782 (testifying that men were taken into the yard of a factory); Mirsada Malagić, KT. 1966, testifying that Bosnian Muslim men, including some of her relatives, were taken to house that had been used as a power station or electrical distribution centre before the war.

⁵⁹² Agreed Facts, para. 157; Ex. P75, Photograph of the White House. See e.g. Robert Franken, T. 1501; Muniba Mujić, T. 1314-16; Witness P-110, KT. 2797; Joseph Kingori, KT. 1850-55.

⁵⁹³ Robert Franken, T. 1505.

⁵⁹⁴ Pieter Boering, T. 910-12.

⁵⁹⁵ Leendert van Duijn, T. 1081-83.

⁵⁹⁶ Robert Franken, T. 1503-05.

Muslim men.⁵⁹⁷ When the White House and the other temporary detention facilities were full, the Bosnian Muslim men were put on buses and trucks using very violent methods.⁵⁹⁸

170. Just like the rest of the Potočari area, the road leading to the White House was littered with personal belongings because the Bosnian Muslim men were prevented from bringing these items into the White House.⁵⁹⁹ These belongings were subsequently burned in the morning of 14 July.⁶⁰⁰ The Bosnian Muslim men were forced to leave passports and identity cards in front of the White House, which made DutchBat members suspicious about whether the checks carried out in the White House were to investigate the men for suspected war criminals.⁶⁰¹ The explanation given by one of the MUP members present, a captain referred to as “Mane”,⁶⁰² who served under Duško “Stalin” Jević, the commander of the Training Centre of the Special Police Brigade in Jahorina, was that the men would not need their passports or identity cards anymore.⁶⁰³

171. A DutchBat officer testified that on 12 July he saw Bosnian Muslim men being taken to a building about 300-400 metres away from the entry to the UN compound.⁶⁰⁴ The Bosnian Muslim were aged between 12 and 80 years and looked petrified.⁶⁰⁵ The witness testified that he saw what he believed were “elite troops of the VRS” with several guard dogs.⁶⁰⁶ The DutchBat officer entered the building and saw passports, clothes and other items on the ground inside the building.⁶⁰⁷ He was immediately removed from the building at gun point by the VRS soldiers. The Dutch officer heard shooting from behind the building.⁶⁰⁸ The “elite troops” prevented him from going to behind the building.⁶⁰⁹

⁵⁹⁷ Agreed Facts, paras 101-02; Joseph Kingori, KT. 1860-61.

⁵⁹⁸ Muniba Mujić, T. 1317.

⁵⁹⁹ Agreed Facts, para. 158. *See, e.g.*, Leendert van Duijn, T. 1083, Muniba Mujić, T. 1312; Robert Franken, T. 1504; Mile Janjić, T. 9835; Witness P-116, Ex. P455, p. 2 para. 4.

⁶⁰⁰ Agreed Facts, para. 160; Robert Franken, T. 1504; Ex. P77, photograph showing burning pile in Potočari.

⁶⁰¹ Leendert van Duijn, T. 1083; Joseph Kingori, KT. 1853, 56.

⁶⁰² Leendert van Duijn, T. 1061.

⁶⁰³ Leendert van Duijn testified at T. 1083:

“I confronted [Mane] with his explanation about the men being singled out which he had told me the day before, about wanting to check if the men were war criminals, and I confronted him with that, because if they didn't have their passports they could easily have given a false name or something and then his system of trying to check who was a war criminal and who was not would not work, and he more or less laughed at me and said, “Well, don't make a fuss about it because they don't need those passports any more.” So that was more or less the moment that I really knew that something really bad was going to happen. Of course, when you see men being teared from their families, you know that that is not the way a normal life should be lived but there was a war going on and terrible things happened there, but at that time when I saw the passports and knew that Mane said that they wouldn't need the passports any more, I knew that they had a very dark future ahead of them.”

⁶⁰⁴ Pieter Boering, T. 912-913.

⁶⁰⁵ Pieter Boering, T. 912.

⁶⁰⁶ Pieter Boering testified that he thought that the VRS soldiers looked like a possible execution squad ready to march people off behind the building. Pieter Boering, T. 911, 913.

⁶⁰⁷ Pieter Boering, T. 911.

⁶⁰⁸ Pieter Boering, T. 912.

⁶⁰⁹ Pieter Boering, T. 912.

172. Momir Nikolić testified that on 12 July he was tasked by Colonel Radislav Jankovic of the Main Staff with the co-ordination of the transport of the women, children and elderly, the separations of the men and their temporary transport and detention.⁶¹⁰ He testified that he was told to “co-ordinate” his own activities with Duško Jević, the commander of the Jahorina Training Centre of the MUP Special Police Brigade.⁶¹¹ He further testified that he co-ordinated the activities of the units that were present in Potočari, involved in the “evacuation.”⁶¹² In Potočari he saw members of the Bratunac Brigade Military Police, the MUP Special Police Brigade, members of the 2nd and 3rd Battalion of the Bratunac Brigade,⁶¹³ civilian police officers from the Bratunac SJB, the 10th Sabotage Detachment and the Drina Wolves.⁶¹⁴ Upon his arrival in Potočari, Momir Nikolić instructed the units that their task was to separate all men of military age and detain them in a house.⁶¹⁵

173. According to Momir Nikolić, members of the Bratunac Brigade Military Police took part in the separation process,⁶¹⁶ along with members of the MUP.⁶¹⁷ Numerous members of the Bratunac Brigade Military Police who testified, however, denied having any involvement with the separations.⁶¹⁸ The Trial Chamber observes that participation in separations is not limited to the actual act of separating men from women, children and elderly, but may also include participation in loading of people onto buses when such a process is done in order to segregate men from women, children and elderly persons.

⁶¹⁰ Momir Nikolić, T. 1683-84.

⁶¹¹ Momir Nikolić, T. 1685.

⁶¹² Momir Nikolić, T. 1688.

⁶¹³ Momir Nikolić, T. 1688-89. For presence of members of the 2nd Battalion of the Bratunac Brigade, *see supra* para. 165. For presence of the 3rd Battalion, *see also* Milomir Tanasijević who testified that he drove through Potočari on 13 July on an APC, along with four other members of the battalion. Milomir Tanasijević, T. 9240-41Ex. P21, video compilation, shows the APC and Milomir Tanasijević in Potočari.

⁶¹⁴ Momir Nikolić, T. 1689, 2202-04.

⁶¹⁵ Momir Nikolić, T. 1690-91. The Trial Chamber notes that this would have been the White House.

⁶¹⁶ Momir Nikolić estimated that between 10-15 members of the Bratunac Brigade Military Police were in Potočari, participating in separation, detention and evacuation activities. Momir Nikolić, T. 1691.

⁶¹⁷ Momir Nikolić, T. 1690-92; Nikola Popović, T. 11075; Mile Janjić, T. 9779-80; Mendeljev Đurić, Ex. D216/1, p. 32; Predrag Krstić, Ex. D215/1, p 9-10; Svetlan Stanisić, Ex. D214/1, p. 11-12.

Part of the Task Force went to Potočari on 12 July and 13 July, where they were involved in the transport of the civilians. Duško Jević, T. 3233-34; Witness DP-102, T. 8249-52; Mendeljev Đurić, Ex. D216/1, interview 18 October 2000, pp. 32-35, 59-60. One platoon of the Jahorina Training Centre, consisting of approximately 30 men remained in Potočari. Two other platoons were sent to secure the road. Duško Jević was informed by Ljubisa Borovčanin in the evening of 11 July that an agreement regarding the evacuation of the civilians had been reached. The platoon that went to Potočari was ordered to “secure the UNPROFOR and ensure that the evacuation began as per the agreement”. Duško Jević, T. 3216.

⁶¹⁸ Members of the Bratunac Brigade Military Police denied that they took part in separations. Some testified that the Bratunac Brigade Military Police were in Potočari on 12 or 13 July to “secure the area” or to provide security for General Mladić. *See* Witness P-138, T. 3511-12; Mile Janjić, T. 9768-69, testifying that his assignment in Potočari was limited to counting people boarding buses; Radenko Zarić, T. 6028-30; Nenad Đokić, T. 5453-54 (private session); Desimir Bučalina, T. 10294-96; Nikola Popović, T. 11074-75, 11101 testifying that members of the Bratunac Brigade Military Police did not participate in the separations and only participated in loading “the ones that they separated off” onto the buses; Boško Lazić, Ex. D226/1, p. 2; Milan Gvozdenović, Ex. D225/1, p. 3; Milovan Mitrović, Ex. D222/1, p. 2; Slobodan Mijatović, Ex. D221/1, p. 2; Zdravko Ilić, Ex. D224/1, p. 2.

174. The VRS soldiers prevented women and children from following their separated husbands and male relatives.⁶¹⁹ According to Muniba Mujić, a Bosnian Muslim woman who had been living in the Srebrenica enclave with her brother, a soldier was directing the people as they approached the buses: “he said ‘Men are to go on the other side of the road. And all your personal belongings and bags, you can leave them there.’ And [...] to my brother and to others, he was saying, ‘You, you, and you go over there.’”⁶²⁰ She identified the soldier as Nenad Đokić,⁶²¹ who was a member of the Bratunac Brigade Military Police at the time.⁶²² Muniba Mujić tried to follow her brother as he was taken away by VRS soldiers.⁶²³ She testified about the conversation she had with Nenad Đokić at the time:

So I said: “Can I please take my bag to my brother [...]” and he [Nenad Đokić] said: “No, you won’t. Don’t take that bag, they won’t need it.” Because Nenad had told me they would not need that any more, that seemed very suspicious to me. I found it very hard, and I started to cry and I went past him. But his things were left behind, and I just wanted to get to my brother. I didn’t care about the things, so I went past him.⁶²⁴

Nenad Đokić, when confronted with the testimony of Muniba Mujić, denied that he took part in separations and said that Muniba Mujić was not telling the truth.⁶²⁵

175. Mirsada Malagić gave the following gripping testimony of how a separated Bosnian Muslim man had to give up his baby to a woman who was boarding a bus towards Kladanj:

a Serb soldier told her that she should take a baby to Kladanj. I was about to enter the bus, and I turned around and I realised that a neighbour of ours was standing there, with a baby in his hands – holding a baby in his arms. So he gave her the baby. He never [knew] her very well and he started to cry, and he asked her not to abandon the baby, to give the baby to any relative that she might find, or a friend. So she boarded the bus with that baby, she reached Kladanj, she found the man’s family and handed over the baby. The baby’s father never reappeared. He was separated and taken away together with the other men. To this date, we haven’t heard anything of him.⁶²⁶

⁶¹⁹ Muniba Mujić, T. 1312, 1317-18; Witness DP-103, T. 10003-04 (closed session); Čamila Omanović, KT. 1105; Witness P-102, KT. 1350; Witness P-116, Ex. P455, p 2, para. 4.

⁶²⁰ Muniba Mujić, T. 1312.

⁶²¹ Another Bosnian Muslim woman, Nefa from Gostilj, who had gone to school with Nenad Đokić told Muniba Mujić his name. Muniba Mujić, T. 1312-14, 1319. Muniba Mujić saw Nenad Đokić in 2003 and recognised him. She also spoke with his mother, who, according to Muniba Mujić, spoke with her son about the allegation that he had participated in separations. He reportedly said to his mother, “Well, what was I to do? I had to do that as those were my orders.” Muniba Mujić, T. 1321.

⁶²² Nenad Đokić, T. 5431.

⁶²³ Muniba Majić has never seen her brother again. Muniba Mujić, T. 1319.

⁶²⁴ Muniba Mujić, T. 1313.

⁶²⁵ Nenad Đokić testified:

“I never separated anybody, let alone kill somebody. These things are terrible lies, disgusting lies. I really don’t know what to call these things. Maybe when I walked up to Medina [sic] to take her children, maybe somebody heard me say something like: Please don’t push, or let the children get on the bus. Maybe they misinterpreted my words. But in any case, these are lies. Maybe they just misinterpreted it and they thought that I was separating people. I never did anything bad to anybody.” Nenad Đokić, T. 5453-54.

The Trial Chamber observes that Nenad Đokić was testifying with the status of “suspect” and did so without counsel being present.” Nenad Đokić, T. 5430-31.

⁶²⁶ Mirsada Malagić, KT. 1967.

176. One Bosnian Muslim survivor, who appeared as a witness for the Blagojević Defence, testified that through the assistance of former colleagues and Bosnian Serb friends, he was able to board a bus that was primarily filled with women and children and leave Potočari.⁶²⁷ These former colleagues and Bosnian Serb friends were in fact members of the Bratunac Brigade, one was a soldier of the 2nd Battalion, one was a member of the Military Police.⁶²⁸ The witness testified that these two Bosnian Serb friends were involved in boarding the people onto the buses.⁶²⁹

177. When asked by members of DutchBat why the men were being separated, the VRS gave various explanations. General Mladić and other members of the VRS told DutchBat that the men were being screened for ABiH members and that any such members would be made prisoners of war. They would later be taken to a prison camp near Bijeljina and exchanged for Bosnian Serbs prisoners of war.⁶³⁰ Others said that the men were screened for suspected war criminals, or for safety reasons because the men were armed with pocket knives and that they could attack the bus drivers.⁶³¹

178. In the afternoon of 12 July, General Mladić requested two of the representatives of the Bosnian Muslim population, Nesib Mandžić and Ibro Nuhanović to address the refugees outside the compound. As they left the UNPROFOR headquarters, Ibro Nuhanović was hit by a VRS soldier and forced to his knees, prompting a DutchBat soldier to intervene to prevent further blows.⁶³² Instead of Nesib Mandžić and Ibro Nuhanović, however, General Mladić addressed the vast crowd of more than 20,000 refugees. He told them that they would all leave: first the women with small children, the elderly and the sick, and then the rest.⁶³³ Nesib Mandžić testified that while this was what General Mladić said, the message was quite another:

The departure and the way that we were forced to speak to this group of gathered people it was a specific type of psychological pressure which made us realise, as members of this so-called negotiating team, that we could do nothing. And the message to the population that was being deported is that they couldn't expect any help from the outside, not from international institutions, not from institutions of Bosnia-Herzegovina, that they should just accept that silently -- they should accept the situation, the situation whereby the male population was being separated from the rest.⁶³⁴

⁶²⁷ Witness DP-103, T. 10002-08 (closed session).

⁶²⁸ The names the witness mentioned appear on Ex. D143/1, the Bratunac Brigade roster for July 1995. The witness testified that one of the friends was in fact a bus driver at the time of the separations. Witness DP-103, T. 10002-08 (closed session).

⁶²⁹ Witness DP-103, T. 10009 (closed session).

⁶³⁰ Witness P-201, KT. 899-900 (under seal).

⁶³¹ Leendert van Duijn, T. 1069; Thomas Karremans, T. 11340, Vincentius Egbers, KT. 2232.

⁶³² Nesib Mandžić, T. 800-801.

⁶³³ Agreed Facts para. 86; Nesib Mandžić, T. 800-01.

⁶³⁴ Nesib Mandžić, T. 801.

179. DutchBat soldiers working together with the Bosnian Muslim representatives attempted to make a list of the men above the age of 15 in and around the UNPROFOR headquarters.⁶³⁵ The aim of the list was to try and confirm who arrived and who did not arrive in the ABiH-held territories, and to “try to give them a name or a face.”⁶³⁶ The attempt failed as many Bosnian Muslims refused to give their names as they were scared that the VRS soldiers would enter the compound and seize the list⁶³⁷ or fear among the Bosnian male population that being on the list might endanger their lives if the list fell into the hands of the “Serb army.”⁶³⁸ It was, however, possible to compile a list of 251 men who were present within the base compound.⁶³⁹

(f) The Transport of the Civilian Population out of Potočari

180. During the afternoon of 12 July a large number of buses and other vehicles arrived in Potočari.⁶⁴⁰ The buses came from all over the area, including from Serbia.⁶⁴¹ The RS Ministry of Defence ordered that all available buses and mini-buses belonging to the VRS be made available to the Drina Corps command.⁶⁴² The Bratunac Brigade Daily Combat Report specifies that the transport of Bosnian Muslims from Potočari was carried out on that day:⁶⁴³ two buses mobilised by the Bratunac Brigade were used in Potočari for the transport of Bosnian Muslim from the

⁶³⁵ Agreed Facts, para. 160; Nesib Manžić, T. 794-96; Robert Franken, T. 1507-09.

⁶³⁶ Robert Franken, T. 1508.

⁶³⁷ Robert Franken, T. 1507-08; Witness P-201, KT. 914 (under seal).

⁶³⁸ Nesib Mandžić, T. 795.

⁶³⁹ Ex. P76, Handwritten register of Bosnian men, last name, first name, DOB and location of birth, signed by Robert Franken. According to Nesib Mandžić, there were 239 names on the list, of whom 90% of the men “went missing. That is, the Serb army executed them.” Nesib Mandžić, T. 795. Witness P-201 also testified that there were 239 names on the list. Witness P-201, KT.914 (under seal). Mirsada Malagić identified the name of her son on the list; he has not been seen since July 1995 when he passed her in a truck. Mirsada Malagić, KT. 1984-85.

⁶⁴⁰ Nesib Mandžić, T. 797-98; Robert Franken, T. 1551; Witness P-201, KT. 895 (under seal).

⁶⁴¹ The buses were from companies such as *Raketa* from Titovožica, *Lasta Belgrade*, 7th of July in Sabac, and *Strela* from Valjevo. Nesib Mandžić, T. 802; Mirsada Malagić, KT. 1974. *See also* Rodoljub Trisić, T. 8167.

⁶⁴² Ex. P426, Order from the Republika Srpska Ministry of Defence/Zvornik Secretariat, 12 July 1995, pursuant to a Main Staff request for mobilisation of at least 30 buses and drivers from the municipalities of Zvornik, Višegrad, Vlasenica, Milići and Bratunac. According to the order, the drivers with their buses are to report at the Bratunac stadium by 12 July 1995 at 14:30 at the latest. *See also* Ex. P427, Drina Corps Order by General Živanović received by the Bratunac Brigade on 12 July 1995 at 08:35, regarding “the provision of buses for evacuation from the Srebrenica enclave,” which Dragoslav Trišić commented upon during his testimony, T. 9354; Ex. P434, Order from the Drina Corps, citing a Main Staff order, that 50 buses and fuel are to be provided for the evacuation of the Bosnian Muslims from the Srebrenica enclave; *See also* Ex. D118/1, Ex. D119/1, Ex. D120/1, Requests from the Ministry of Defence to the Defence Secretariat in Bijeljina for mobilisation of at least 20 buses from Pale, Sokolac, Rogatica and Han Pijesak to report to Bratunac on 12 July 1995.

⁶⁴³ Ex. P441, Bratunac Brigade Daily Combat Report, 12 July 1995, signed for Colonel Blagojević, which states: “The transport of Turkish population (Muslim refugees) from the village of Potočari towards Kladanj is in progress. A large number of (10,000) of refugees are expecting to be transported from Potočari to Kladanj.” The Report further provides that: “Logistics support is functioning satisfactorily. We will submit details of consumption of ammunition and fuel later on.”

Srebrenica enclave.⁶⁴⁴ Additionally, various VRS units and the civilian authorities mobilised civilian vehicles.⁶⁴⁵

181. The Bosnian Muslim women, children and elderly, as well as a small number of men, who boarded the buses, bound for Bosnian Muslim held territory, were counted by members of the Bratunac Brigade Military Police, present in Potočari pursuant to an order by Captain Momir Nikolić of the Bratunac Brigade. Members of the MUP assisted in this task. While in Potočari, Mile Janjić of the Bratunac Brigade Military Police was ordered to perform the counting by Colonel Radislav Janković of the Main Staff Intelligence and Security Department.⁶⁴⁶ At one point, Colonel Janković requested more personnel to assist in the counting and, as a consequence, more members of the Bratunac Brigade Military Police were made available.⁶⁴⁷ It soon became clear that it was not possible to count each individual man on the buses; an average per bus was therefore worked out and used to calculate how many refugees were transported from Potočari.⁶⁴⁸

182. The VRS and DutchBat had agreed that the injured Bosnian Muslims would be the first to be transported from the enclave; the VRS, however, refused to adhere to this agreement. When Colonel Karremans voiced his complaints to General Mladić, Mladić stated that the organisation of the transport would be determined by the VRS.⁶⁴⁹

183. The transport of the Bosnian Muslims out of Potočari commenced in the early afternoon on 12 July.⁶⁵⁰ Only women, children and the elderly were permitted to board the buses bound for ABiH-held territory.⁶⁵¹ Many of the Bosnian Muslim refugees felt “they would be saved if they boarded the trucks.”⁶⁵² Four or five buses at a time would stop to be loaded in front of the UNPROFOR compound’s main entrance.⁶⁵³ The boarding of the buses was initially very chaotic and many people were pushed and squeezed in the process.⁶⁵⁴ As a result, Colonel Karremans

⁶⁴⁴ Dragoslav Trišić, T. 9361; Ex. P435, List of companies, licence plates and fuel distribution, 12 July. This list was found at the Bratunac Brigade. Richard Butler, T. 4412. The brigade had two mobilised buses used for transport, two TAM trucks, two delivery vans known as “little TAMs”, and tractors to transport equipment and food. If the two buses were insufficient to transport the Bratunac Brigade’s soldiers, additional buses from the Vihor Transport Company would be commandeered for temporary use. Dragoslav Trišić, T. 9323-26.

⁶⁴⁵ Bosnian Serb civilian authorities mobilised vehicles on the order of General Mladić. *See e.g.* Aleksandar Tesić, T. 7793. The Drina Corps logistics organ mobilised vehicles. *See e.g.* Dragoslav Trišić, T. 9417-18; Ex. D171/1.

⁶⁴⁶ Mile Janjić was told by Momir Nikolić to report to Colonel Janković to receive his assignment. Mile Janjić, T. 9766, 9784.

⁶⁴⁷ Mile Janjić, T. 9768, 9840-41.

⁶⁴⁸ Mile Janjić, T. 9773-75, 9842.

⁶⁴⁹ Thomas Karremans, T. 11335.

⁶⁵⁰ Agreed Facts, para. 135; Nesib Mandžić, T. 798; Ex. P825, Secretary-General’s Report, paras 322-324.

⁶⁵¹ Nesib Mandžić, T. 798, 803; Leendert van Duijn, T. 1068; Aleksandar Tesić, T. 7842; Dragoslav Trisić, T. 9390; Witness P-102, KT. 1350; Mirsada Malagić, KT. 1964-68; *See also* Ex. P825, Secretary-General’s Report, para. 324.

⁶⁵² Čamila Omanović, KT. 1105. *See also* Muniba Mujić, T. 1311.

⁶⁵³ Rodoljub Trisić, T. 8154, 68.

⁶⁵⁴ Muniba Mujić, T. 1312; Robert Franken, T. 1552; Witness P-201, KT. 897-98 (under seal).

ordered that a cordon be set up near the DutchBat compound entrance to allow for safer boarding.⁶⁵⁵ DutchBat soldiers allowed people through in small groups to go to the buses.⁶⁵⁶ Meanwhile, members of the Bratunac Brigade Military Police coordinated the boarding of the buses by the Bosnian Muslim refugees.⁶⁵⁷ The first Bosnian Muslims to be transported were those present outside near the compound.⁶⁵⁸

184. In an attempt to ensure the safety of the Bosnian Muslim refugees during their transport, and in line with the agreement with the VRS, Major Franken ordered that each convoy be escorted. However, as it was not possible to assign a DutchBat soldier to each bus, it was planned that DutchBat vehicles would escort each convoy.⁶⁵⁹ These escorts were accepted – or rather tolerated – by the VRS for the first convoys on 12 July;⁶⁶⁰ thereafter, the VRS stopped the escorts with the excuse that the escorting was dangerous for DutchBat and that the VRS was responsible for the DutchBat safety.⁶⁶¹ Soon after this, the VRS stole 16-18 DutchBat jeeps as well as around 100 small arms, which rendered further DutchBat escorts impossible.⁶⁶²

185. DutchBat members and other witnesses testified about what they saw during the escorts of the convoys.⁶⁶³ A DutchBat officer who accompanied buses with refugees saw VRS military, equipped with anti-aircraft missiles, heavy machine gun, assault weapons, anti-tank weapons and grenades.⁶⁶⁴ When passing the football field near Nova Kasaba on 12 July, DutchBat soldiers saw that the field contained hundreds of – possibly as many as 2,000 to 3,000 – of Bosnian Muslim men, sitting with their hands behind their heads, being guarded by heavily armed VRS soldiers and an APC.⁶⁶⁵ Along the way to Luke, the convoys made frequent stops when VRS soldiers would enter the buses and ask if there were any men onboard.⁶⁶⁶ Any men found would be forced

⁶⁵⁵ Thomas Karremans, T. 11341.

⁶⁵⁶ Leendert van Duijn, T. 1068.

⁶⁵⁷ Slobodan Mijatović, Ex. 221/1, p. 2; Witness DP-103, T. 10009 (closed session); Milovan Mitrović, Ex. D222/1, p. 2.

⁶⁵⁸ Ex. P824, UNMO report, dated 13 July. Those present on the premises would be transported beginning in the afternoon on 13 July 1995. *See also* Nesib Mandžić, T. 802-03.

⁶⁵⁹ Robert Franken, T. 1492. There was not enough men to escort each bus and secure the area of Potočari. *Id.*

⁶⁶⁰ Pieter Boering, T. 914-15.

⁶⁶¹ Robert Franken, T. 1493.

⁶⁶² Robert Franken, T. 1493-94.

⁶⁶³ Pieter Boering, T. 914; Vincentius Egbers, KT. 2221-28; Witness P-101, KT. 1259. *See also* Milan Nedelković, T. 7305-06; Jovan Nikolić, T. 8004; Witness P-207, T. 6088-89, Rodoljub Trisić, T. 8155. The convoy route went from Potočari to and through Bratunac town, where the convoys were clearly seen by the inhabitants. In Bratunac, the convoys would turn west towards Glogova, passing Kravica and Sandići. At Konjević Polje, the buses turned south passing through Nova Kasaba to Milići where they went westwards towards Vlasenica. The convoys then turned north to Tišća before going west to the final destination of Luke. The trip including loading, unscheduled stops and disembarkation took around two and a half hours.

⁶⁶⁴ Vincentius Egbers, KT. 2209-10. Brano Ilić states that a unit that arrived at Žuti Most on 10 July had technical equipment, self-propelled guns and tanks. Brano Ilić, Ex. P231/1, statement 28 June 2002, pp 33, 56.

⁶⁶⁵ Vincentius Egbers, KT. 2227. This has also been corroborated by Witness P-112, KT. 2950-53; Witness P-113, KT. 3020-23; Milovan Mitrović, Ex. D222/1, p. 3.

⁶⁶⁶ Agreed Facts, para. 163. *See also* Witness P-101, KT. 1257-60.

to leave the buses and join the Bosnian Muslim men who were marching along the roads, under the control of armed VRS soldiers and members of the MUP.⁶⁶⁷ When the last escorted convoy returned towards Potočari on 13 July, the football field was empty apart from the body of a dead man and a pile of burning personal belongings.⁶⁶⁸

186. The commander of the Drina Corps, General Živanović, ordered the Command of the Bratunac Brigade to regulate traffic, in cooperation with the Bratunac SJB, on the Bratunac-Konjević Polje road and in Bratunac, particularly around the Bratunac stadium.⁶⁶⁹ The order stated that “priority [was to be] given to the buses for evacuation.”⁶⁷⁰ The Drina Corps had also ordered the Zvornik Brigade command to regulate traffic at the Konjević Polje junction, with priority given to buses travelling from Srebrenica.⁶⁷¹ Furthermore, the MUP PJP Companies were involved in the securing of the roads leading to Bosnian Muslim-held territory.⁶⁷² Bratunac Brigade Military Police were ensuring the passage of the trucks carrying refugees from Potočari through Bratunac.⁶⁷³

187. Buses from Potočari headed first toward Konjević Polje and then toward Kravica.⁶⁷⁴ A witness testified that at the exit of Kravica a bus stopped and three Bosnian Serb soldiers came in, took out knives and threatened to slit the prisoners’ throats.⁶⁷⁵ The soldiers asked for money, and they looked for weapons.⁶⁷⁶ This happened twice more along the way.⁶⁷⁷

188. The Bosnian Muslim men who managed to get to Luke by bus were separated by VRS soldiers and detained in the nearby elementary school.⁶⁷⁸

189. The transport continued throughout 12 July until approximately 19:00 to 20:00.⁶⁷⁹ Mile Janjić, the Bratunac Brigade Military Police member responsible for counting the number of

⁶⁶⁷ Vincentius Egbers, KT. 2222-25; Witness P-101, KT. 1261-63.

⁶⁶⁸ Vincentius Egbers, KT. 2255-56. When this convoy returned, the DutchBat members were forced by VRS soldiers to hand over their vehicle, an APC, to the VRS soldiers, who also stole their UN equipment, including the weapons. Vincentius Egbers, KT. 2242, 2245; Bego Ademović, KT. 1607-08; Witness P-112, KT. 2950-53; Witness P-113, KT. 3022-23.

⁶⁶⁹ Ex. P440, Drina Corps order regarding traffic regulation, 12 July 1995.

⁶⁷⁰ Ex. P440, Drina Corps order regarding traffic regulation, 12 July 1995; Richard Butler, T. 4422.

⁶⁷¹ Ex. P440, Drina Corps order regarding traffic regulation, 12 July 1995.

⁶⁷² Witness DP-102, T. 8253; Svetland Stanisić, Ex. D214/1, p. 13-14; Predrag Krstić, Ex. D215/1, pp 1-15.

⁶⁷³ Ex. P449, Bratunac Brigade Military Police logbook, entry for 12 July 1995.

⁶⁷⁴ Witness P-112, KT. 2959, 3009.

⁶⁷⁵ Mirsada Malagić, KT. 1975.

⁶⁷⁶ Mirsada Malagić, KT. 1975.

⁶⁷⁷ Mirsada Malagić, KT. 1976. Along the way, the witness saw a long column of men with their hands tied behind the nape of their necks. She recognised some of the men in the column as neighbours and relatives who had left through the woods. Mirsada Malagić, KT 1976-77.

⁶⁷⁸ Pieter Boering, T. 915. *See infra* section II. F. 1. (e).

⁶⁷⁹ Duško Jević, T. 3230.

people transported, estimated that by then somewhere between 9,000 and 10,000 Bosnian Muslim men, women and children had left Potočari.⁶⁸⁰

190. The Bosnian Muslim men who were transported out of Potočari on 12 July were taken to Bratunac, where they were detained.⁶⁸¹ The Trial Chamber has heard evidence that on 12 July at least one member of the Bratunac Brigade Military Police boarded a bus which travelled to Bratunac.⁶⁸²

191. In the morning on 13 July, the transport continued as it had done the previous day. Before 08:30, when most of the VRS soldiers returned to Potočari, the transport had already been ongoing for one and a half hours under the supervision of DutchBat soldiers and without influence of the Bosnian Serb forces. During that time, Bosnian Muslim men could leave Potočari safely; as soon as the VRS soldiers arrived, however, the separation process continued.⁶⁸³ Members of the Bratunac Brigade Military Police were again in Potočari, having been ordered by Captain Nikolić, to return to Potočari and continue counting the refugees.⁶⁸⁴ Members of the 3rd Battalion were seen, some of whom were in an APC, in Potočari while Bosnian Muslim refugees were boarding the buses.⁶⁸⁵ Pursuant to instructions by General Mladić, the MUP played a primary role in the transport of Bosnian Muslim refugees out of Potočari on 13 July.⁶⁸⁶ By early evening, all but the wounded refugees had been transported, and as reported by the Drina Corps to the VRS Main Staff, by 20:00 on 13 July the transport was completed.⁶⁸⁷

192. The Bosnian Muslim men who were transported out of Potočari on 13 July were taken in the direction of Bratunac and ultimately to the Zvornik Brigade area of responsibility.⁶⁸⁸

⁶⁸⁰ Mile Janjić, T. 9776. These numbers were kept on record by Colonel Janković. Mile Janjić, T. 9788.

⁶⁸¹ See *infra* section II. E.

⁶⁸² Zdravko Ilić, Ex. D224/1, p. 2, stating that he boarded a bus to Bratunac on 12 July and went home.

⁶⁸³ Leendert van Duijn, T. 1080, Mile Janjić, T. 9797, Bego Ademović, Ex. P793, 23 May 1996 Statement, p 4. Bego Ademović also testified how his bus, which originated in Potočari and carried mainly women to Luke, would occasionally be stopped by Bosnian Serb soldiers who would search it to find men to kill, unless they were friends with the soldiers, or women to rape. Bego Ademović, KT. 1628.

⁶⁸⁴ Mile Janjić, T. 9793-94; Slobodan Mijatović, Ex. D221/1, p. 2; Milan Gvozdinović, Ex. D225/1, p 3; Mile Petrović, Ex. D220/1, interview p. 41.

⁶⁸⁵ Witness P-102 identified Sreten Petrović, the deputy commander of the 3rd Battalion. Witness P-102, KT. 1351. Milomir Tanasijević testified that he and four other members of the 3rd Battalion were present in Potočari. They had gone to Potočari in an APC. Milomir Tanasijević, T. 9240-41. Ex. P21, video compilation, shows Milomir Tanasijević and the other four members of the 3rd Battalion, sitting on the APC in Potočari.

⁶⁸⁶ Ex. P458, Letter by Dragomir Vasić, Chief of the Zvornik CJB, dated 13 Jul 1995, as discussed by Duško Jević, T. 3289-91.

⁶⁸⁷ Agreed facts, para. 146. Ex. P480, Drina Corps IKM report, 13 July 1995. Some refugees remained within the UNPROFOR headquarters compound until 21 July 1995 when it was dismantled, Nesib Mandžić, T. 813-14, T. 870-72.

⁶⁸⁸ See *infra* section II. E. 4.

(g) Killings in Potočari

193. During the days immediately after the fall of the Srebrenica enclave, a number of corpses were discovered in the Potočari area.

194. The bodies of nine men who had been killed were discovered on 12 July by DutchBat in a field near the river, about 500 metres from the UN Compound.⁶⁸⁹ The dead men were all dressed in civilian clothes and had been shot in the back.⁶⁹⁰ Major Robert Franken, who saw the bodies of the men, marked the location of the bodies on a photograph, which has been entered into evidence.⁶⁹¹ The Trial Chamber finds that the location where the bodies were found is on the west side of the main road.⁶⁹² The Trial Chamber notes that Budak is on the west side of the main road.⁶⁹³

195. On the morning of 12 July, DutchBat also found corpses of nine or ten men about seven hundred meters from the UN Compound.⁶⁹⁴ The bodies were located behind the White House in the vicinity of an electrical station near a creek.⁶⁹⁵ The bodies were lying in a line and some corpses had bloodstains on their backs and in the back of their heads.⁶⁹⁶ The men were all dressed in civilian clothes and were aged between 15 and 45.⁶⁹⁷ A DutchBat soldier took photographs of the bodies, which have been entered into evidence.⁶⁹⁸

196. The Trial Chamber observes that the bodies of the men in both paragraphs above, have been found in close proximity of each other. However, based on the witness testimony and the markings both witnesses made on the photographs,⁶⁹⁹ showing the exact location where the bodies were found, the Trial Chamber finds that these were two separate incidents.

197. The Trial Chamber has also been presented with the eye-witness testimony of a DutchBat soldier of the execution of a Bosnian Muslim man behind the White House on 13 July.⁷⁰⁰ The DutchBat soldier witnessed a group of four VRS soldiers hold an unarmed civilian. The civilian,

⁶⁸⁹ Eelco Koster, KT. 3415-16.

⁶⁹⁰ Robert Franken, T. 1511, testifying that “They were executed. It couldn’t have been from combat or fire. They were in a row, shot in the back.” Robert Franken marked the location on a photograph. *See also* Eelco Koster, KT. 3415-16; Witness P-201, KT. 908 (under seal).

⁶⁹¹ Ex. P78, Photograph marked by Robert Franken.

⁶⁹² Ex. P78, Photograph marked by Robert Franken.

⁶⁹³ Ex. D211/1, Map of the Srebrenica Enclave, marked by Thomas Karremans to indicate the Bandera Triangle.

⁶⁹⁴ Witness P-103, KT. 1529.

⁶⁹⁵ Witness P-103, KT. 1528-29.

⁶⁹⁶ Witness P-103, KT. 1539.

⁶⁹⁷ Witness P-103, KT. 1539

⁶⁹⁸ Witness P-103, Ex. P781, Tabs 3 to 5.

⁶⁹⁹ Ex. P78, photograph marked by Robert Franken and Ex. P781.2, photograph marked by Witness P-103.

⁷⁰⁰ Paul Groenewegen, T. 1033-36. *See also* Ex. P50, Photograph of Potočari, marked by Paul Groenewegen; Robert Franken, T. 1511-12.

who was attempting to get away, was shot at point blank range with a single shot to the back of his head.⁷⁰¹ The man collapsed and the soldiers walked away.⁷⁰² A number of other VRS soldiers were in the vicinity and also observed the killing.⁷⁰³ The murder was committed at a distance of 100-150 meters from the crowd of Bosnian Muslim refugees.⁷⁰⁴ The soldier reported the execution to his superiors at DutchBat.⁷⁰⁵

198. The Trial Chamber has also been furnished with evidence from Bosnian Muslim witnesses regarding other dead bodies that were found in Potočari.

199. On 12 July, Witness P-104 came across twenty or thirty bodies lying on top of each other in a field behind the Express Bus Company compound.⁷⁰⁶ The victims' necks had been slit.⁷⁰⁷ VRS soldiers and a former policeman from Srebrenica, Milisav Gavrić, wearing a blue-grey police uniform, were at the site and a tractor or excavator was in use.⁷⁰⁸ The Serb troops were dressed in yellow and green multicoloured military clothes, with round blue, white and red patches on their arms⁷⁰⁹ and there was yellow writing on the badges.⁷¹⁰ Witness P-104 first saw the Serb troops through a window, and they were standing outside behind the Transport Bus Company⁷¹¹ about 7 to 10 meters away from him.⁷¹² Witness P-104 recognised one of the soldiers, Goran Rakić, whose father's name was Momčilo. Rakić was wearing multicoloured military clothes and was carrying a weapon. The Trial Chamber observes that the roster of the Bratunac Brigade for July 1995 lists this individual as a member of the "artilerija."⁷¹³

200. Čamila Omanović testified that on 12 July, when her son went to fetch water at a creek behind the Bus Compound he saw the dead bodies of five or six people.⁷¹⁴

201. On the 13 July, Witness P-102, a Bosnian Muslim refugee, went to a stream about ten metres away from the Express Bus Company Compound where he saw the dead bodies of six

⁷⁰¹ Paul Groenewegen, T. 1034-35.

⁷⁰² Paul Groenewegen, T. 1035.

⁷⁰³ Paul Groenewegen, T. 1035-36.

⁷⁰⁴ Paul Groenewegen, T. 1036.

⁷⁰⁵ Robert Franken, T. 1511-12.

⁷⁰⁶ Witness P-104, KT. 1688-1692.

⁷⁰⁷ Witness P-104, KT. 1688.

⁷⁰⁸ Witness P-104, KT. 1688-89.

⁷⁰⁹ Witness P-104, KT. 1684.

⁷¹⁰ Witness P-104, KT. 1710.

⁷¹¹ Witness P-104, KT. 1684.

⁷¹² Witness P-104, KT. 1709.

⁷¹³ Ex. D143/1, Bratunac Brigade Roster for July 1995.

⁷¹⁴ Čamila Omanović, KT. 1114.

women and five men.⁷¹⁵ The victims were all dressed in civilian clothes.⁷¹⁶ The witness testified that it appeared that the victims had been stabbed in the side of the neck.⁷¹⁷

202. Bego Ademović testified that on 13 July, in the early morning hours after dawn he went to the River Krizevica, near the Express Bus Compound, to wash.⁷¹⁸ He saw a man who was hanging from a piece of chain from a poplar tree above a brook.⁷¹⁹

(h) Potočari: 16-17 July

203. After the completion of the transport of Bosnian Muslims, Miroslav Deronjić, the newly appointed Bosnian Serb Civilian Commissioner of Srebrenica, ordered the civilian protection of the Bratunac municipal authorities to carry out *asanacija* in Potočari and Srebrenica, which started on 16 or 17 July.⁷²⁰ Houses and abandoned vehicles were searched and dead bodies were removed. The general order was that any dead bodies found were to be driven to the Glogova mass grave site.⁷²¹ The reason for this was that all digging equipment was already deployed there, meaning that other graves could not be dug elsewhere. This clean-up operation of Srebrenica and Potočari was completed within a couple of days.⁷²²

204. On 17 July 1995, in the face of growing international condemnation, Major Franken, the Deputy Commander of DutchBat, met with a VRS delegation to discuss the situation of wounded Bosnian Muslims in the former enclave.⁷²³ The same day, a meeting was organised regarding the signing of a “Declaration” concerning “the realisation of the agreement on the evacuation of civilian population of the enclave.” The document, which had already been drafted by Miroslav Deronjić before the meeting started,⁷²⁴ contains the incorrect information that the Bosnian Muslim side was represented that day by the three Bosnian Muslim representatives, Čamila Omanović,⁷²⁵ Ibro Nuhanović and Nesib Mandžić.⁷²⁶ According to Nesib Mandžić, only he was present: Čamila Omanović was not present, as she had recently attempted to commit suicide and was recovering

⁷¹⁵ Witness P-102, KT. 1349.

⁷¹⁶ Witness P-102, KT. 1370.

⁷¹⁷ Witness P-102, KT. 1370.

⁷¹⁸ Bego Ademovic, KT. 1599-1600.

⁷¹⁹ Bego Ademovic, KT. 1600.

⁷²⁰ Witness DP-101, T. 7885, 7926 (closed session). For an explanation of *asanacija*, see *supra* para. 89.

⁷²¹ Witness DP-101, T. 7885-86, 7923-25 (closed session)

⁷²² Witness DP-101, T.7887 (closed session).

⁷²³ Agreed Facts, para. 150.

⁷²⁴ Miroslav Deronjić, T. 6221; Ex. P36, declaration of civilian authorities, signed by Miroslav Deronjić, Robert Franken and Nesib Mandžić, and Ex. P36.2, statement of representatives of civilian authorities of the Srebrenica enclave regarding the evacuation of the civilian population from the enclave, 17 July.

⁷²⁵ Mentioned in the document by her maiden name Purković.

⁷²⁶ Nesib Mandžić, T. 806-7.

under supervision in the UNPROFOR headquarters, and Ibro Nuhanović had left Potočari with his wife and son. Ibro Nuhanović has never been seen since.⁷²⁷

205. It is recorded in the document that the Bosnian Serb side represented by General Mladić, General Krstić, Lieutenant Colonel Vujadin Popović, Drina Corps Chief of Security, Lieutenant Colonel Kosorić, Drina Corps Chief of Intelligence, Dragomir Vasić, Chief of the Zvornik CJB, Ljubisav Simić, President of the Bratunac Municipal Assembly, and Srblislav Davidović, President of the Bratunac Municipality Executive Board. DutchBat was represented by its deputy commander, Major Robert Franken.

206. During the meeting, Major Franken and Nesib Mandžić were told to sign the Declaration specifying that the transfer of the Bosnian Muslim civilians from Potočari was voluntary, supervised and escorted by UNPROFOR and carried out by the VRS without any irregularities.⁷²⁸ The Declaration states that the refugees had enjoyed a right to stay or to be transported to ABiH-held territory in accordance with the individual wishes of the refugees. In his testimony, Miroslav Deronjić, the Civilian Commissioner for Srebrenica, stated that this was not a correct assessment of the situation in Potočari:

my opinion is and was at the time that Muslims could not remain in Srebrenica, even if they had expressed such a wish, because the actual circumstances did not allow for that possibility.⁷²⁹

The Declaration sets out what was agreed at the earlier meeting held at the Hotel Fontana on 12 July and purports that “the evacuation was carried out by the Serb side correctly” and that during “the evacuation there were no incidents on either of the sides,” in particular that “the Serb side [...] adhered to all the regulations of the Geneva Conventions and international war law.”⁷³⁰ To this latter statement, the DutchBat representative Major Franken added by hand “as far as convoys actually escorted by UN forces are concerned.”⁷³¹

(i) Conclusions and Findings related to the Role of the Bratunac Brigade

207. The Trial Chamber finds that the Bratunac Brigade’s participation in the attack on the Srebrenica enclave included firing on civilians in the centre of Srebrenica town, which had the effect of causing those civilians and DutchBat to take the decision to leave Srebrenica town and go

⁷²⁷ Nesib Mandžić, T. 808-809 (re: Čamila Omanović), T. 796-797 (re: Ibro Nuhanović, who was last seen alive near the UNPROFOR headquarters in Potočari on 13 July 1995).

⁷²⁸ Agreed Facts, para. 151.

⁷²⁹ Miroslav Deronjić, T. 6218.

⁷³⁰ Agreed Facts, para. 151; Robert Franken, T. 1516-18; Nesib Mandžić, T. 806-813; Ex. P36.1 and P36. 2.

⁷³¹ Robert Franken, T. 1517-18; Ex. P36.1.

to Potočari. The Trial Chamber finds that elements of the Bratunac Brigade continued to fire around the civilians as they made the trek from Srebrenica town to Potočari.⁷³²

208. The Trial Chamber has heard evidence of the presence in Potočari of members from several units of the Bratunac Brigade. Specifically, the Trial Chamber has heard that on 12 July, members of the Bratunac Brigade Military Police, the Bratunac Brigade 1st Battalion and the 2nd Battalion were present in Potočari, as well as one member of the “Artilerija.” Furthermore, the Trial Chamber has heard evidence that Momir Nikolić was present in Potočari on 12 July. On 13 July, the Bratunac Brigade Military Police was again present in Potočari, along with members of the 1st Battalion, the 2nd Battalion and the 3rd Battalion. At least five members of the 3rd Battalion went to Potočari in an APC.⁷³³

209. The Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt that elements of the Bratunac Brigade participated in the killings that took place in Potočari. There is insufficient evidence before the Trial Chamber to establish which units of the VRS participated in killings, and indeed, whether the VRS was involved in all killings in Potočari: Bosnian Serb civilians and members of the MUP were also present in Potočari. As for Goran Rakić,⁷³⁴ the Trial Chamber finds that the mere presence of him near dead bodies in Potočari does not establish beyond reasonable doubt that Rakić actually participated in, assisted or encouraged the killing of these twenty to thirty people.

210. The Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt that elements of the Bratunac Brigade participated in the beatings of Bosnian Muslim civilians in Potočari. Survivors of these beatings and witnesses to them have not been able to identify individual soldiers who participated in the beatings and the Trial Chamber cannot therefore conclude beyond reasonable doubt that any members of the Bratunac Brigade participated in such beatings. While finding that the presence of armed members of the Bratunac Brigade in Potočari contributed to the atmosphere of fear and terror in Potočari, as well as to the intimidation of the Bosnian Muslim refugees there, the Trial Chamber cannot conclude that through their presence members of the Bratunac Brigade assisted or encouraged the beatings that took place in Potočari.

211. The Trial Chamber finds that insufficient evidence has been adduced to establish beyond reasonable doubt that elements of the Bratunac Brigade participated in the abusive interrogations of Bosnian Muslim civilians in Potočari.

⁷³² See *supra* section II. D. 1. (a).

212. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that elements of the Bratunac Brigade participated in the separations of Bosnian Muslim men from the Bosnian women, children and elderly in Potočari. Specifically, the Trial Chamber finds that members of the Bratunac Brigade Military Police participated in the separations, by actively separating men from their families and by providing security for the other units engaged in the separations.⁷³⁵ While members of the Bratunac Brigade Military Police who appeared before this Trial Chamber all denied participating in the separation of men from the rest of the Bosnian Muslim population,⁷³⁶ the Trial Chamber finds their testimony unconvincing. Rather, the Trial Chamber finds the evidence of Bosnian Muslim witness Muniba Mujić credible and convincing in its detail; Momir Nikolić, other witness testimony, and video evidence provide further support to a finding that the Bratunac Brigade Military Police participated in the separations.⁷³⁷ Additionally, the Trial Chamber finds that Momir Nikolić participated in the separation of men from the rest of the Bosnian Muslim population: he has accepted responsibility for “co-ordinating” the various units which carried out the separations.⁷³⁸ While the Trial Chamber has regarded with caution those aspects of Momir Nikolić’s testimony that may implicate other persons, and particularly the Accused, in criminal activity, the Trial Chamber finds no reason to doubt the reliability of this aspect of Momir Nikolić’s testimony as the primary person whom it incriminates is himself.

213. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that elements of the Bratunac Brigade contributed to the inhumane conditions to which the Bosnian Muslim civilians in Potočari were subjected. The officers from the Bratunac Brigade present in Potočari, including Momir Nikolić and Major Dragoslav Trišić, were aware of the conditions to which the Bosnian Muslims were subjected, as were the members of the Bratunac Brigade Battalions and Military Police present. The Trial Chamber recognises that in July 1995, after three years of war, supplies for a humanitarian crisis such as existed in Potočari were very low, and must consider the one or two truck loads of bread distributed by the Bratunac Brigade in that context. The Trial Chamber finds, however, that members of the Bratunac Brigade generally did little to nothing to alleviate the suffering and extreme hardship of the Bosnian Muslims: they did not provide sufficient food, water or toilets. They had directed the refugees into the small industrial area at Potočari which caused severe overcrowding. Rather, the members of the Bratunac Brigade present in Potočari provided “security,” which included keeping thousands upon

⁷³³ See *supra* section II. D.1. (f).

⁷³⁴ See *supra* section II. D.1. (g).

⁷³⁵ See *supra* section II. D.1. (c).

⁷³⁶ See *supra* section II. D.1. (e).

⁷³⁷ See *supra* section II. D. 1. (e).

thousands of hungry, exhausted, terrified people crammed on top of each other. Through this action and their general inaction, the members of the Bratunac Brigade contributed to the inhumane conditions.

214. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that elements of the Bratunac Brigade participated in creating an atmosphere of fear and terror in Potočari. Specifically, the Trial Chamber finds that the sniping and shooting by the 2nd Battalion and the Mixed Artillery Group at the Bosnian Muslims fleeing from Srebrenica town to Potočari instilled fear in the refugees for their physical safety.⁷³⁹ The presence of armed soldiers from the 2nd and 3rd Battalion in uniform and the armed members of the Bratunac Brigade Military Police, among other members of the VRS and MUP present in Potočari, frightened and intimidated the Bosnian Muslim population.⁷⁴⁰ Through their presence and actions, these members of the Bratunac Brigade, acting together with other members of the VRS and MUP, made the Bosnian Muslims, already vulnerable from the hardship they had endured, feel unsafe and threatened.

215. The Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt that elements of the Bratunac Brigade participated in the destruction of personal property and effects in Potočari. The evidence before the Trial Chamber is such that the Trial Chamber cannot identify which units or individuals took personal property and effects from the Bosnian Muslims in Potočari.

216. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that elements of the Bratunac Brigade participated in the transfer of women, children and elderly from Potočari. Specifically, the Trial Chamber finds that the Bratunac Brigade contributed vehicles and fuel to the transfer operation.⁷⁴¹ Furthermore, members of the Bratunac Brigade Military Police assisted in the transfer by counting people as the buses were loaded.⁷⁴² Captain Nikolić gave the orders to the Bratunac Brigade Military Police to go to Potočari and to count the people.⁷⁴³ Finally, elements of the Bratunac Brigade regulated traffic as the buses passed through Bratunac on their way to Konjević Polje.⁷⁴⁴

⁷³⁸ See *supra* section II. D.1. (c).

⁷³⁹ See *supra* section II. D. 1. (a).

⁷⁴⁰ See *supra* section II. D. 1. (d).

⁷⁴¹ See *supra* section II. D. 1. (f).

⁷⁴² See *supra* section II. D. 1. (f).

⁷⁴³ See *supra* section II. D. 1. (f).

⁷⁴⁴ See *supra* section II. D. 1. (f).

217. The Trial Chamber finds that Bratunac Brigade Military Police members participated in the transfer of Bosnian Muslim men from Potočari. While counting the number of people in the buses with women, children and elderly, the Bratunac Brigade Military Police also counted the number of men who were boarded. Elements of the Bratunac Brigade escorted buses out of Potočari to Bratunac.⁷⁴⁵

2. The Column

(a) 10-16 July 1995

(i) Searching the Terrain

218. As the situation in Srebrenica escalated towards crisis on the evening of 10 July, word spread through the Bosnian Muslim community that the able-bodied men should take to the woods, form a column together with members of the 28th Division of the ABiH and attempt a breakthrough towards Bosnian Muslim-held territory to the north of the Srebrenica enclave.⁷⁴⁶ The Bosnian Muslim population was afraid that if their men were caught by the Bosnian Serbs they would be killed and believed that the only chance to survive was to escape through the woods in the direction of Muslim-held territory in Tuzla.⁷⁴⁷ At around 22:00 on 11 July, the “division command”, together with the Bosnian Muslim municipal authorities of Srebrenica, made the decision to form the column.⁷⁴⁸

219. By the evening of 11 July, 10,000 to 15,000 Bosnian Muslim refugees gathered near the villages of Jagličići and Šušnjari and began to trek north.⁷⁴⁹ An area of around 800 meters to one kilometre between Jagličići and Ravni Buljimi, to the west of Jagličići, was not taken by VRS units.⁷⁵⁰ According to Dragan Obrenović, the Bosnian Muslims in the enclave had been using that area, which was mined, to leave and enter the enclave.⁷⁵¹

⁷⁴⁵ See *supra* section II. D. 1. (f).

⁷⁴⁶ Agreed Facts, para. 166; Witness P-112, KT. 2944-45; Witness P-113, KT. 3048; Witness P-114, KT. 3188, 3214. See also Ex. P851, Report based on DutchBat debriefing, 1995, p. 32, stating that the first groups of Bosnian Muslim men started to leave in the night of 10 July.

⁷⁴⁷ Witness P-104, KT. 1682; Witness P-113, KT. 3016-17; Čamila Omanović, KT. 1081; Enver Husić, KT. 2601, 2604, 2640.

⁷⁴⁸ Agreed Facts, para. 167; Witness P-109, KT. 2734-36, who testified that the “command of the army” ordered the able-bodied men to go through the woods and the weak were supposed to go to Potočari; Witness P-112, KT. 2943, who testified that he and his family received orders from the “civilian structures” to go Šušnjari. However, see Nesib Manžić, T. 779-780; Witness P-175, KT. 3241-42, 3284. Both these witnesses testified that there was no organised decision to form the column.

⁷⁴⁹ Agreed Facts, para. 168; Witness P-112, KT. 2944; Witness P-109, KT. 2733-34; Witness P-113, KT. 3016-17; Witness P-175, KT. 3240; Kemal Mehmedović, T. 1265; Mevludin Orić, T. 1338; Witness P-111, T. 1382. See also Ex. P7/A and Ex. P8/A/2, maps showing the route taken by some witnesses.

⁷⁵⁰ Dragan Obrenović, T. 2457-58.

⁷⁵¹ Dragan Obrenović, T. 2458.

220. The Bosnian Muslim group consisted predominately of boys and men who were between the ages of 16 and 65,⁷⁵² although a small number of women, children and elderly people were also present.⁷⁵³ While at least some of the men were armed and were wearing uniforms,⁷⁵⁴ the majority of the men were civilians.⁷⁵⁵ Witnesses' recollection as to how many and where the armed men were situated in the column varies.⁷⁵⁶ At around midnight of 11 July, the column started moving along the axis between Konjević Polje and Bratunac; the last group left the area around Šušnjari and Jagličići in the afternoon of 12 July.⁷⁵⁷ Because of the route the column took, the Bosnian Muslim men eventually had to cross either the road from Bratunac to Konjević Polje, or the road from Miličići to Konjević Polje. Both roads come together at Konjević Polje.⁷⁵⁸

221. In the early morning of 12 July, the column was proceeding in single file and shooting could only be heard in the distance.⁷⁵⁹ The Bratunac Brigade 1st Battalion was at that time observing the column.⁷⁶⁰ Later in the day heavy shooting on the column began.⁷⁶¹ The Bosnian Serb armed forces, including many MUP units, who were patrolling the road between Kravica and

⁷⁵² Witness P-114, KT. 3189; Witness P-112, KT. 2944-45; Mevludin Orić, T. 1338.

⁷⁵³ Witness P-112, KT. 2944-45.

⁷⁵⁴ Enver Husić, KT. 2603-04; Witness P-104, KT. 1704; Čamila Omanović, KT. 1122.

⁷⁵⁵ Witness P-107, KT. 2568; Witness P-106, T. 1209.

⁷⁵⁶ One witness, Witness P-104, testified that the men that fled the area in the column were not armed. Witness P-104, KT. 1703-04. Witness P-107 testified that the majority of the men were not armed within the column, Witness P107, KT. 2551. According to Witness P-175, some carried rifles and pistols, while others carried hand grenades which, according to a witness, were for the purpose of taking their own life if they were captured. Witness P-175, KT. 3240. Kemal Mehmedović estimated that about 200 to 300 people carried infantry weapons, Kemal Mehmedović, T. 1265; Witness P-114 testified that very few people had military weapons, the other armed men had their own private and very often old weapons. Witness P-114, KT. 3189, 3218.

The testimony concerning the location of any armed men within the column varies. Enver Husić testified that around 50 men with rifles, who were members of the Mountain Battalion of the Bosnian Muslim army, were positioned at the rear of the column in order to protect it, Enver Husić, KT 2604, 2633. However, other witnesses said that the armed men were at the front of the column, Witness P-106, T. 1209; Witness P-112, KT. 2996-97. There is also evidence indicating that men with weapons and men without weapons were intermingled. Witness P-175, KT. 3240-42.

⁷⁵⁷ Agreed Facts, para. 175; Mevludin Orić, T. 1338; Witness P-111, T. 1383; Kemal Mehmedović, T. 1264-65; Witness P-106, KT. 1208; Witness P-114, KT. 3189.

⁷⁵⁸ Ex. P116, large map of north-east Bosnia, showing the areas around Bratunac and Zvornik.

⁷⁵⁹ Witness P-111, T. 1383; Ex. P21, video compilation, showing a long line of men walking in a single file.

⁷⁶⁰ Witness DP-105, T. 10074.

⁷⁶¹ Witness P-111, T. 1383; Witness P-106, T. 1210.

Konjević Polje and the road between Konjević Polje and Nova Kasaba⁷⁶² started firing at the column, using artillery, machine guns and hand grenades.⁷⁶³

222. During the period of 12 to 17 July, the Drina Corps and its subordinate brigades carried out searches of the area with the purpose of capturing the men from the column.⁷⁶⁴ On the evening of 12 July, several brigade commanders of the Drina Corps reported to General Krstić at the Bratunac Brigade headquarters, where they received directions regarding the terrain search.⁷⁶⁵ There is no evidence that Colonel Blagojević was among those commanders.

223. A Bratunac Brigade daily combat report for 12 July shows that forces of the Bratunac Brigade were “mopping up the enclave and preventing the enemy from breaking through – or withdraw from the enclave in Milačevići-Jaglići-Bokčjin Potok direction and further towards Tuzla and Kladanj.”⁷⁶⁶ The 4th Battalion of the Bratunac Brigade was at that point in time stationed just to the north of Jaglići. The 1st Company of the 4th Battalion reported seeing 100-200 men from the column and as a result Radika Petrović, the battalion commander, contacted both the Zvornik Brigade and Bratunac Brigade for reinforcements.⁷⁶⁷ During the day, the 1st, 2nd and 5th Companies of the 2nd Battalion searched the terrain between Zagoni and Jaglići, through the village of Pale.⁷⁶⁸ The Companies stayed around Pale in the night of 12 July.⁷⁶⁹ The following

⁷⁶² Part of the Task Force, comprised of several MUP units, including a company from the Jahorina training centre of the Special Police Brigade and resubordinated to the VRS was deployed to the road between Kravica and Konjević Polje which was in charge of a 5 km stretch of the road. Their task was to “intercept fugitives”. The patrols were there for approximately five days, Witness P-131, Ex. P683, December Statement, p. 9 (under seal). This is corroborated by Witness P-112, who testified that the Bosnian Serb soldiers standing by the side of the road at Konjević Polje were wearing camouflage uniforms in different shades of dark blue, Witness P-112, KT. 2948-49; Ex. P445, Report of the Drina Corps to the Main Staff, 12 July; and Ex. P159, Borovčanin combat report, p. 2, stating that part of the Task Force was deployed along the road from Kravica-Sandići-Pervani up to Hričići. The segment of the road between Nova Kasaba and Konjević Polje was “covered by elements of the Protection Regiment”.

⁷⁶³ Witness P-112, KT. 2990-91; Witness P-106, T. 1207-10. Witness P-111 testified that he could hear the Bosnian Serb soldiers shouting from the hills “Balija’s where are you running? Come back.” Witness P-111, T. 1383. A report of the MUP to the Deputy Minister of the MUP of the RS states that VRS personnel set up ambushes near the village of Sandići, Ex. P448.

⁷⁶⁴ Witness DP-105 defined the searching of the terrain as a preventive scouring action taken with the aim of establishing control over a territory in terms of finding out whether there are any remaining parts or infiltrated sabotage units, or weapons left behind by the enemy. It is done by letting the soldiers spread out in a combat disposition 6-10 metres apart, but within eye contact of each other. Witness DP-105, T. 10081-82. Pursuant to a written order by General Krstić on 13 July, the Bratunac Brigade, the Skelani Separate Battalion and the Milići Brigade were directed to conduct search operations in and around the Srebrenica enclave for Bosnian “Muslim stragglers”, and to report back to General Krstić by 17 July on the outcome of their efforts. Agreed Facts, para. 199; Ex. P472, Drina Corps Order, dated 13 July 1995, signed by General Krstić.

⁷⁶⁵ Mirko Trivić, T. 7487. Mirko Trivić’s units of the 2nd Romanija Brigade were assigned to search the terrain from Srebrenica through the village of Vihogor towards the mountain facility at Jahorina. Mirko Trivić, T. 7482-83.

⁷⁶⁶ Ex. P441, Bratunac Brigade daily combat report, dated 12 July, signed for Colonel Blagojević.

⁷⁶⁷ Radika Petrović, T. 8716-18, testifying that he spoke with Dragan Obrenović who said that he would see what he could do; Dragan Obrenović, T. 2457-58.

⁷⁶⁸ Zoran Jovanović, T. 9866.

⁷⁶⁹ Zoran Cvjetinović, a member from this company, testified that the purpose of the search was to find Bosnian Muslim men and send them to Potočari. According to him, the company did not come across a single prisoner or

day, they left the village of Pale, continuing the search toward Jagličići, where they arrived at night.⁷⁷⁰

224. On 12 and 13 July, two prisoners were taken by the 1st Company of the 4th Battalion of the Bratunac Brigade. The first one was captured, but shot dead, while being taken to the battalion command post at Kajičići.⁷⁷¹ The second prisoner, Ešef Gabeljić, surrendered during the early evening of 13 July and during the morning of 14 July, he was taken to the battalion command where he was interviewed.⁷⁷² He was driven to the Bratunac Brigade in the morning of 14 July and was handed over to Momir Nikolić.⁷⁷³

225. On 13 July, General Krstić ordered that part of the Drina Corps, together with MUP forces, were to control the territory behind the lines, “detect, block, capture or disarm dispersed Muslim forces”, as well as to “set up ambushes along the Muslim groups’ axes of withdrawal, completely secure the Bratunac-Konjević Polje-Miličići-Vlasenica and Zvornik-Šekovičići-Vlasenica roads and make them passable around the clock.”⁷⁷⁴

226. At a meeting on 13 July, General Mladić informed the MUP that the VRS resumed with the military operation towards Žepa, and was “leaving all other work to the MUP”.⁷⁷⁵ These tasks included “evacuation of the remaining civilian population from Srebrenica towards Kladanj (about 15,000) by bus”, “killing of about 8,000 Muslim soldiers [...] blocked in the woods around Konjević Polje” and “security of all essential facilities in the town of Srebrenica”.⁷⁷⁶

227. In the early morning of 13 July, Bosnian Serbs soldiers along the Bratunac-Konjević Polje road shouted to the Bosnian Muslim men in the woods, promising that the Bosnian Muslims would be exchanged and that the Geneva Conventions would be respected.⁷⁷⁷ The soldiers issued

any dead bodies. Zoran Cvjetinović, T 8838-40, 8844-45. Brano Ilić stated that the 2nd Company of the 2nd Battalion spent the night near Pale. Brano Ilić, Ex. D213/1, statement, pp 9-10, 18.

⁷⁷⁰ Zoran Jovanović, T. 9870; Brano Ilić, Ex. D213, p. 10-11.

⁷⁷¹ Radika Petrović, T. 8729. The prisoner attempted to escape and went into a minefield. The 4th Battalion soldiers, rather than follow the prisoner, shot him dead. T. 8729.

⁷⁷² Radika Petrović, T. 8738-40.

⁷⁷³ Radika Petrović, T. 8738-40.

⁷⁷⁴ Ex. P471, Drina Corps combat report, dated 13 July, signed by General Krstić. *See also* Ex. P 468, Drina Corps Order, dated 13 July 1995, signed by General Krstić, which holds that “in coordination with the MUP all units shall be ready to control and search the field and eliminate enemy elements infiltrated into or left behind in our rear.” On that same day, General Milenko Živanović had issued an order very similar to the one sent by General Krstić. He ordered the commands of the subordinate units of the Drina Corps to use all available manpower “to discover, block, disarm and capture” any Muslim groups and prevent their crossing into Muslim-held territory. To this end they were ordered to set ambushes along the entire Zvornik-Crni Vrh-Šekovičići-Vlasenica road; Ex. P467, Drina Corps Order, dated 13 July, signed by General Živanović.

⁷⁷⁵ Ex. P458, Letter by Dragomir Vasić, Chief of the Zvornik CJB, dated 13 Jul 1995, as discussed by Duško Jević, T. 3289-91.

⁷⁷⁶ *Id.*

⁷⁷⁷ Witness P-112, KT. 2946, 3007, Witness DP-102, T. 8264. According to Witness DP-102, members of the MUP were calling the Bosnian Muslims down from the hills.

an ultimatum that the Bosnian Muslim men should surrender by 10:00 or else they would be attacked.⁷⁷⁸ Members of the column responded that they would surrender only if UNPROFOR and the Red Cross were there.⁷⁷⁹ The deadline was then extended until 15:00.⁷⁸⁰ Around midday the Bosnian Serb soldiers shouted that UNPROFOR and the Red Cross were there and that they should surrender.⁷⁸¹ There was heavy shelling as the Bosnian Serb forces tried to drive the members of the column out of the hills⁷⁸² and a number of ambushes were set up.⁷⁸³ The column had been divided into different smaller groups.⁷⁸⁴ Many of them had a large number of wounded people. The men came down from the hills to the asphalt road connecting Konjević Polje and Bratunac in small groups, some carrying wounded persons.⁷⁸⁵ People surrendering were searched or asked to empty their pockets.⁷⁸⁶ By the evening of 13 July, thousands of Bosnian Muslims had already surrendered and been taken prisoners.⁷⁸⁷

228. The Bratunac Brigade continued the terrain search on 13 July.⁷⁸⁸ As previously mentioned, the 2nd Battalion was searching the terrain toward the village of Jagličići. The 4th Battalion was continuing its search and during the day reinforcements previously requested, 40 men, arrived and took up positions south of Kravica.⁷⁸⁹ According to a Bratunac Brigade daily combat dated 13 July the main forces of the brigade were searching the terrain “in the ordered direction Ravni Buljim-

⁷⁷⁸ Kemal Mehmedović, T. 1266; Witness P-112, KT. 2946.

⁷⁷⁹ Kemal Mehmedović, T. 1266.

⁷⁸⁰ Kemal Mehmedović, T. 1266.

⁷⁸¹ Witness P-109, KT. 2766; Enver Husić, KT. 2606. Enver Husić testified that the Bosnian Serbs shouted around mid-day that they should surrender and that UNPROFOR was there and would transport them to Tuzla. Some Bosnian Serb soldiers were in a white personnel carrier and around 8-10 of them were wearing the UN uniform of blue helmets and UN camouflage flak jackets.

⁷⁸² The members of the column were shelled by mortars and Praga. Mevludin Orić, T. 1340; Witness P-112, KT. 2946.

⁷⁸³ Witness P-106, T. 1210; Mevludin Orić, T. 1338-40.

⁷⁸⁴ Witness P-112, KT. 3002-04.

⁷⁸⁵ Witness P-106, T.1210-12; Witness P-114, KT. 3192-93; Witness P-112, KT. 2949. Witness P-112, testified that the men in the column started to surrender to the Bosnian Serb soldiers at Kravica. He also added that many of the men did not want to surrender and preferred killing themselves instead:

They knew more or less what lay in store for them, that they would be killed or put into camps. And I saw two brothers. [...] First they embraced each other. They had an automatic rifle. There was a scream. They opened a burst of fire to one another. Some of the wounded had been exposed to shelling from the soldiers along the road and some of them were wounded in an ambush that took place in the night of 12 to 13 July at Kamenicko, called Brdo.”

Witness P-112, KT. 3002-04. *See also* Witness P-106, T. 1210, 1212, who testified that before he surrendered, he was located at a hill above Kamenica, and later called it Kamenica Brdo. The Trial Chamber notes that the word “Brdo” means “hill”.

⁷⁸⁶ Kemal Mehmedović, T. 1267; Witness P-106, T. 1211; Witness P-111, T. 1387.

⁷⁸⁷ Agreed Facts, para. 147.

⁷⁸⁸ Ex. P469, Bratunac Brigade daily combat report, dated 13 July, indicating that forces of the Bratunac Brigade were searching the terrain; Zoran Jovanović, T. 9865-66, 9870, 9887.

⁷⁸⁹ Radika Petrović, T. 8721-22. Petrović did not know where these men came from or who their commander was except that he was called Gajić or Garić. *Id.* The exact position was on a line between trig point 651 and Siljkovići

Zvijezda-Šiljato Brdo.” The report also states that a large group of Bosnian Muslims was surrounded in the area between Konjević Polje and Nova Kasaba, further to the north-west.⁷⁹⁰

229. The Trial Chamber has been provided with evidence that on 13 July, Momir Nikolić went to Konjević Polje together with Mile Petrović,⁷⁹¹ another senior member of the military police, and soldiers from the Bratunac Brigade.⁷⁹² The men drove to Konjević Polje in an APC, marked with signs of the UN.⁷⁹³ Witness P-138 believed that the purpose of the trip to Konjević Polje was probably related to security. While driving near Konjević Polje, they took two Bosnian Muslim men prisoner, who were coming down a path towards the road.⁷⁹⁴ Once in Konjević Polje, these two men were taken away by “the soldiers” towards a building where prisoners were held.⁷⁹⁵ Momir Nikolić told Witness P-138 to follow a car driven by civilian police with a loudspeaker on the roof which was making an announcement. Witness P-138 could not hear the announcement. The witness said that an APC went off towards Nova Kasaba-Milići.⁷⁹⁶

230. On 14 July, Colonel Blagojević issued an order assigning specific areas for infantry battalions to be searched with immediate effect and to be completed by 16 July.⁷⁹⁷ 1st Battalion was to search an area effectively east of a line between around Kajići in the north and Šušnjari in the south, to a line between south of Glogova in the north, through the village of Pale, and further south-west to Zvijezda.⁷⁹⁸ 4th Battalion was “to control the area in front of it, spreading from Lupoglav to Ravni Buljim, and [reach] forward as far as Mratinski Brdo and Sandići” in the north-west along the Bratunac-Konjević Polje road.⁷⁹⁹ This order also moved the 1st Battalion command post to Čizmići, north of the village of Pale. The Trial Chamber recalls that both the 4th Battalion IKM and the 2nd Company of the 4th battalion were located north by north-west of the village of Jaglići.

⁷⁹⁰ Ex. P469, Bratunac Brigade daily combat report, item 2.

⁷⁹¹ Mile Petrović, Ex. D220/1, statement August 2003, p. 2.

⁷⁹² Witness P-138, T. 3527-35; Mile Petrović, Ex. D220/1, statement August 2003, p. 3.

⁷⁹³ Witness P-138, T. 3530-31.

⁷⁹⁴ Witness P-138, 3539, 3604; Mile Petrović, Ex. D220/1, statement August 2003, p. 3. Momir Nikolić testified that five or six men were taken prisoner on that occasion. Momir Nikolić, T. 1719-21.

⁷⁹⁵ Witness P-138, T. 3539, 3604. *See also* Mile Petrović, Ex. D220/1, August 2003 statement, pp 1-3.

⁷⁹⁶ Witness P-138, T. 3531-33.

⁷⁹⁷ Ex. P483, Ground Search Order, 14 July 1995, signed by Colonel Vidoje Blagojević.

⁷⁹⁸ Between, to the right, Bratunac-Konjević Polje-Ježestica road (K-316)-trig point 555-Lupoglav (trig point 675)-Šušnjari, and, to the left, Lomanac brook (village of Hranča)-village of Pale-Zvijezda trig point 906.

⁷⁹⁹ Ex. P483, Ground Search Order, 14 July 1995, signed by Colonel Vidoje Blagojević. The order also lists the search areas for the 2nd and 3rd Battalions, which were to the south-west around Potočari. 2nd Battalion, to the right, Lomanac brook-village of Pale (trig point 529)-Prijanska Kosa (trig point 685), and, to the left, Biljeg (trig point 601)-Gradac (trig point 527) inclusive Prijanska Kosa (trig point 685). 3rd Battalion, to the right, Obli Vis (trig point 732)-Gradac (trig point 527)-Prijanska Kosa-Zvijezda (trig point 906), and, to the left, Zeleni Jadar-along the right bank of Zeleni Jadar river-village of Slapovići-Šiljato Brdo (trig point 901).

231. In the daily combat report of 14 July Colonel Blagojević reported to the Drina Corps command that in the area where Bratunac Brigade forces were searching the terrain “no enemy forces were spotted and nor did [we] come across any.”⁸⁰⁰ It is reported that “[a] small part of enemy forces is still surrounded in the area of Bokčin Potok-Šiljkovići-Mratinjci.”⁸⁰¹ By an order dated 14 July, Colonel Blagojević requested that a unit be sent temporarily to Trnovo.⁸⁰²

232. The Bratunac Brigade daily combat report of 15 July reports that the forces of the Bratunac Brigade are on the line Lupoglav-Šušnjari-Prijanska Kosa-Osredak-village of Viogor-village of Bojna, *i.e.* effectively an area south of the village of Pale.⁸⁰³ There is evidence before the Trial Chamber, however, that the 1st Battalion did not reach Lupoglav or Šušnjari on this date due to heavy rain, but that it was only on 16 July that the 1st Battalion started to search the terrain in this direction.⁸⁰⁴ The battalion did not come across any prisoners, dead bodies or abandoned weapons.⁸⁰⁵ Also on 16 July, Colonel Blagojević ordered the 1st Battalion to prepare for combat activities in Žepa.⁸⁰⁶ On this date, the brigade also made “preparations to dispatch two companies to the Zvornik Brigade (100 soldiers).”⁸⁰⁷

233. On 15 July, the detained DutchBat soldiers were taken by bus from Milići towards Konjević Polje.⁸⁰⁸ At one point the bus came upon a convoy of approximately 15 Serb tanks and APCs that carried several Serb soldiers. Some of the soldiers were wearing Dutch T-shirts and uniform jackets and a few wore blue UN helmets and blue berets. There were also small groups of Serb soldiers sitting along the side of the road.⁸⁰⁹ When the bus reached the junction before Konjević Polje, the bus turned right towards Bratunac.⁸¹⁰ A few hundreds metres later the bus passed small piles of civilian clothes with knives, keys and shoes on top of them. The piles extended at one meter intervals for approximately 300 metres.⁸¹¹

234. On 15 July, a meeting was held at the Zvornik Brigade headquarters, attended by Dragan Obrenović, Ljubiša Borovčanin, Dragomir Vasić and Miloš Stupar.⁸¹² Dragan Obrenović reported that a large group of Bosnian Muslim men was headed in the direction of Zvornik and that it was

⁸⁰⁰ Ex. P485, daily combat report, dated 15 July 1995.

⁸⁰¹ Ex. P485, daily combat report, dated 15 July 1995.

⁸⁰² Ex. P484, Request for the relief of a unit attached to the 4th Drina Light Infantry Brigade, 14 July.

⁸⁰³ Ex. P490, daily combat report, dated 15 July 1995. According to the combat report, 80 soldiers of the Bratunac Brigade had been sent to the area of the Zvornik Brigade, and an S-2M platoon had been sent into the 2nd Romanija Motorised Brigade area of responsibility.

⁸⁰⁴ Witness DP-105, T. 10140-43.

⁸⁰⁵ Witness DP-105, T. 10087-89.

⁸⁰⁶ Ex. P498, Bratunac Brigade Order for deployment of battalion in combat activity, 16 July 1995.

⁸⁰⁷ Ex. P496, Bratunac Brigade daily combat report, 16 July 1995.

⁸⁰⁸ Andere Stoelinga, KT. 2284-85.

⁸⁰⁹ Andere Stoelinga, KT. 2285-86.

⁸¹⁰ Andere Stoelinga, KT. 2287.

⁸¹¹ Andere Stoelinga, KT. 2292, 2301.

feared that they could take control of Zvornik.⁸¹³ A part of the MUP Task Force was therefore deployed near Baljkovica.⁸¹⁴ On 15 and 16 July, the Task Force fought with the column, until it was decided that a corridor would be opened to allow passage for the Bosnian Muslim men.⁸¹⁵ The MUP Task Force remained at their positions until a few days later.⁸¹⁶

235. At a meeting held at the Bratunac Brigade headquarters on 16 July, part of the MUP Task Force was deployed to search the terrain between Srebrenica and Konjević Polje.⁸¹⁷ The method of searching was discussed at a meeting at the Bratunac Brigade headquarters on 17 July. Among the units taking part in the search were the MUP unit from the Jahorina Training Centre, a search dog unit, a “special company” from Bijeljina and two military units; one from Bratunac and one from Milići.⁸¹⁸ The men received their orders from and reported to the Bratunac Brigade command.⁸¹⁹ According to Duško Jević, all orders were given orally.⁸²⁰ The Bratunac Brigade Chief of Artillery, Captain Mićo Gavrić, was in overall command of the search operation.⁸²¹

236. On 17 July, Colonel Blagojević assigned Dragomir Zekić, commander of the 3rd Battalion, to search the terrain in the Konjević Polje area.⁸²² According to the daily combat report of Colonel Blagojević, dated 18 July, the 3rd and the 4th Battalions, as well as people mobilised for compulsory labour, were searching the terrain in the area of Pobude and Konjević Polje.⁸²³

237. In the morning of 17 July the search commenced in Kravica, moving in the direction of Konjević Polje. By the evening, about 200 Bosnian Muslims had surrendered, including four children. The prisoners were taken in the direction of Zvornik, in buses that drove along the Konjević Polje-Bratunac road.⁸²⁴ The searching of the terrain by the Task Force continued until

⁸¹² Miloš Stupar, T. 8370-71; Dragan Obrenović, T. 2523-24.

⁸¹³ Miloš Stupar, T. 9372.

⁸¹⁴ Miloš Stupar, T. 8374-78; Witness DP-102, T. 8278. The 2nd Detachment from Šekovići and the 1st PJP Company were the component units of this part of the Task Force.

⁸¹⁵ Miloš Stupar, T. 8379-80; Ex. P159, Borovčanin combat report for 10-20 July 1995, pp 3-4.

⁸¹⁶ Miloš Stupar, T. 8381.

⁸¹⁷ Duško Jević, T. 3244-3246. This part of the Task Force consisted of the Company from the Jahorina Training Centre.

⁸¹⁸ Duško Jević, T. 3247.

⁸¹⁹ Duško Jević, T. 3309, 3315-16; Ex.P 496, Bratunac Brigade daily combat report, 16 July 1995. The Trial Chamber notes that on 15 July Colonel Ignat Milanović had proposed to the Main Staff that Colonel Blagojević be appointed to command the search operation. Ex. P495, Report by Colonel Milanović, 15 July, regarding deployment of forces in searching the terrain.

⁸²⁰ Duško Jević, T. 3265.

⁸²¹ Duško Jević, T. 3249-50; Captain Mićo Gavrić testified that he was present during the search operation to make sure that “things went properly.” Mićo Gavrić, T. 8514-15.

⁸²² Dragomir Zekić, T. 8934-35.

⁸²³ Ex. P503, daily combat report, sent by Colonel Blagojević, dated 18 July 1995. According to Radenko Zekić, the actual areas searched that day were Glogava, Sandići, and Hrcnici. They did not search in the areas of Pobude or Konjevic Polje (T 8934-35).

⁸²⁴ Duško Jević, T. 3249-50.

20 July, when the operation was left to the PJP Companies of the Zvornik CJB and the Bijeljina CJB.⁸²⁵

(ii) Specific Incidents related to the Men Detained 12-15 July

a. Killings along the Konjević Polje-Nova Kasaba road

238. By the morning of 13 July, a group of approximately 2,000 to 3,000 people from the column had reached an area between Konjević Polje and Nova Kasaba.⁸²⁶ They could not cross the road as it had been blocked by Bosnian Serb units.⁸²⁷ At around 13:00, the Bosnian Serb forces surrounded the large group.⁸²⁸ One witness, who was hidden in the woods about 500 meters away from the large group, testified that he saw the soldiers killing anyone who got separated from the group, amounting to an approximate total of 200 to 300 people who were killed.⁸²⁹ The large group was then forced down to the asphalt road.⁸³⁰

b. Sandići meadow

239. On 12 July, a part of the MUP Task Force⁸³¹ was tasked with securing the road between Konjević Polje and Bratunac, reinforcing the men of the Task Force who were already at that location.⁸³²

240. Between 1,000 and 4,000 Bosnian Muslim men captured from the column were detained in the Sandići Meadow, located on the Konjević Polje-Bratunac road on 13 July.⁸³³ The majority of men were civilians.⁸³⁴ The soldiers guarding the men forced them to drop their belongings into big piles and to hand over any valuables they might still have.⁸³⁵ Members of the MUP Task Force

⁸²⁵ Ex. P159, Borovčanin combat report for 10-20 July, pp 4-5.

⁸²⁶ Witness P-114, KT. 3191-92.

⁸²⁷ Witness P-114, KT. 3191.

⁸²⁸ Witness P-114, KT. 3192.

⁸²⁹ Witness P-114, KT. 3192-93.

⁸³⁰ Witness P-114, KT. 3192-93.

⁸³¹ This part of the Task Force consisted of two platoons of the 1st Company of the MUP forces from the Jahorina Training Centre. Duško Jević, T. 3223-3224.

⁸³² According to Duško Jević, the second company “from Jahorina” came to the Konjević Polje-Bratunac road on 12 July. Duško Jević, T. 3234-35; Mendeljev Đurić stated that in the evening of 12 July, his platoon was stationed between the outskirts of Bratunac and Glogova, in order to protect Bratunac. Mendeljev Đurić, Ex. D216/1, interview 18 October 2000, pp 55-57. According to Duško Jević, the second company “from Jahorina” came to the Konjević Polje-Bratunac road on 12 July.

⁸³³ Agreed Facts, 189. *See also* Witness DP-101, T. 7871, 7898-7900 (closed session); Witness DP-102, T. 8259-61; Witness P-106, T. 1214; Witness P-111, T. 1389-1391; Witness P-107, KT. 2502-03, 2508; Enver Husić KT. 2605-27 and Ex. P21 and Ex. P22: video compilation and still images of Enver Husić’s surrender and of the Sandići Meadow. Some witnesses saw the men while passing on the buses. Mirsada Malagić, KT. 1978; Bego Ademović, KT. 1605-06; Witness P-101, KT. 1259.

⁸³⁴ Witness P-101, KT. 1259; Witness P-107, KT. 2507; Witness P-131, Ex. P683, statement 14-18 December 1995, p. 9 (under seal).

⁸³⁵ Witness P-107, KT. 2502, 2506.

were guarding the prisoners.⁸³⁶ Momir Nikolić travelled on the Bratunac-Konjević Polje road on 13 July.⁸³⁷ He testified that MUP forces were deployed along the road and that he saw 10-15 captured Muslims in the Sandići area. Buses coming from Potočari passed the prisoners in the meadow.⁸³⁸ The few women who were among the captured prisoners and some boys were allowed to leave on those buses.⁸³⁹ Late in the afternoon, General Mladić visited the meadow and told the men that they would not be hurt but would be exchanged as prisoners of war. He also told them that their families had been transported safely to Tuzla.⁸⁴⁰

241. While the prisoners were in the meadow they were given very little food and some water.⁸⁴¹ The men were forced to lie on their stomachs, even for long periods of time,⁸⁴² to make the Serb salute and to sing Serbian songs, such as “Long live the king, long live Serbia”.⁸⁴³ They also had to perform this in the presence of General Mladić.⁸⁴⁴ One man was made to call out to the Bosnian Muslim men in the column that it was “safe to come to the Serbs”.⁸⁴⁵

242. There is evidence that throughout the day prisoners were beaten and some were killed.⁸⁴⁶ A prisoner who had told a Bosnian Serb officer that he had been in the firing unit, was beaten.⁸⁴⁷ Another man who reached out to get some water was kicked in the head by the soldiers and then shot.⁸⁴⁸ During the course of the day those who were wounded or injured were sent to a house

⁸³⁶ Enver Husić, KT. 2618-20; Witness P-131, Ex. P683, statement 14-18 December 1995, pp 9-11 (under seal). Duško Jević testified that members of the MUP Task Force were guarding a stretch of road between Sandići and Kravica. Duško Jević, T. 3228. Miloš Stupar testified that he and members of the 2nd Šekovići Detachment were present on the road from Bratunac to Kravica. He testified that they were guarding prisoners on a meadow near Sandići. Miloš Stupar was present at the meadow when General Mladić arrived to address the prisoners. Miloš Stupar, T. 8337-40.

⁸³⁷ Momir Nikolić, T. 1710.

⁸³⁸ Witness P-106, T. 1216; Witness P-111, T. 1390-95. Witness P-111 testified that the buses were coming from the direction of Bratunac and were heading towards Konjević Polje.

⁸³⁹ Witness P-106, T. 1245; Witness P-111, T. 1392-95. According to Witness P-111, it was announced that anyone born after 1980 would be allowed to leave in the buses that were passing by. Kemal Mehmedović testified that the few women who were present among the prisoners captured from the column, were allowed to leave on those buses too. A few boys were also allowed to leave. However, one woman, who was very pretty was kept behind, because she was “needed”. Kemal Mehmedović, T. 1268-69.

⁸⁴⁰ Agreed Facts, para. 191; Miloš Stupar, T. 8342-43; Borivoje Jakovljević, T. 9939-44; Kemal Mehmedović, T. 1270; Witness P-106, T. 1216-17; Witness P-107, KT. 2509; Pero Andrić, Ex. D227/1, statement, p. 2 and interview pp 9-10. According to Witness DP-102, Mladić told the prisoners that they would be exchanged and taken to “their desired direction” except for those who had “Serbian blood [...] on their hands.” Witness DP-102, T. 8262.

⁸⁴¹ According to Kemal Mehmedović the men were given only small amounts of water. Kemal Mehmedović, T. 1269. Witness DP-101 testified that he took a fire engine to the meadow. The detained men were allowed to drink water. Witness DP-101, T. 7871 (closed session).

⁸⁴² Witness P-111, T. 1396-97.

⁸⁴³ Witness DP-102, T. 8298; Witness P-111, T. 1396-97.

⁸⁴⁴ Kemal Mehmedović, T. 1270.

⁸⁴⁵ Ex. P21, video compilation; Ex. P21A, transcript of the video compilation, pp 67-68.

⁸⁴⁶ Witness P-111 said that he “saw an elderly man in civilian clothes who had been killed and maggots were all around his body”. Witness P-111, T. 1389. Witness P-101 testified that the women in the bus where he also was started screaming and that he saw “Muslim men lying in the meadow who did not seem to be moving. Witness P-101, KT. 1259.

⁸⁴⁷ Witness P-111, T. 1389.

⁸⁴⁸ Witness P-106, T. 1214-15.

close to the meadow⁸⁴⁹ and were later executed.⁸⁵⁰ Approximately 30 men were taken away on a truck, with spades and pickaxes, and were not seen again.⁸⁵¹

243. The Bosnian Serb forces present began ordering the men out of the meadow.⁸⁵² While some of the detainees were marched towards the nearby Kravica Warehouse,⁸⁵³ others were loaded on buses and trucks and taken towards Bratunac and other nearby locations.⁸⁵⁴ One witness testified that a group of 15 Bosnian Muslim men who were left behind in the meadow were killed by members of the 1st Company of the Jahorina Training Centre, with a bullet in the head or with bursts of gunfire.⁸⁵⁵ Witness P-102, who was on a bus that came from Potočari on 13 July, testified that on his arrival in Kravica he saw about 100 prisoners walking towards the buses with their hands behind their neck.⁸⁵⁶ He also saw another 20 or 30 Bosnian Muslim men, being guarded by three or four Bosnian Serb soldiers, who had a tank and three armoured vehicles.⁸⁵⁷

244. Radika Petrović, commander of the 4th Battalion of the Bratunac Brigade, testified that, as he passed along the road between Kravica and Konjević Polje on 15 July, he saw a large number of corpses alongside the road and also on the meadows on the sides of the road. Most of the bodies were near Sandići.⁸⁵⁸

c. The Warehouse at the Konjević Polje Intersection

245. Some of the men who were either captured or who surrendered on 13 July were detained at a warehouse at the Konjević Polje intersection.⁸⁵⁹ The warehouse was about 15 or 20 meters long

⁸⁴⁹ Kemal Mehmedović, T. 1269.

⁸⁵⁰ Witness P-111, T. 1396-97; Witness P-106, T. 1215. Witness P-106 said: “nothing is known about any of them”. However, Borivoje Jakovljević, a Bratunac Brigade Military Police officer testified that he and a colleague gave some Bosnian Muslims medical aid. Borivoje Jakovljević, T. 9943.

⁸⁵¹ Witness P-106, T. 1217.

⁸⁵² Agreed Facts, para. 192; Miloš Stupar, T. 8342.

⁸⁵³ Agreed Facts, para. 192; Witness P-106, T. 1217-18; Witness P-107, KT. 2510; Miloš Stupar, T. 8342; Witness DP-102, T. 8262.

⁸⁵⁴ Agreed Facts, para. 192; Mevludin Orić, T. 1344; Witness P-111, T. 1397-98. Buses were full with prisoners. Witness P-111 testified that the men were “standing like sardines”. Witness P-131 stated that Bosnian Muslim men were taken in buses towards Bratunac. Witness P-131, Ex. P683, statement 14-18 December 1995, pp 9-11 (under seal).

⁸⁵⁵ Witness P-131, Ex. P683, pp 22-29 (under seal). The officer in charge ordered the soldiers to “kill the prisoners on the spot”. Some of the recruits refused to do so and were punished.

⁸⁵⁶ Witness P-102, KT. 1354-55, 1370. Witness P-102 also saw the bodies of Bosnian Muslim men when he drove through Kravica.

⁸⁵⁷ Witness P-102, KT. 1355.

⁸⁵⁸ Radika Petrović, T. 8743-44. Enver Husić testified that he saw dead bodies in the forest, some of whom were mutilated, Enver Husić, KT. 2605-06.

⁸⁵⁹ See e.g. Mevludin Orić, who testified that on 13 July he and 13 other people were captured on some hills over Konjević Polje. The majority was unarmed. After being searched, they were told to run with their hands over their heads along the road to Konjević Polje where they were taken to a warehouse, Mevludin Orić, T 1340-41.

and had two rooms.⁸⁶⁰ There is evidence showing that these prisoners were guarded by MUP members at this location.⁸⁶¹

246. On 13 July, Momir Nikolić drove from the direction of Kravica and stopped at the junction in Konjević Polje.⁸⁶² In Konjević Polje, he recognised members of the MUP from Bratunac, including Nenad Deronjić and Mirko Perić.⁸⁶³ Momir Nikolić did not see members of the Bratunac Brigade along the road.⁸⁶⁴ Momir Nikolić saw approximately 200-250 Bosnian Muslim men detained in the locations that were used as base for the Drina Corps 5th Engineering Battalion in Konjević Polje.⁸⁶⁵ The engineering battalion was based in some privately owned houses in Konjević Polje, and was also using part of the elementary school there. The prisoners were detained in those locations, as well as in a meadow in the same area.⁸⁶⁶ Momir Nikolić spoke with the MUP people from the Bratunac SJB at the checkpoint and told them to detain all the people in buildings and that transport would come later to bring the prisoners to Bratunac.⁸⁶⁷ Momir Nikolić instructed the MUP members that prisoners should be detained in places that could easily be secured. Momir Nikolić testified that at the time he gave this instruction he knew that all those captured had to be transported to Bratunac, temporarily detained and then killed.⁸⁶⁸

247. Upon entering the warehouse, the prisoners were forced to remove their clothes and had to stand in their underpants.⁸⁶⁹ They were lined up against the walls of the first room and were beaten with rifles and other objects, until they fell to the ground.⁸⁷⁰ After being threatened with death, the Bosnian Muslim men were told to put their clothes on and to go to the other room.⁸⁷¹ They were beaten again and suffered blows with clubs and batons to the back and head.⁸⁷²

248. One survivor, Witness P-112, testified that when he and 30 other men surrendered,⁸⁷³ there were already about 300 people walking on the road towards Konjević Polje.⁸⁷⁴ The group of men

⁸⁶⁰ Witness P-175, KT. 3269.

⁸⁶¹ Witness P-138, T. 3534-35. According to Mevludin Orić, who was detained in the warehouse with 8 other Bosnian Muslim men, the soldiers present there were from the JNA. He concluded this on the basis of the soldiers' camouflage flak jackets, the uniform and the professional way they behaved, Mevludin Orić, T. 1341-42, 1363.

⁸⁶² Momir Nikolić, T. 1710-13. *See also* section II. D. 2. (a) (i).

⁸⁶³ Momir Nikolić, T. 1724-25. The Trial Chamber notes that Nenad Deronjić was a member of the 2nd PJP Company. Nenad Deronjić, T. 8187.

⁸⁶⁴ Momir Nikolić, T. 1724.

⁸⁶⁵ Momir Nikolić, T. T. 1713-14.

⁸⁶⁶ Momir Nikolić, T. 1713-15, 1717.

⁸⁶⁷ Momir Nikolić, T. 1713-15, 1717.

⁸⁶⁸ Momir Nikolić, T. 1713-15, 1717.

⁸⁶⁹ Witness P-175 testified that he was afraid. A soldier asked why he was shaking and subsequently began to beat him. Witness P-175, KT. 3269-70.

⁸⁷⁰ Witness P-175, KT. 3269-70, 3273-74.

⁸⁷¹ Witness P-175, KT. 3270.

⁸⁷² Witness P-175, KT. 3270-71.

⁸⁷³ Witness P-112, KT. 2948-49.

was put in the warehouse. Only two or three buckets of water were brought for the entire group. They were ordered to hand over any money and valuables. They remained at the warehouse for about twenty minutes. Prisoners were loaded onto buses and trucks, some of which were facing Nova Kasaba and Milići,⁸⁷⁵ and were ordered onto trucks which drove toward the football field in Nova Kasaba.⁸⁷⁶

249. Another survivor, Mevludin Orić, was detained with eight other Bosnian Muslim men in the warehouse.⁸⁷⁷ They were not mistreated by the soldiers who were guarding them.⁸⁷⁸ Mevludin Orić was taken to Bratunac, in a bus, which already had women from Potočari in it.⁸⁷⁹ He testified that military police from Republika Srpska, wearing stolen blue UNPROFOR flak jackets, boarded the buses.⁸⁸⁰

250. There is evidence indicating that Colonel Blagojević, on 13 or 14 July, drove along the Bratunac-Konjević Polje-Milići road.⁸⁸¹ There were soldiers from the Bratunac Brigade standing along the Bratunac-Konjević Polje road. According to Witness P-210, Colonel Blagojević asked the soldiers whether there were any problems and told them that if they should run into any prisoners they should bring them to the Brigade, so that they would not be mistreated or provoked and that they should treat them professionally.⁸⁸²

d. Interrogation at Konjević Polje Checkpoint

251. The 6th PJP Company of the MUP was also deployed at this checkpoint.⁸⁸³ On 13 July, two prisoners were taken by two members of the 6th PJP Company to the Konjević Polje checkpoint.⁸⁸⁴ The two Bosnian Muslim men were Hasan Salihović, and Rešid Sinanović. When Momir Nikolić arrived at the checkpoint and interrogated Rešid Sinanović, whom he knew, about the column.⁸⁸⁵ Momir Nikolić took both men to Bratunac. Rešid Sinanović was taken to the office of Zlatan Čelanović, the Bratunac Brigade desk officer for moral, legal and religious affairs.⁸⁸⁶ Zlatan

⁸⁷⁴ The Bosnian Serb soldiers were wearing camouflage uniforms in dark blue. Witness P-112, KT. 2948-49. One of the Serbian soldiers ordered the men who were carrying wounded people to leave the wounded by the crossroads at Konjević Polje and that the wounded would be taken care of. Witness P-112, KT. 2949-50.

⁸⁷⁵ Witness P-112, KT. 2949-50.

⁸⁷⁶ Witness P-112, KT. 2948-50.

⁸⁷⁷ Mevludin Orić, T. 1341.

⁸⁷⁸ Mevludin Orić, T. 1341-42.

⁸⁷⁹ Mevludin Orić, T. 1342-43.

⁸⁸⁰ Mevludin Orić, T. 1343. Mevludin Orić testified that the Military Police was wearing white belts with markings of the Military Police of the Republika Srpska.

⁸⁸¹ Witness P-210, T. 7388.

⁸⁸² Witness P-210, T. 7387.

⁸⁸³ Witness P-134, T. 6517.

⁸⁸⁴ Witness P-134, T. 6528-29. The Konjević Polje checkpoint was manned by the 6th PJP Company at that time. Witness P-134, T. 6517-18.

⁸⁸⁵ Witness P134, T. 6530-31.

⁸⁸⁶ Witness P-134, T. 6531; Momir Nikolić, T. 1715.

Čelanović was asked to look into allegations of war crimes committed by Rešid Sinanović.⁸⁸⁷ Zlatan Čelanović also knew Rešid Sinanović and spoke with him for about 45 minutes.⁸⁸⁸ Srbislav Davidović, a former colleague and friend of Rešid Sinanović, was meeting with Dragoslav Trišić in the Bratunac Brigade headquarters at this time.⁸⁸⁹ Dragoslav Trišić told him that Rešid Sinanović was being detained by the military police. Srbislav Davidović wanted to see his friend, and asked Zlatan Čelanović if this was possible. Čelanović agreed. Srbislav Davidović and Rešid Sinanović spoke for one hour, during which time, Srbislav Davidović told Rešid Sinanović that he would not be able to help him because this was a military operation and he, as President of the Executive Board, worked with the municipal government. Srbislav Davidović testified that he did not think it would be necessary to help Rešid Sinanović, as he expected that him to be exchanged.⁸⁹⁰

252. According to Zlatan Čelanović, Rešid Sinanović was then taken to the Vuk Karadžić School in Bratunac by what Čelanović believed to be a special military police unit.⁸⁹¹ Zlatan Čelanović testified that he thought Rešid Sinanović was not in danger when he left his office, but rather that he was being taken to the “collection centre” pending exchange.⁸⁹² According to Momir Nikolić, Rešid Sinanović was then transported to the Zvornik Brigade area of responsibility and shot.⁸⁹³ Rešid Sinanović was never seen again.⁸⁹⁴

e. Nova Kasaba

253. On 13 July 1995, Witness P-102, a Bosnian Muslim man, passed Nova Kasaba in a bus. From the bus, he could see about 200 to 300 Muslim men lying down, guarded by Bosnian Serb soldiers.⁸⁹⁵ Throughout the day, an estimated 1,500 to 3,000 Bosnian Muslim men captured from the column were held prisoner on the Nova Kasaba football field on 13 July.⁸⁹⁶ Men who had been

⁸⁸⁷ Zlatan Čelanović, T. 9502-06; Momir Nikolić, T. 1716. The office of Zlatan Čelanović was located in the Bratunac Brigade Military Police building, next to the Bratunac Brigade headquarters.

⁸⁸⁸ Zlatan Čelanović, T. 9504-10.

⁸⁸⁹ Srbislav Davidović, T. 7713-16.

⁸⁹⁰ Srbislav Davidović, T. 7713-15.

⁸⁹¹ Zlatan Čelanović, T. 9510-12. *See also* Momir Nikolić, T. 1805.

⁸⁹² Zlatan Čelanović, T. 9513.

⁸⁹³ Momir Nikolić, T. 1805. Most likely Rešid Sinanović was transported to Orahovac.

⁸⁹⁴ Zlatan Čelanović 9493-94. Zlatan Čelanović, in his testimony, referred to Ex. D169/1, a letter from Dr. Zoran Jović to Veselin Londrović Attorney-at-Law, dated 5 March 2003, re: photocopy of medical records from Sanatorium in Banja Koviljača, as proof that Rešid Sinanović was in Serbia and still alive on 15 July. The Trial Chamber notes that the in medical record only the first name “Rešid” of one of the patients is legible. The Trial Chamber does not find this enough as corroborative evidence.

⁸⁹⁵ Witness P-102, KT. 1355-56.

⁸⁹⁶ Agreed Facts, para. 193; Borivoje Jakovljević, T. 9949-51; Witness P-112, T. 2950-52; Mirko Trivić, T. 7502-03; Witness P-113, T. 3020-23. According to Witness P-113, some men were initially taken to the elementary school in Nova Kasaba which had been converted into Serb barracks, Witness P-113, KT. 3017-20. Bego Ademović, passing by bus, saw approximately 1,000 Bosnian Muslim men walking in a column with both hands behind their heads toward the football stadium in Nova Kasaba. Bego Ademović, KT. 1607, 1629. According to

captured or who had surrendered from the column were detained at the football field.⁸⁹⁷ As in the Sandići meadow, the men at Nova Kasaba were forced to turn over any valuables and abandon their belongings.⁸⁹⁸ The prisoners sat in rows close together and surrounded by Bosnian Serb soldiers.⁸⁹⁹ During their detention the prisoners never received anything to drink.⁹⁰⁰

254. General Mladić visited these prisoners after he had been to the Sandići Meadow,⁹⁰¹ and told them that they would be evacuated and would be able to join their families.⁹⁰² He told them that they would be exchanged and that they all should have surrendered because “not a bird could pass through their lines”.⁹⁰³ According to Witness P-113, who was detained at the football field, General Mladić ordered that a list be made of the prisoners in the football field.⁹⁰⁴ During the day buses arrived and the prisoners were taken to Bratunac town.⁹⁰⁵

255. 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.⁹⁰⁶ In July 1996, a team of forensic investigators under the direction of Dr. William Haglund exhumed four primary, undisturbed graves in the Nova Kasaba area. The graves, located in two fields, contained the bodies of 33 male victims.⁹⁰⁷ Thirty-two of these victims died as a result of gun shot wounds and one victim died as a result of massive head trauma.⁹⁰⁸ Twenty-seven of the men had their hands tied behind their backs. All victims are estimated to have been of military age or younger when they died.⁹⁰⁹ Evidence from the graves suggests that many of the victims were shot while

Dragomir Keserović, Chief of the Police Section of the Security Administration of the Main Staff, Beara had passed on the order that the prisoners should be kept in the stadium. Dragomir Keserović, T. 10703.

⁸⁹⁷ Witness P-112, KT. 2950-2953; Witness P-113, KT. 3017-20.

⁸⁹⁸ Agreed Facts, para. 194; Witness P-112, KT. 2950-53.

⁸⁹⁹ Witness P-113, KT. 3022. According to Witness P-112, there were approximately 100 soldiers. Witness P-112, KT. 2952-53; Ex. P3.5, aerial photograph of Nova Kasaba. It is established that MUP units were involved in the capture of Bosnian Muslim prisoners in the Nova Kasaba region on 13 July; Agreed Facts, 404. According to Borivoje Jakovljević, a Bratunac Brigade Military Police officer who was providing security for General Mladić, the VRS soldiers, guarding the men in Nova Kasaba and in Sandići wore similar uniforms, though some members of the “special police” of the MUP were wearing blue uniforms. Borivoje Jakovljević, T. 9949-51. Witnesses also described that soldiers were wearing camouflage uniforms. Witness P-112, KT. 2953; Witness P-113, KT. 3021-22.

⁹⁰⁰ Witness P-112, KT. 2955.

⁹⁰¹ Borivoje Jakovljević, T. 9952-53; *See also* Dragomir Keserović, T. 10701-02; Witness P-113, KT. 3024-25; Pero Andrić, Ex.P227/1, Interview pp 9-10.

⁹⁰² Dragomir Keserović, T. 10701-02; Witness P-113, KT. 3024. Borivoje Jakovljević testified that General Mladić repeated what he had said at the Sandići Meadow; Borivoje Jakovljević, T. 9952-53.

⁹⁰³ Witness P-113, KT. 3024.

⁹⁰⁴ Witness P-113 stated that at the moment General Mladić ordered the list to be made, a man stood up. The man was first beaten and then shot. Witness P-113, KT. 3024-25.

⁹⁰⁵ Dragomir Keserović, T. 10701-02; Kemal Mehmedovic, T. 1270-72.

⁹⁰⁶ Ex. P552, Dean Manning, Summary of forensic evidence – execution points and mass graves report, p. 12; Ex. P6.6, aerial photo disturbed earth, Nova Kasaba.

⁹⁰⁷ Ex. P753, Report by William Haglund, pp vii and 10.

⁹⁰⁸ Ex. P753, Report by William Haglund, p. 43.

⁹⁰⁹ Ex. P552, Dean Manning, Summary of forensic evidence – execution points and mass graves, report, p. 13; Ex. P753, Report by William Haglund, pp 40, 44.

they were positioned in the grave.⁹¹⁰ One of the victims has been positively identified through DNA-testing, as being Fadil Husić.⁹¹¹ In 1999 another four primary graves were exhumed in Nova Kasaba, containing the remains of at least 55 individuals.⁹¹² As far as could be ascertained, at least 52 of these victims were male, and at least 43 victims had died as a result of multiple gunshot wounds.⁹¹³

f. Detention near the Kravica supermarket

256. The Bosnian Muslim men who had surrendered or had been captured were also detained in buses and trucks. In Kravica, some trucks stopped by a supermarket on 13 July. Around 119 men were detained in one truck.⁹¹⁴ The soldiers guarding the truck started mistreating people and hitting them through the canvas. They asked people to identify which villages they came from and, depending on the answers, certain people were taken off the bus.⁹¹⁵ At all times there were around 10 to 15 Bosnian Serb soldiers guarding the trucks.⁹¹⁶ All through the night, the prisoners on the truck heard bursts of gunfire and screams of people begging not to be killed or beaten.⁹¹⁷ In the morning, the men detained on the truck did not get any food and were given only one jerry can of water for the entire group.⁹¹⁸ A soldier threatened to kill eleven of the prisoners if he heard any of the prisoners talk.⁹¹⁹ At one point, Witness P-112 saw that a Bosnian Serb soldier took a Bosnian Muslim man and placed the barrel of his gun in the mouth of that man.⁹²⁰ Witness P-112 did not testify that he saw that this Bosnian Muslim man was shot then and there, but said that “he did not reach the free territory.”⁹²¹ The truck on which Witness P-112 was detained did not leave until 15:00 and drove toward Zvornik.⁹²²

(b) Detention and killings after 17 July

(i) 18-19 July 1995 – Capture and Execution in the area of Baljkovica near Nezuk

⁹¹⁰ Ex. P753, Report by William Haglund, p. 25. Dr. Haglund based this finding on the fact that the bodies were found in a kneeling or semi-sitting position in the graves.

⁹¹¹ Ex. P552, Dean Manning, Summary of forensic evidence – execution points and mass graves, report, Annex B, p. 2; Ex. P753, Report by William Haglund, p. 47.

⁹¹² Ex. P552, Dean Manning, Summary of forensic evidence- execution points and mass graves, report, p. 61.

⁹¹³ Ex. P552, Dean Manning, Summary of forensic evidence- execution points and mass graves, report, p. 62.

⁹¹⁴ Witness P-112, KT. 2956.

⁹¹⁵ Witness P-112, KT. 2956-57, 2992-93.

⁹¹⁶ Witness P-112, KT. 2999.

⁹¹⁷ Witness P-112, KT. 2957.

⁹¹⁸ Witness P-112, KT. 2958-60.

⁹¹⁹ Witness P-112, KT. 2961.

⁹²⁰ Witness P-112, KT. 2958.

⁹²¹ Witness P-112, KT.5960-61.

⁹²² Witness P-112, KT. 2962-63.

257. On 18 July, a group of around 500 Bosnian Muslim men from the column had reached Baljkovica.⁹²³ Among the men was Witness P-114 who had managed to cross the road between Konjević Polje and Nova Kasaba.⁹²⁴ Witness P-114 and ten other men left the group when they heard shooting in the vicinity and the Bosnian Serbs calling upon them to surrender.⁹²⁵ The following day, on 19 July, the eleven men hid in some bushes near the forest, about a kilometre away from the frontline.⁹²⁶ They heard Bosnian Serb soldiers calling out for them to surrender and shortly after, heavy shooting started above their heads.⁹²⁷ The group surrendered one by one.⁹²⁸ When they reached the path where the Bosnian Serb soldiers were, they were beaten by them. One of the Bosnian Muslim men was beaten particularly hard.⁹²⁹ The men were ordered to give up any documents, money and valuables that they still had, and were interrogated about the number of the Muslim troops, their commanders and about what happened in Srebrenica.⁹³⁰ The soldiers took two boys away and killed them.⁹³¹ Witness P-114, who survived the executions, was also taken away and shot in his left shoulder. He pretended to be dead, until late in the night. Once the Bosnian Serb soldiers had left he managed to escape⁹³² after having witnessed further executions.⁹³³ He testified that he knew of one other man who survived the executions.⁹³⁴

(c) Conclusions and Findings related to the Role of the Bratunac Brigade

258. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that members of the Bratunac Brigade, including elements of all four Bratunac Brigade Infantry Battalions⁹³⁵ and the Bratunac Brigade Military Police,⁹³⁶ participated in searching the terrain for Bosnian Muslim men who had fled Srebrenica in an effort to break-through to ABiH territory,⁹³⁷ with the instructions to capture and disarm these men.⁹³⁸ The Trial Chamber does not, however, find that there is sufficient evidence to support a finding beyond reasonable doubt that

⁹²³ Witness P-114, KT. 3194-95.

⁹²⁴ Witness P-114, KT. 3193-94. Witness P-114 had been in the woods with the group of around 2,000 to 3,000 people from the column that were stopped in the area between Konjević Polje and Nova Kasaba on the morning of 13 July. After he had witnessed the killing of 200-300 men he escaped and managed to cross the road. Witness P-114, KT. 3191-93.

⁹²⁵ Witness P-114, KT. 3195.

⁹²⁶ Witness P-114, KT. 3196-97.

⁹²⁷ Witness P-114, KT. 3196-97.

⁹²⁸ Witness P-114, KT. 3197.

⁹²⁹ Witness P-114, KT. 3197.

⁹³⁰ Witness P-114, KT. 3198.

⁹³¹ One of the two boys was around 15 or 16 years old. Witness P-114, KT. 3198-3200.

⁹³² Witness P-114, KT. 3200-01.

⁹³³ Witness P-114, KT. 3201-02, 3204-05, 3207.

⁹³⁴ Witness P-114, KT. 3210 (private session). Witness P-114 also testified that one of the soldiers gave orders to kill the group of around 500 Bosnian Muslim men that Witness P-114 had left before. Witness P-114, KT. 3203. See *supra* section II. D. 2. (a) (i), and in particular paras 223, 224, 228-32, 236.

⁹³⁶ For the involvement of the Bratunac Brigade Military Police, see Ex. P494, entry for 15 July, and see *supra* section II. D. 2. (a) (i).

⁹³⁷ See *supra* section II. D. 2. (a) (i), and in particular paras 218, 219.

⁹³⁸ See *supra* section II. D. 2. (a) (i).

members of the Bratunac Brigade actually captured Bosnian Muslim men from the column as a result of searching the terrain, other than in a few cases.⁹³⁹

259. The Trial Chamber does find, however, that through their participation in searching the terrain, which was conducted by armed members of the Bratunac Brigade in uniform in the area where the column was located on 12, 13 and 14 July, members of the Bratunac Brigade contributed to the decision by Bosnian Muslim men to come down from the hills and surrender, which led to their ultimate capture.

260. The Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt that members of the Bratunac Brigade participated in the killings which occurred along the Konjević Polje-Nova Kasaba road,⁹⁴⁰ in the detention at the Nova Kasaba football field, or in the detention at the Kravica supermarket.

261. The Trial Chamber finds that there is some evidence that elements of the Bratunac Brigade were in the area of the Sandići meadow at the time that men were being detained and killed there. Specifically, Captain Momir Nikolić, an assistant commander in the Bratunac Brigade, was on the Bratunac-Konjević Polje road on 13 July, on which date he saw 10-15 Bosnian Muslims being detained. On 14 July, Colonel Blagojević issued an order to the 4th Battalion to search the terrain in an area that extended to Sandići. The Trial Chamber does not find, however, that this evidence links any elements of the Bratunac Brigade to the actual detention and killings that took place in Sandići on 13 July.

262. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that an officer from the Bratunac Brigade, Momir Nikolić, was present in Konjević Polje on 13 July and was involved in the detention of Bosnian Muslim men there. Momir Nikolić testified to the fact that he instructed the members of the MUP to move the men whom they had captured to the warehouse to be detained. Furthermore, Momir Nikolić testified that he gave these instructions knowing that the men would be transferred to Bratunac and later killed. While the Trial Chamber exercises caution when relying on the testimony of Momir Nikolić, it finds in this instance that the evidence is reliable: the evidence incriminates Momir Nikolić himself and the Trial Chamber can find no motive for Momir Nikolić to provide false evidence that incriminates

⁹³⁹ See *supra* section II. D. 2. (a) (i).

⁹⁴⁰ The evidence supports a finding that the elements of the 3rd and 4th Battalion who were searching the terrain around Konjević Polje did so on 17 and 18 July – after the Bosnian Muslim men had been taken out of the area. See *supra* section II. D. 2. (a) (ii).

himself. The Trial Chamber will discuss the link that can be established between Momir Nikolić and the Bratunac Brigade on 13 July below.⁹⁴¹

263. Finally, the Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that the Bratunac Brigade was involved with the detention and interrogation of two Bosnian Muslim men at the Konjević Polje intersection.⁹⁴² The Trial Chamber further finds that the Bratunac Brigade was involved in bringing the men to Bratunac where they were detained, and at least Rešid Sinanović was questioned and brought to the Vuk Karadžić school, with the knowledge of an officer from the Bratunac Brigade.⁹⁴³

E. Detention and killings in Bratunac town

1. General situation in Bratunac town

264. Thousands of Bosnian Muslim men arrived in Bratunac town during 12 and 13 July and were detained there for between one and three days.⁹⁴⁴ They were put in temporary detention in facilities, such as in and around the Vuk Karadžić School,⁹⁴⁵ in the Bratunac town football stadium, as well as in buses parked along the streets in Bratunac town.⁹⁴⁶ The security situation in the town was tense and chaotic.⁹⁴⁷ The conditions of detention were terrible. The prisoners were deprived of sufficient food and water and suffered in sweltering, crowded conditions in the detention facilities and on the buses.⁹⁴⁸

265. The Trial Chamber has heard evidence describing the layout of Bratunac town and has also been furnished with photographic evidence of the layout of Bratunac town. The Trial Chamber also recalls that it visited Bratunac town during its site visit. Witness P-210 testified that Colonel Blagojević's apartment was approximately 200 metres from the Bratunac Brigade headquarters.⁹⁴⁹

⁹⁴¹ See *infra* section III. A. 2.

⁹⁴² See *supra* section II. D. 2. (a) (ii) (d).

⁹⁴³ See *supra* section II. D. 2. (a) (ii) (d).

⁹⁴⁴ Agreed Facts, 206.

⁹⁴⁵ This school appears to have been a primary school. Srblav Davidović, T. 7753-55; Momir Nikolić, T. 1753. The school is today called the Branko Radičević School. Ljubomir Beatović, T. 9704.

⁹⁴⁶ Agreed Facts, 204. See also Momir Nikolić, T. 1749-50; Srblav Davidović, T. 7709; Mile Janjić, T. 9807-08; Nikola Popović, T. 11077, 11101; Pero Petrović, T. 5499-5500; Witness P-105, T. 1182-83; Milan Gvozdenović, Ex. D225/1, p 3.

⁹⁴⁷ Momir Nikolić, T. 1749-50.

⁹⁴⁸ Witness P-113, KT. 3027-29; Daniel Bosch, Ex. P755, November statement, p. 6, stating that he saw two civilian buses "full of Muslim men [...] both sitting and standing. Those sitting were bent forward. They looked like sardines in a can."; Witness P-110, KT. 2803; Witness P-111, T. 1398. However, some witnesses testified that some prisoners did receive food and water; Srblav Davidović, T. 7710 and Mile Janjić, T. 9848; Witness P-113, KT. 3029-32 (testifying that on 14 July the bus driver turned on the heating in the bus and left it like that for about two to three hours. The Bosnian Muslim men onboard were not given any water and as a result people started to faint).

⁹⁴⁹ Witness P-210, T. 7375. See also Ex. P681, an aerial photograph of Bratunac town on which the location of Colonel Blagojević's apartment has been marked with a triangle.

Photographic evidence shows that the football stadium is very near the Vuk Karadžić School.⁹⁵⁰ The Trial Chamber concludes that distances in Bratunac town centre are generally short.

2. Detention in buses in Bratunac town

266. As has been described above, the transport out of Potočari of the Bosnian Muslim men started in the afternoon on 12 July.⁹⁵¹ The evidence establishes that by 19:00 or 20:00 that night all-in-all around 9,000 to 10,000 Bosnian Muslim men, women, children and elderly had left Potočari on buses and trucks.⁹⁵² While the buses with the women, children and elderly continued from Bratunac town towards Kladanj, the buses containing the Bosnian Muslim men stopped in Bratunac town. As a result, during the night of 12 July large numbers of men were detained on buses parked along the streets in the town centre. The evidence establishes that there three buses were parked outside the Bratunac Municipal Assembly building⁹⁵³ and that many more were standing along the streets from the Vuk Karadžić School to the football stadium.⁹⁵⁴

267. Approximately 80-120 buses and trucks were parked in Bratunac town on the night of 13 July and it is estimated that between 3,500 to 4,500 Bosnian Muslim men were detained in these buses.⁹⁵⁵ A large number of trucks and buses came from Nova Kasaba and Milići and other buses came from Potočari.⁹⁵⁶ Bosnian Muslim men who had surrendered at the Sandići meadow were transported to Bratunac town by at least five or six buses.⁹⁵⁷

268. The buses in Bratunac town were guarded by members of the Republika Srpska armed forces, including by several members of the Bratunac Brigade Military Police Platoon,⁹⁵⁸ the

⁹⁵⁰ Ex. P681, an aerial photograph of Bratunac town on which the Vuk Karadžić School is marked by an “x”. For a description of the distance between the various buildings on the Vuk Karadžić School area, *see infra* section II. E. 3.

⁹⁵¹ *See supra* section II. D. 1. (f).

⁹⁵² Mile Janjić, T. 9776.

⁹⁵³ Srbslav Davidović, T. 7708.

⁹⁵⁴ Ljubisav Simić, T. 7625-26, testifying that upon arriving at the Municipal Assembly building in the morning of 13 July he was informed by the president of the Executive Board, Srbslav Davidović, that these buses had been parked along the street during the night.

⁹⁵⁵ Momir Nikolić, T. 1749-50, estimating that there were between 3,500 to 4,500 men in Bratunac on the evening of 13 July and 2263, testifying that 80-120 buses were in Bratunac town on the evening of 13 July 1995; Mile Janjić, T. 9804-06, and 9809, testifying that on 13 July he saw many buses parked outside the town hall and that the street leading from Hotel Fontana towards the Vuk Karadžić School was full of buses; Nikola Popović T. 11077-79; Pero Petrović, T. 5506-09; Srbslav Davidović, T. 7706-07; Ljubisav Simić, T. 7625-26, testifying that “buses carrying people came to Bratunac and parked from the school all the way up to and including the stadium”; Witness P-113, KT. 3027-29; Witness P-135, T. 5731; Mevludin Orić, T. 1344-45.

⁹⁵⁶ Momir Nikolić, T. 1749; Witness P-110, KT. 2799. Approximately, 1,000 Bosnian Muslim men, who had been separated from the women, children and elderly in Potočari, were transported to Bratunac town and detained there. They were subsequently joined by prisoners who had been captured from the column. Agreed Facts, 203. The prisoners from Potočari and the men captured from the column in the woods were not kept separately. Agreed Facts, 204.

⁹⁵⁷ Kemal Mehmedović, T. 1270-72.

⁹⁵⁸ Mile Janjić, T. 9804-08, testifying that he guarded buses parked along the streets in Bratunac town on 13 July until around 06:00 to 07:00 in the morning on 14 July; Mile Janjić, T. 9804-05, testifying that he saw Bratunac

civilian police of the MUP, as well as by armed civilians who volunteered.⁹⁵⁹ The evidence suggests that there was an apparent fear among the Bosnian Serb forces and population in Bratunac town that the concentration of such large numbers of Bosnian Muslim men, even though unarmed and entirely helpless, posed a threat to their safety.⁹⁶⁰

269. One survivor, who had come from the Sandići meadow and was on one of the buses parked near the *Vihor* garage in central Bratunac town, testified that as soon as the buses had arrived on 13 July Bosnian Serb soldiers started asking the detainees where they were from.⁹⁶¹ Those who answered were taken off the bus and into the garage.⁹⁶² Those remaining in the bus would then hear men being hit and threatened, then screams, shots of fire and silence.⁹⁶³ The men detained in the buses continued to suffer from the lack of food and water.⁹⁶⁴

270. Witness P-111 also spent the night of 13 July on a bus in Bratunac town and testified that the prisoners on the bus were jammed so tightly together that his body was numb. The conditions were unbearable.⁹⁶⁵ Witness P-113, who was detained in a bus near the school, heard shooting throughout the night.⁹⁶⁶ He saw four or five men taken out from the bus. Those men never came back.⁹⁶⁷

3. Detention and killings in and around the Vuk Karadžić School on 12 and 13 July 1995

271. Beginning on 12 July, around 2,000-3,000 men were detained in Bratunac town at the Vuk Karadžić School⁹⁶⁸ and the buildings surrounding it, such as in the school gym, a in a building

Brigade Military Police along the street between the Fontana Hotel and Vuk Karadžić School and outside the MUP headquarters; Nikola Popović, T. 11078, testifying that he started guarding the buses parked along the road, and which had arrived from Konjević Polje, sometime between 19:00-20:00 on 13 July); Zdravko Ilić, Ex. D224/1, p. 2, stating that in the evening on 13 July he was securing a truck with Bosnian Muslim men at the bakery in Bratunac town; Boško Lazić, Ex. D226/1, p. 3, stating that in the evening on 13 July he was ordered by the Bratunac Brigade Military Police Platoon commander Mirko Janković to go and secure the captured Bosnian Muslims who were in the buses parked on the street leading to the Vuk Karadžić School.

⁹⁵⁹ Momir Nikolić, T. 1753-54, testifying that buses that had arrived were being secured by the civilian police as well as by volunteers from Bratunac town; Srblav Davidović, T. 7704-06, testifying that members of the civilian police were guarding three buses parked in front of the municipal building in Bratunac town sometime between 19:00 and 21:00 on 12 July 1995, and T. 7709, testifying that “retired people who had their own weapons were called upon to help guard the buses as there were so few police officers there.”; Nikola Popović, T. 11107.

⁹⁶⁰ Srblav Davidović, T. 7709; Dragan Josipović, Ex. D219/1.

⁹⁶¹ Kemal Mehmedović, T. 1272-75.

⁹⁶² Kemal Mehmedović, T. 1273-75.

⁹⁶³ Kemal Mehmedović, T. 1273-75.

⁹⁶⁴ Kemal Mehmedović, T. 1275.

⁹⁶⁵ Witness P-111 described the conditions in the bus where he was detained as unbearable and said it was like being in hell. Witness P-111, T. 1398-99.

⁹⁶⁶ Witness P-113, KT. 3027-29.

⁹⁶⁷ Witness P-113, KT. 3027-29.

⁹⁶⁸ Dragomir Zekić, T. 8901. The Vuk Karadžić School was two a storey building; Witness P-105, T. 1182; Witness P-210, T. 7383; Ex. P720, sketch of the school (under seal).

called the hangar, and in a nearby secondary school for technical education called “Slobodo, ime ti je Tito”.⁹⁶⁹

272. The Vuk Karadžić School and the various buildings surrounding it were secured by several units of the Republika Srpska armed forces, including by members of the Bratunac Brigade Military Police Platoon,⁹⁷⁰ by the special police,⁹⁷¹ by the civilian police of the MUP,⁹⁷² as well as by members of the Drina Wolves and paramilitary formations.⁹⁷³

273. The prisoners detained at the Vuk Karadžić School building were in a state of shock and frightened.⁹⁷⁴ They were deprived of sufficient water and of medical aid.⁹⁷⁵

274. Prisoners would frequently be taken out of the school by VRS soldiers in camouflage uniforms and policemen in blue uniforms.⁹⁷⁶ One of the survivors testified that prisoners were beaten and assaulted during their detention.⁹⁷⁷ One of the prisoners was brutally beaten by a policeman around the head and shoulders with an automatic rifle, and ended up covered in blood.⁹⁷⁸ He was later called outside by the same policeman and those inside heard awful screams. The

⁹⁶⁹ According to some witnesses, the men detained in the Vuk Karadžić School had been captured on the Kravica-Konjević Polje road and were brought there on the night of 12 July 1995; Srbislav Davidović, T. 7753-55; Ljubisav Simić, T. 7625-26; Witness P-135, T. 5742 (testifying that the “Slobodo, ime ti je Tito” (“Freedom, your name is Tito”) secondary school is 50 metres from the hangar, which in turn is 100-150 metres from the Vuk Karadžić School); Witness DP-101, T. 7916 (closed session), testifying that the “Slobodo, ime ti je Tito” school is also called the “building engineering school”.

⁹⁷⁰ Witness P-135, T. 5732-33, 5742-45, testifying that he recognised members of the Bratunac Brigade Military Police Platoon outside the Vuk Karadžić School, as well as at the School “Slobodo, ime ti je Tito”, in the afternoon on 13 July; Witness P-210, T. 7379-80, testifying that he saw members of the Bratunac Brigade Military Police Platoon at the Vuk Karadžić School on 12 July; Ljubomir Beatović, T. 9704-05, testifying that he visited the Vuk Karadžić School around noon on 13 July and saw three members of the Bratunac Brigade Military Police Platoon and two members of the Bratunac Brigade 2nd Battalion inside the school; Mile Janjić, T. 9807-08, testifying that he and members of the Bratunac Brigade Military Police Platoon guarded buses at the Vuk Karadžić School from the evening on 13 July until around 06:00 to 07:00 on 14 July; Nikola Popović, T. 11102-03, testifying that he had arrived in Bratunac town with a convoy consisting of around 15 buses which had left Potočari at 14:00 or 15:00 on 13 July and that he and other members of the Bratunac Brigade military police had continued to guard these buses once they had reached the Vuk Karadžić School. Popović further testified that the military police had remained outside the school until 19:00 or 20:00, Popović also testified that the Drina Corps Military Police arrived after 20.00-21.00, but that they did not stay to guard the prisoners.

⁹⁷¹ Nikola Popović, T. 11103, testifying that also the special police were guarding the prisoners.

⁹⁷² Witness P-135, T. 5740, testifying that he saw civilian police at the hangar behind the Vuk Karadžić School in the afternoon on 13 July; Witness P-210, T. 7379, testifying that he saw civilian policemen outside Vuk Karadžić School. *See also* Momir Nikolić, T. 1753, testifying that he was informed by Mirko Janković, commander of the Bratunac Brigade Military Police Platoon, that also elements of the Bratunac SJB had been added to the security.

⁹⁷³ Witness P-110 testified that during the night in the hangar near the Vuk Karadžić School, soldiers introduced themselves saying “this one is an Arkanovac”. The Trial Chamber notes that ‘Arkanovac’ is a name used for members of the paramilitary forces led by Arkan. Other Bosnian Serb soldiers said that they belonged to the Drina Wolves. Witness P-110, KT. 2805-07.

⁹⁷⁴ Ljubomir Beatović, T. 9706-09.

⁹⁷⁵ Witness P-105, T. 1188-89.

⁹⁷⁶ Witness P-105, T. 1185.

⁹⁷⁷ Witness P-105, T. 1184-85. He testified that when he and other prisoners arrived at the school the soldiers started immediately maltreating them. Witness P-105, T. 1184.

⁹⁷⁸ Witness P-105, T. 1184-85.

man never returned.⁹⁷⁹ Men were removed in this manner on several occasions and day and night the sound of prisoners groaning and screaming outside the school could be heard.⁹⁸⁰

275. On 12 July, Colonel Blagojević ordered one of his bodyguards, Witness P-210, to stop by the Vuk Karadžić School on his way home⁹⁸¹ where there were people “from Srebrenica”.⁹⁸² Colonel Blagojević told him to:

see that everything was all right there and to inform the policemen who were there, to tell them that there shouldn't be any problems.⁹⁸³

Witness P-210 understood this to mean nobody should be allowed to come in to the school and mistreat the prisoners.⁹⁸⁴ Witness P-210 was told to report back to Colonel Blagojević if he encountered any problems.⁹⁸⁵ The witness then went to the school where he saw both members of the Bratunac Brigade Military Police as well as members of the civilian police. He could also hear that there were prisoners in the school gym right behind the school, however he did not enter the gym.⁹⁸⁶ Witness P-210 “conveyed [...] Colonel Blagojević's orders” to the military police but did not see any problems. He then left the premises.⁹⁸⁷ The following day at 07:00, Witness P-210 met Colonel Blagojević, who asked if he had seen anything unusual at the school and the witness said that he had not.⁹⁸⁸

276. On the evening of 12 July, prisoners were detained in a warehouse-looking building called the hangar, which was located behind the Vuk Karadžić School.⁹⁸⁹ The hangar became so full that there was not enough space for everyone to sit down and the detained men complained that they would suffocate due to the lack of space and air.⁹⁹⁰ The soldiers threatened to kill them if they did not keep silent.⁹⁹¹ One of the survivors testified after soldiers asked the prisoners where they were from. One man who responded was taken from the hangar, and the prisoners then heard blunt

⁹⁷⁹ Witness P-105 said “He [the prisoner] had to go out. Then shouts and screams could be heard. I can describe everything to you, but I can't describe the sounds that we heard. He made various sounds as he was screaming and he never returned again.” Witness P-105, T. 1184-85.

⁹⁸⁰ Witness P-105, T. 1185-86; Mile Janjić, testified that during the night “volleys of automatic gunfire could be heard coming from the direction of the school. Half an hour prior to the shooting I heard shouts coming from the direction of the school. After the shooting the shouts were not heard again.” Mile Janjić, T. 9811-12.

⁹⁸¹ Witness P-210, T. 7404.

⁹⁸² Witness P-210, T. 7376.

⁹⁸³ Witness P-210, T. 7376.

⁹⁸⁴ Witness P-210, T. 7376.

⁹⁸⁵ Witness P-210, T. 7377.

⁹⁸⁶ Witness P-210, T. 7379, 7405.

⁹⁸⁷ Witness P-210, T. 7379.

⁹⁸⁸ Witness P-210, T. 7408.

⁹⁸⁹ Momir Nikolić, T. 1753-54; Witness P-110, KT. 2800-01, 2803. Witness P-110 testified that “approximately 10 to 15 soldiers were waiting for the buses at the hangar”; Witness P-110, KT. 2801; Nenad Đokić, 5446-67, testifying that the hangar was within the school area; Witness P-135, T. 5739, testifying that the hangar was used for the training of car mechanics.

⁹⁹⁰ Witness P-110, KT. 2801-03.

⁹⁹¹ Witness P-110, KT. 2803.

blows and his screams and moans.⁹⁹² When the screams stopped, the soldiers came back with flashlights and called out again for people from various towns to identify themselves. When no prisoners responded, the soldiers selected people at random with the beam of a flashlight.⁹⁹³ On a few occasions, soldiers brought beaten up prisoners back into the hangar.⁹⁹⁴ Some men had to hold badly beaten prisoners due to the lack of space and some of the wounded died overnight.⁹⁹⁵

277. On 13 July, the soldiers allowed the prisoners to take the dead bodies out of the hangar. Ten men were chosen to load the bodies in vehicles and these men never came back.⁹⁹⁶ Trucks also arrived a second time to take away dead bodies and also on this occasion ten prisoners were ordered to load the bodies. Also these ten men were never seen again.⁹⁹⁷ Prisoners returning from the toilet would be selected at random and killed.⁹⁹⁸ In the evening of 13 July, General Mladić arrived at the hangar and told prisoners that they would be taken to Kalesija to be exchanged.⁹⁹⁹ Mladić then told the men to find out how many of them were in the hangar and after a count it turned out that there were 296 prisoners in the hangar.¹⁰⁰⁰

278. Ljubomir Beatović, who in July 1995 served as an orderly in the Bratunac Brigade, testified that at around 11:00 on 13 July he met Colonel Blagojević at the office of the duty officer of the brigade.¹⁰⁰¹ Colonel Blagojević told him to go to the Vuk Karadžić School, where there was a group of people “from Srebrenica”. Beatović was also told:

to visit them to take medicaments there and to see what their health condition was, whether there were any wounded or sick people among them.¹⁰⁰²

Beatović then passed by the health centre, a five-minute walk, to pick up a few boxes of painkillers, which was the only kind of medication that he was permitted to administer to help. He then walked between five and ten minutes to reach the school from the health centre. Beatović testified that there was nobody outside the school building but that when he went inside he saw three military police officers and two soldiers. The three military police were from the Bratunac Brigade’s military police and the two soldiers were from the Bratunac Brigade’s 2nd Battalion.¹⁰⁰³ Beatović saw that there were “about a hundred” prisoners in a small sports hall and in two

⁹⁹² Witness P-110, KT. 2804.

⁹⁹³ Witness P-110, KT. 2803-04.

⁹⁹⁴ Witness P-110, KT. 2804.

⁹⁹⁵ Witness P-110, KT. 2804-05.

⁹⁹⁶ Witness P-110, KT. 2804.

⁹⁹⁷ Witness P-110, KT. 2805-08.

⁹⁹⁸ Witness P-110, KT. 28006-7, testifying that the prisoners were struck on the head with an iron rod by one soldier, and hit in the back with the blade of a hatchet by another soldier.

⁹⁹⁹ Witness P-110, KT. 2808.

¹⁰⁰⁰ Witness P-110, KT. 2808.

¹⁰⁰¹ Ljubomir Beatović, T. 9701.

¹⁰⁰² Ljubomir Beatović, T. 9701-02.

¹⁰⁰³ Ljubomir Beatović, T. 9704-05.

classrooms. The prisoners were sitting on the floor with their heads bowed and Beatović could see that they were in a state of shock and were frightened. He asked loudly if anyone had any health problems, if anyone was injured or in pain but there was no reaction from the men.¹⁰⁰⁴ Beatović subsequently returned to the Bratunac Brigade headquarters but did not report back to Colonel Blagojević.¹⁰⁰⁵

279. In the afternoon on 13 July, Witness P-135, a member of the Bratunac Brigade went to the Vuk Karadžić School in an attempt to “establish a contact with the detainees in order to locate a record of the [ABiH] minefields”.¹⁰⁰⁶ Arriving at the school he saw ten to fifteen members of the Bratunac Brigade military police, including the commander of the Military Police Platoon, Mirko Janković.¹⁰⁰⁷ Witness P-135 also recognised a Pinzgauer vehicle, as well as its operator, belonging to the Bratunac Brigade 3rd Battalion.¹⁰⁰⁸ In order to gain access to the school, Witness P-135 told the military police that “Colonel Blagojević had ordered [him] to get in and try to locate a record of the minefields.” This worked and he was let into the school and went up to the second floor.¹⁰⁰⁹ Once inside, Witness P-135 noticed that the school was full of men, only men, whom he believed were “former soldiers of the Srebrenica army, but they wore civilian clothes.”¹⁰¹⁰ He then tried to make contact with the detainees however none of them wanted to speak with him.¹⁰¹¹ Witness P-135 then walked to the nearby hangar, where he saw two civilian policemen.¹⁰¹² He also saw blood on one of the walls of the hangar but there were no prisoners there; they were instead in three or four of the hangar’s classrooms.¹⁰¹³ Following this, Witness P-135 went to the “Sloboda, ime ti je Tito” School where he made contact with a member of the military police of the Bratunac Brigade, who let him in.¹⁰¹⁴ There were prisoners also in this location.¹⁰¹⁵ After this, Witness P-135 left the Vuk Karadžić area.¹⁰¹⁶

280. On 13 July, prisoners were also detained in buses parked outside the Vuk Karadžić School.¹⁰¹⁷ A mentally retarded Bosnian Muslim man was taken from one bus and murdered. The

¹⁰⁰⁴ Ljubomir Beatović, T. 9706-07.

¹⁰⁰⁵ Ljubomir Beatović, T. 9707-08.

¹⁰⁰⁶ Witness P-135, T. 5731-32, 5734, 5738. Witness P-135 was unsure who gave him the order to go to the Vuk Karadžić School but testified that “there is a strong possibility that I myself concluded that this [was] something that should be done”, Witness P-135, T. 5730.

¹⁰⁰⁷ Witness P-135, T. 5732, 5734, testifying that he recognised the military police from their insignia and their white military police belts, T. 5733, identifying Mirko Janković.

¹⁰⁰⁸ Witness P-135, T. 5732.

¹⁰⁰⁹ Witness P-135, T. 5734, 5736.

¹⁰¹⁰ Witness P-135, T. 5736.

¹⁰¹¹ Witness P-135, T. 5738.

¹⁰¹² Witness P-135, T. 5739-41.

¹⁰¹³ Witness P-135, T. 5740-41.

¹⁰¹⁴ Witness P-135, T. 5743, also testifying that there was a civilian policeman at the entrance to this school.

¹⁰¹⁵ Witness P-135, T. 5743-44.

¹⁰¹⁶ Witness P-135, T. 5745.

¹⁰¹⁷ Mevludin Orić, T. 1345.

man had fallen asleep and, upon being suddenly awoken by a member of the military police, accidentally hit the policeman's flak jacket.¹⁰¹⁸ The man was removed from the bus and taken to the school. A short burst of gun-fire was heard and the man did not come back.¹⁰¹⁹ Another prisoner was interrogated by a Bosnian Serb soldier about an ambush that had taken place. He was beaten on the head, stomach and thighs.¹⁰²⁰ Groups of men were taken from the buses to the school all through the night and did not return.¹⁰²¹

281. On 14 July 1995, Momir Nikolić was informed by Dragan Mirković, commander of the *Rad* Utilities Company, that between 80 and 100 Bosnian Muslims had been killed during the night of 13 to 14 July around the Vuk Karadžić School.¹⁰²² Moreover, on 15 July, a representative for the Bratunac Department of Defence was informed that there were corpses in the Vuk Karadžić School.¹⁰²³ Forty to fifty bodies were discovered in the classrooms, both on the ground floor and the first floor.¹⁰²⁴ There was a terrible stench.¹⁰²⁵ The representative for the Department of Defence arranged for a truck which transported the bodies from the school to Glogova where a grave had already been dug.¹⁰²⁶ After the bodies had been removed, approximately 20-30 women from Bratunac, who had been arrested for looting in Potočari and Srebrenica, were ordered by the municipality to clean up the school.¹⁰²⁷

282. Momir Nikolić testified that he met Colonel Blagojević on the evening of 12 July at the Bratunac Brigade headquarters and that he told Colonel Blagojević about the separation, detention of the men at the Vuk Karadžić School and about the plan that they would later be killed.¹⁰²⁸

¹⁰¹⁸ Mevludin Orić, T. 1347-48, testifying that the policeman said "look at him, he hit me" and then he cursed. The Bosnian Serb soldiers outside the bus responded "let's kill him, let's slaughter him, throw him out!".

¹⁰¹⁹ Mevludin Orić, T. 1347.

¹⁰²⁰ Mevludin Orić, T. 1348 (testifying that a military policeman however threw the soldier off the bus as the soldier was drunk).

¹⁰²¹ Mevludin Orić testified that "all night shooting could be heard from the school. People were screaming, moaning. It was horrible to listen to that kind of thing all night. But we had to. Whoever was taken out in those groups was never returned to the bus."; T. 1348-49; Witness P-113, KT. 3029, testifying that during the night of 13 to 14 July four or five men were taken off the bus, which was parked near the Vuk Karadžić School, and that the men never returned.

¹⁰²² Momir Nikolić, T. 1762-64. *See also* Sribislav Davidović, T. 7753, 7756-57, testifying that after all the prisoners had left, *i.e.* after 14 July, he heard that there were some corpses around the Vuk Karadžić school.

¹⁰²³ Witness DP-101, T. 7916-17 (closed session).

¹⁰²⁴ Witness DP-101, T. 7917-18 (closed session). Dragan Mirković testified that he saw about six corpses at the school, but was later informed that there were many more, T. 7954. However Momir Nikolić testified that Dragan Mirković told him that there was 80-100 Bosnian Muslims. Momir Nikolić, T. 1762-63.

¹⁰²⁵ Witness DP-101 (closed session), T. 7883-84 (closed session).

¹⁰²⁶ Witness DP-101 (closed session), T. 7919, 7920 (closed session). *See also* Dragan Mirković, who testified that a group of people from the utilities company was told to collect bodies at Vuk Karadžić School. They had heard the shooting around the school; Dragan Mirković, T. 7953-54.

¹⁰²⁷ Witness DP-101 (closed session), T. 7883-84 (closed session).

¹⁰²⁸ Momir Nikolić, T. 1701.

4. Transport of prisoners from Bratunac to the Zvornik area - 13 to 15 July

283. On the evening of 13 July, some of the prisoners who had been detained in Bratunac were taken by buses and trucks to Petkovci, a journey which took approximately five hours.¹⁰²⁹ The conditions in the buses and trucks were unbearable.¹⁰³⁰ One witness testified that the prisoners were extremely desperate for water; one man drank his own urine.¹⁰³¹ One witness tried to look and see what was happening but had a rifle pointed at him and was told to get down.¹⁰³² Another witness testified that on one occasion the driver started the engine, turned up the heat and then left the bus.¹⁰³³ This continued for about two to three hours and people started fainting because of the heat. A soldier arrived and told them they were going to be exchanged. The bus started moving a bit later, driving northwards through Zvornik up to the area of Pilica. The men were transported to a school in Pilica and were ordered to run up towards the school.¹⁰³⁴ They were put in a crowded hall.¹⁰³⁵

284. On 14 July, members of the Bratunac Brigade were involved in the transfer of prisoners from Bratunac to Zvornik.¹⁰³⁶ Members of a special unit wearing bluish-black uniforms boarded the buses.¹⁰³⁷ Nikola Popović reported to Mirko Janković who ordered him to accompany him to Zvornik in order to escort the convoy of buses holding the prisoners.¹⁰³⁸ Popović saw a man signalling to him to follow a car and Mirko Janković, Nikola Popović and Mile Petrović followed in the UNPROFOR APC.¹⁰³⁹ Throughout the journey the car was in front of the APC.¹⁰⁴⁰

285. The Bosnian Muslim men, from Potočari as well as from Sandići and Nova Kasaba, who had spent the night on 13 July in Bratunac town went in a long column of buses the following day to various temporary detention facilities and execution sites in the Bratunac and Zvornik municipalities. Members of the Bratunac Brigade Military Police were part of the VRS units that

¹⁰²⁹ Witness P-110 said that six buses arrived; Witness P-110, KT. 2810, KT. 2813; Witness P-111, T. 1403; Ex. P14.2, photograph of entrance of the Petkovci school.

¹⁰³⁰ Witness P-110 testified that "there were more men on the buses than there were seats." Witness P-110, KT. 2811.

¹⁰³¹ Witness P-111, T. 1402.

¹⁰³² Witness P-111, T. 1399-1400.

¹⁰³³ Witness P-113, KT. 3029-30.

¹⁰³⁴ Witness P-113, KT. 3031.

¹⁰³⁵ Witness P-113, KT. 3031-32.

¹⁰³⁶ Nikola Popović, T. 11082, 11109-10.

¹⁰³⁷ Nikola Popović, T. 11109-10.

¹⁰³⁸ He did this subsequent to an order from Momir Nikolić. Nikola Popović, T. 11082-83.

¹⁰³⁹ Nikola Popović, T. 11082-87, 111093.

¹⁰⁴⁰ Nikola Popović, T. 11093.

were escorting these men to the Zvornik municipality and guarding them at the detention facilities.¹⁰⁴¹

5. Conclusions and Findings related to the Role of the Bratunac Brigade

286. The Trial Chamber finds that there is sufficient evidence to support a finding beyond reasonable doubt that members of the Bratunac Brigade Military Police were involved in providing security for the buses filled with Bosnian Muslim prisoners parked around the town on the nights of 12 and 13 July.¹⁰⁴² As such, the Bratunac Brigade Military Police contributed to the detention of Bosnian Muslim men on buses on the nights of 12 and 13 July.

287. The Trial Chamber finds that there is sufficient evidence to support a finding beyond reasonable doubt that elements of the Bratunac Brigade were involved in the detention of Bosnian Muslim men in and around the Vuk Karadžić School on the nights of 12 and 13 July.¹⁰⁴³ Specifically, the Trial Chamber finds that elements of the Bratunac Brigade Military Police were providing security at the Vuk Karadžić School. The Bratunac Brigade Military Police were stationed outside the school and played a role in controlling who could enter the school.¹⁰⁴⁴ The Trial Chamber finds that there is reliable evidence that other elements of the Bratunac Brigade were present at the Vuk Karadžić school: at least two members of the Bratunac Brigade were sent to the school by Colonel Blagojević to check on the prisoners and make sure that they were treated properly. Members of the Bratunac Brigade 2nd battalion were seen in the Vuk Karadžić school on 13 July.¹⁰⁴⁵ Additionally a member of the Bratunac Brigade command went to the Vuk Karadžić school on 13 July in order to find information from the prisoners about ABiH minefields.¹⁰⁴⁶

288. The Trial Chamber finds that there is insufficient evidence to support a finding beyond reasonable doubt that elements of the Bratunac Brigade were involved in the beating and mistreatment of Bosnian Muslim men detained in Bratunac town in either the buses or in the buildings around the Vuk Karadžić School. While the Trial Chamber finds there is sufficient evidence to establish that the detainees were beaten and mistreated, it does not find sufficient evidence to identify who committed these crimes. It does find, however, that elements of the Bratunac Brigade would have known of such mistreatment as it occurred on a widespread basis: screams and shooting could be heard coming from the school and around the town throughout the

¹⁰⁴¹ Momir Nikolić, T. 1761-62; Richard Butler, T. 4534; Ex. P499, Bratunac Brigade Military Police log for 17 July 1995, stating that one police patrol remained in Pilica to guard the Muslims.

¹⁰⁴² See *supra* section II. E. 2, and in particular para. 279.

¹⁰⁴³ See *supra* section II. E. 3, and in particular, para. 278.

¹⁰⁴⁴ See *supra* section II. E. 3, and in particular, para. 279.

¹⁰⁴⁵ See *supra* section II. E. 3, and in particular, para. 278.

¹⁰⁴⁶ See *supra* section II. E. 3.

night. Furthermore, a member of the Bratunac Brigade who went into the Vuk Karadžić School testified to seeing blood on the walls. Finally, Momir Nikolić testified that on 15 July he was informed that men had been killed in the school.

289. Furthermore, the Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that elements of the Bratunac Brigade contributed to the inhumane conditions under which the Bosnian Muslim men were detained. While the Trial Chamber recognises that there were some actions taken to make conditions better such as Vidoje Blagojević sending the brigade orderly to bring some medicine to the detainees and individual members of Bratunac Brigade giving water to friends, the Trial Chamber finds that there was an overall failure to take the steps that they could have taken to at least alleviate the situation for the Bosnian Muslim men. Through the guarding of detention sites, members of the Bratunac Brigade Military Police contributed to the continuation of the detention of the Bosnian Muslim men in overcrowded buses and buildings, without food, water or medical treatment, as was needed in some cases.

290. Finally, the Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that members of the Bratunac Brigade Military Police participated in the transfer of Bosnian Muslim prisoners from Bratunac to Zvornik on 14 July.¹⁰⁴⁷

¹⁰⁴⁷ See *supra* section II. E. 4.

F. Organised Mass Executions and Burial Operations

1. Mass Executions and Burial Operations

291. There is ample evidence before the Trial Chamber of a wide-scale and organised killing operation carried out by VRS and MUP forces from 12 until 19 July 1995. Thousands of Bosnian Muslim men from the Srebrenica enclave were executed and buried in different locations in the Srebrenica, Bratunac and Zvornik municipalities.¹⁰⁴⁸

(a) Potočari

292. In the afternoon of 12 July, a Bosnian Muslim man witnessed the killing of an estimated 100 Bosnian Muslim men¹⁰⁴⁹ by approximately ten VRS soldiers close to the UN compound in Potočari over the course of three hours.¹⁰⁵⁰ He described that the men were lead onto some kind of scaffolding, decapitated with a “kind of machete” and that their heads were thrown in a pile. Some of the VRS soldiers left from time to time to bring more Bosnian Muslim men to be killed at the site. The dead bodies were put in blue bags, and loaded onto a truck, that left the area on several occasions to return again.¹⁰⁵¹

(b) Jadar River

293. On the morning of 13 July, 16 Bosnian Muslim men who had been captured from the column were transported by bus from the warehouse in Konjević Polje to the Jadar River bank.¹⁰⁵² Amongst them was a 15 year old boy. After the men got off the bus they were lined up alongside the river. Four Serb soldiers who had escorted them in the bus opened fire with their automatic rifles. One of the Bosnian Muslim men survived as he threw himself into the river after he was hit by a bullet.¹⁰⁵³ This witness recognised one of the soldiers participating in the killings as a member of the 2nd PJP Company.¹⁰⁵⁴

¹⁰⁴⁸ Ex. P731, Chart of Srebrenica-related Missing and Dead Persons, Helge Brunborg. Helge Brunborg testified that the total number of persons missing or killed in relation to the Srebrenica enclave amounted to 7475 persons. Helge Brunborg, T. 6968.

¹⁰⁴⁹ Hidden behind a shed, Bego Ademović and his colleague Dzermal Karić counted how many men were killed with the aid of a pencil and a cigarette box. The pencil broke at 83 and the killings continued until over one hundred; Bego Ademović, KT. 1595-96.

¹⁰⁵⁰ Between the Zink factory and Aljo's house; Bego Ademović, KT. 1593-94, 1625.

¹⁰⁵¹ Bego Ademović, KT. 1594-96, 1619-20.

¹⁰⁵² According to Witness P-175 two Muslim men were left behind and nothing is known about them. Witness P-175 KT. 3275.

¹⁰⁵³ Witness P-175, KT. 3271-78, 3286-87.

¹⁰⁵⁴ Witness P-175 KT. 3267 (private session), 3272. Witness P-175 identified this soldier as being Nenad Deronjić, Nenad Deronjić was a member of the 2nd PJP Company. Nenad Deronjić, T. 8187, 8201. During his testimony Nenad Deronjić denied having participated in the killings; T. 8192.

(c) Cerska Valley

294. On 13 July at around 14:00 a Bosnian Muslim man observed from a hill where he was hiding two or three buses leaving from Konjević Polje towards Nova Kasaba.¹⁰⁵⁵ He saw the buses turning right off the asphalt road in the direction of the village of Cerska. The buses were escorted by an APC carrying soldiers in camouflage uniforms, and another vehicle. About five minutes later an excavator followed the other vehicles. The witness lost sight of the vehicles when they turned around a bend, but after about 10 minutes he heard the sound of light arm and machine gun fire. The shooting lasted for about half an hour. He then saw the three buses coming back followed by the APC and some time later the excavator.¹⁰⁵⁶

295. In September 1995, the witness found a mass grave next to the road in Cerska Valley¹⁰⁵⁷ which suggests that men were shot in the valley and just covered with soil on the spot. There is forensic evidence from the exhumation of the human remains in Cerska Valley, which establishes that the grave contained at least 150 male individuals, of whom 147 were dressed in civilian clothes. The cause of death of 149 men was gunshot wounds.¹⁰⁵⁸ Many of the victims wrists had been bound behind their backs with wire bindings.¹⁰⁵⁹ Investigation into the cartridges discovered at the grave site revealed that the cartridges found in the grave itself matched with those found along the road at the gravesite, indicating that the victims in the grave were shot at the gravesite.¹⁰⁶⁰ The bodies of the victims were located in an incline along the roadside. The bodies had been covered by transferring earth removed from the roadside opposite to the burial site, using earthmoving equipment.¹⁰⁶¹

(d) Kravica Warehouse

(i) Executions

¹⁰⁵⁵ Witness P-109, KT. 2736-37.

¹⁰⁵⁶ Witness P-109, KT. 2737-39, 2741, 2781.

¹⁰⁵⁷ Witness P-109, KT. 2751-53.

¹⁰⁵⁸ Ex. P740 (Report on the Examination of Human Remains from Eastern Bosnia in 2000 by Jose Baraybar), p. 5. According to Ex. P740, 24 victims were aged between 13 and 24 years, while 126 victims were older than 24 years. *Id.* Ex. P751, Expert Report of William Haglund, forensic investigation of the Cerska grave site (Report of William Haglund, 15 June 1998), p. vii-ix. According to Ex. P751 there was also evidence of affiliation with the Muslim religion found on nine individuals. A quarter of the witnesses were ligatured. *Id.* See also William Haglund, KT. 3733.

¹⁰⁵⁹ Ex. P751, Report of William Haglund, 15 June 1998, p. 28.

¹⁰⁶⁰ Ex. P751, Report of William Haglund, 15 June 1998, p. 10.

¹⁰⁶¹ Ex. P751, Report of William Haglund, 15 June 1998, p. 28.

296. On the evening of 13 July, at least 1,000 Bosnian Muslim men were killed in the Kravica Warehouse.¹⁰⁶² There are only two known survivors from this execution site. They testified that they were taken to the Kravica Warehouse by foot or by bus from a meadow near Sandići,¹⁰⁶³ where they had been detained since their capture earlier that day.¹⁰⁶⁴ One of the survivors, Witness P-106, testified that the doors of the warehouse were guarded by Bosnian Serb soldiers.¹⁰⁶⁵ According to another survivor, Witness P-107, the soldiers took any valuables that the Bosnian Muslim men had on them.¹⁰⁶⁶

297. Witness P-106 testified that the soldiers started shooting as soon as the warehouse was full of people.¹⁰⁶⁷ The soldiers were not only firing with infantry weapons and machine-guns into the warehouse through the doors and the windows, but also threw hand grenades into the warehouse.¹⁰⁶⁸ Witness P-106 described that:

there was firing everywhere. There was so much dust. There was so much firing; you didn't know where the shots were coming from. I couldn't see anything. That was just full of noise. Next to me was sitting a man from Vlasenica called Salko Redzić. He was killed there in the warehouse. We just sat down and put our heads next to each other. And he died. And after darkness fell, there was no more shooting.¹⁰⁶⁹

298. Witness P-106 estimated that the firing lasted for four hours.¹⁰⁷⁰ Later in the night of 13 July, Witness P-106 found a neighbour hiding in a kind of reception booth in the warehouse. When he tried to leave the booth, his neighbour was shot and killed.¹⁰⁷¹ In order to avoid being killed, Witness P-106 hid under two dead bodies and spent the whole night like this.¹⁰⁷² Witness

¹⁰⁶² Witness P-106, T. 1228-29. Witness P-106 testified that the number of men on the field from which they were all taken to the warehouse was 2,000. *See also* Witness P-107, KT. 2520. Witness P-107 stated that there were around 1,000 to 1,500 men in the section of the warehouse in which he had been detained.

¹⁰⁶³ From the testimony of Miloš Stupar it can be concluded that it was Sandići meadow. Miloš Stupar, T. 8340-42.

¹⁰⁶⁴ *See supra* section II. D. 2. (a) (ii) (b).

Witness P-106, T. 1216-18. Witness P-106 described that after General Mladić had given a speech to the Muslim men telling them that they would be exchanged, they were marched in columns guarded by soldiers with automatic rifles to the Kravica Warehouse; Witness P-107, KT. 2510, Witness P-107 testified that they were taken there by bus.

¹⁰⁶⁵ Witness P-107 testified that the Bosnian Serb soldiers were wearing camouflage, that one of the soldiers had a blue UN helmet, and some of the soldiers had flak jackets. Witness P-107,

¹⁰⁶⁶ Witness P-107, KT. 2519.

¹⁰⁶⁷ Witness P-106, T. 1221.

¹⁰⁶⁸ Witness P-106, T. 1222-23; Witness P-107, KT. 2524. *See also* Ex. P561, Report by Michael J. Hedley, pp 9-10, stating that the forensic investigators found several parts, such as release pins, of grenades outside the warehouse; Ex. P565: expert report of Michael S. Maloney and Michael Brown, p. 2-7, stating that the forensic investigators found impacts on the walls inside the building and presence of explosive residue.

¹⁰⁶⁹ Witness P-106, T. 1221-22.

¹⁰⁷⁰ Witness P-106, T. 1245. Witness P-106 gave evidence that the shooting started at around 17:00 and lasted until 21:00. Confronted with the statement of Witness P-107, at KT. 2523, according to whom the shooting started after it became dark, Witness P-106 repeated that the shooting started before night fell. Witness P-106, T. 1245-46.

¹⁰⁷¹ Witness P-106, T. 1222.

¹⁰⁷² Witness P-106, T. 1222.

P-107 managed to escape the warehouse by climbing out of a window.¹⁰⁷³ He was discovered and shot at again. Lying on the ground outside, he pretended to be dead.¹⁰⁷⁴

299. On the morning of 14 July soldiers were asking if anyone was alive or wounded.¹⁰⁷⁵ Witness P-107 gave evidence that the soldiers promised that the Red Cross had come and would take the wounded to the hospital. He described that “whoever could walk and crawl out of the warehouse, they came out.”¹⁰⁷⁶ Then one soldier, who was in command of the others, ordered the survivors to sing Serb songs:

They went on singing for about half an hour or an hour, I'm not sure, then I heard bursts of fire. The fire went on for some time, I don't know for how long, a certain amount of time. They killed those wounded, and later I didn't hear anything anymore [...] they were dragging them inside, into the warehouse.¹⁰⁷⁷

300. The commander of the 2nd Šekovići Detachment of the Special Police Brigade, Miloš Stupar, testified that an incident that happened in the Kravica Warehouse in the late afternoon on 13 July caused the killing of all the detainees in the warehouse. Miloš Stupar testified that while he was at the Sandići Meadow, one of his MUP officers went with the deputy commander of the 2nd Šekovići Detachment to the warehouse to see a neighbour who was among the Bosnian Muslim men being detained at the warehouse.¹⁰⁷⁸ The MUP officer was killed and the deputy commander of the detachment was injured when a Muslim prisoner allegedly grabbed the automatic rifle of one of the Bosnian Serb soldiers. Miloš Stupar claimed that after his injured deputy commander had left the warehouse, the soldiers outside opened fire.¹⁰⁷⁹ According to Momir Nikolić, the “special brigade of the MUP”, which included members of the 2nd Šekovići Detachment, was involved in the Kravica Warehouse killings.¹⁰⁸⁰ Miloš Stupar, the commander of

¹⁰⁷³ Witness P-107, KT. 2529.

¹⁰⁷⁴ Witness P-107, KT. 2530-33.

¹⁰⁷⁵ The soldiers said that anyone who was alive, should come out and join their army. Witness P-106, T. 1223.

¹⁰⁷⁶ Witness P-107, KT. 2534. Witness P-106 also testified that those who responded to the question if anyone was alive or wounded were killed. Witness P-106, T. 1223.

¹⁰⁷⁷ Witness P-107, KT. 2535.

¹⁰⁷⁸ Miloš Stupar, T. 8345.

¹⁰⁷⁹ Miloš Stupar testified that he was told about the incident by Rade Čuturić, who got wounded, when he drove him to the hospital; Miloš Stupar, T. 8346-48, 8354. Miloš Stupar also told Dragan Obrenović about the incident on 15 July; Dragan Obrenović, T. 2528. In Ex. P464 (book on wounded soldiers, 1992-1996) the name of the wounded MUP officer Rade Čuturić nicknamed “Oficir” is listed with a time stamp saying 17:40 on 13 July 1995, and the name of the killed MUP officer Krsto Dragečević called “Krle” saying 19:00 and “deceased”; T. 8356-58. Another witness, Witness DP-102, heard about the incident from people passing by Sandići meadow. Witness DP-102 T. 8270-72.

The Defence for Vidoje Blagojević has tendered a letter by Dragomir Vasić, the commander of the Zvornik CJB, dated 28 April 2003, concerning the Kravica Warehouse incident under Ex.D36/1. The Trial Chamber does not find that the evidence presented in this letter has sufficient probative value to be considered, due to the fact that the letter contains hearsay evidence which has not been examined through examination-in-chief and cross-examination.

¹⁰⁸⁰ Momir Nikolić learned about their participation on 14 July. Momir Nikolić, T. 1737. Momir Nikolić also testified that one of the people who told him about the Kravica Warehouse massacre was Miodrag Josipović, chief of the public security station. Momir Nikolić, T. 1734.

the 2nd Šekovići Detachment of the Special Police Brigade, testified that when he drove past the Kravica Warehouse on 13 July to pick up the wounded deputy commander of the Detachment, he saw soldiers he did not know firing their guns.¹⁰⁸¹

301. On 14 July, Jovan Nikolić, a Bosnian Serb who had been a member of the Bratunac Brigade, but was the director of an agricultural co-operative in Bratunac in 1995,¹⁰⁸² went to the Kravica Warehouse to check on the sales of the raspberries that were sold from the warehouse.¹⁰⁸³ Another witness, Perica Vasović, who worked at the agricultural co-operative on work obligation, testified that he too went to the warehouse to check on the sales and delivery of the raspberries.¹⁰⁸⁴

302. Jovan Nikolić saw many corpses outside the warehouse when he arrived at the Kravica Warehouse. He also witnessed executions that were going on at the other end of the warehouse. He described the executions as being carried out in the following way: men were lined up and told to lie down. Four soldiers were ordered to “vaccinate” them, meaning to shoot them in the back of the head. Then an order was issued to “check the vaccination” by shooting them below the left shoulder blade.¹⁰⁸⁵ Jovan Nikolić started yelling at the soldiers, who then turned their guns toward him, but Perica Vasović and a few villagers from Kravica intervened.¹⁰⁸⁶

303. Jovan Nikolić claimed that he did not recognise any of the soldiers, who took part in the killings on the morning of 14 July. He testified that they wore “traditional VRS uniforms” and masks over their faces.¹⁰⁸⁷ Perica Vasović testified that he saw “unknown persons in camouflage uniforms” at the warehouse and that men wearing masks were carrying out the executions.¹⁰⁸⁸ A member of the former Department of Defence in Bratunac also testified that on 14 July at around noon he saw several groups of soldiers unknown to him at the warehouse and approximately 200 or 300 corpses placed in front of the warehouse.¹⁰⁸⁹

(ii) Burials at Glogova

304. On the evening of 13 July, Colonel Beara, together with Miroslav Deronjić and others, began organising the burials of the Bosnian Muslim men killed at the Kravica Warehouse. A

¹⁰⁸¹ Miloš Stupar, T. 8352.

¹⁰⁸² Jovan Nikolić, T. 7997, 8014. Jovan Nikolić testified that he had been the deputy commander of the 1st Battalion of the Bratunac Brigade. Because he was unfit for military service due to an injury he sustained in December 1992, he was not mobilised to the Bratunac Brigade in 1995.

¹⁰⁸³ Jovan Nikolić, T. 8010-11.

¹⁰⁸⁴ Perica Vasović, T. 8087-89.

¹⁰⁸⁵ Jovan Nikolić, T. 8012-13.

¹⁰⁸⁶ Jovan Nikolić, T. 8014; Perica Vasović, T. 8088.

¹⁰⁸⁷ Jovan Nikolić, T. 8013-14; Jovan Nikolić testified that he was attacked by the soldiers, which was one of the reasons why he believed the soldiers were not Bratunac Brigade soldiers. Jovan Nikolić, T. 8014.

¹⁰⁸⁸ Perica Vasović, T. 8088-89. Because on the accent of the soldiers, Perica Vasović thought that the soldiers were from the Sarajevo area.

number of meetings between the civilian authorities and the VRS was held at the SDS offices in Bratunac.¹⁰⁹⁰ It was decided that workers from the *asanacija* unit of the *Rad* Utilities Company and “work obligation unit” of the Bratunac Civilian Protection report in Kravica the next morning to load the bodies onto vehicles.¹⁰⁹¹ Dragan Mirković, the director of the *Rad* Utilities Company in Bratunac and the commander of the Company’s *asanacija* unit,¹⁰⁹² was ordered by Beara to get all men and machinery available to him ready for a burial operation.¹⁰⁹³

305. Some time after midnight another meeting was held at the SDS offices, attended by, among others, Miroslav Deronjić, two unknown VRS officers and Momir Nikolić.¹⁰⁹⁴ Miroslav Deronjić ordered that the Civilian Protection workers should report at Glogova the morning of 14 July.¹⁰⁹⁵ The *asanacija* unit of the *Rad* Utilities Company were to dig a large grave there. At Glogova the *asanacija* unit was to be handed over to Momir Nikolić.¹⁰⁹⁶ However, Dragan Mirković, who had accompanied the *asanacija* unit to Glogova on the morning of 14 July, testified that he did not see Momir Nikolić or Colonel Beara there.¹⁰⁹⁷

306. Between 14 and 16 July, the bodies of the Bosnian Muslim men were taken in trucks from the Kravica Warehouse to be buried at grave sites in Glogova and Ravnice.¹⁰⁹⁸ A loader of the *Rad* Utilities Company was used to load the bodies onto the trucks.¹⁰⁹⁹ It was operated by two members of the Bratunac Brigade: Radenko Djurković,¹¹⁰⁰ and Krsto Simić,¹¹⁰¹ both members of the Workers Battalion of the Bratunac Brigade.¹¹⁰² Krsto Simić testified that on the morning of

¹⁰⁸⁹ Aleksandar Tesić, T. 7809, 7812-13.

¹⁰⁹⁰ Witness DP-101 T. 7872-73 (closed session). Witness DP-101 gave evidence that he met with Miroslav Deronjić and two unknown officers at the SDS offices to get orders. Dragan Mirković testified that he met with Beara and two unknown officers in Miroslav Deronjić’s office on the night of 13 July; Dragan Mirković, T. 7940.

¹⁰⁹¹ Witness DP-101, T. 7872-7874 (closed session).

¹⁰⁹² According to Dragan Mirković, the *Rad* Utilities Company was a public company that in times of war received orders from the president of the Municipal Assembly, the president of the Executive Board and from utility, sanitary and building inspectors. It was not subordinated to the army, but its activities were to be coordinated with those of the army through the civilian authorities. During the war *asanacija* was one of its duties; T. 7965-66, 7938.

¹⁰⁹³ Dragan Mirković, T. 7939-43.

¹⁰⁹⁴ Witness DP-101, T. 7876 (closed session).

¹⁰⁹⁵ Witness DP-101, T. 7876 (closed session). The Trial Chamber has also heard evidence that a member of the *asanacija* unit was taken to a shack in front of the Bratunac Brigade Military Police station, where Momir Nikolić confirmed the order of Dragan Mirković to go to Glogova, Witness P-140, T. 3405.

¹⁰⁹⁶ Witness DP-101, T. 7876-78 (closed session).

¹⁰⁹⁷ Dragan Mirković, T. 7950.

¹⁰⁹⁸ The expert Witness Dean Manning testified as to artefacts located in the Ravnice grave and the Glogova primary grave that were identical to those in the Kravica Warehouse; Dean Manning, T. 7179-81, 7210-11.

¹⁰⁹⁹ Witness DP-101, T. 7909 (closed session).

¹¹⁰⁰ Krsto Simić, T. 7327-28, Dragan Mirković, 7948-49.

¹¹⁰¹ Krsto Simić, T. 7329; Jovan Nikolić, T. 8036. The Trial Chamber has considered Krsto Simić’s status as suspect when it has evaluated his evidence.

¹¹⁰² Witness P-140, T. 3401 (private session). Radenko Đurković was assigned to the *asanacija* unit of the *Rad* Utilities Company and was mobilised to the Bratunac Brigade in July 1995, Witness P-140, T. 3445, 3450, 3395 (private session); Dragan Mirković, T. 7974. Krsto Simić, T. 7345-51, *referring* to Ex. P165, Bratunac Brigade Roster, list of reserve members; Ex. D143/1, roster of the Bratunac Brigade, which lists Krsto Simić as a member of the 3rd Battalion.

14 July¹¹⁰³ following an order by members of the Military Police whom he did not recognise, he and a colleague of his had to report to the *Rad* Utilities Company and then to the Bratunac Brigade headquarters.¹¹⁰⁴ In front of the Bratunac Brigade headquarters Momir Nikolić ordered them to go to Kravica.¹¹⁰⁵ Trucks from Bratunac utilities companies and one from a Zvornik utilities company left Bratunac around noon, escorted by military police.¹¹⁰⁶ According to Krsto Simić the Military Police first secured the area at the Kravica Warehouse while the bodies were loaded onto the trucks¹¹⁰⁷ and then the column of trucks when it left for Glogova.¹¹⁰⁸ At Kravica, Momir Nikolić ordered Krsto Simić to replace Radenko Djurković in operating the loader.¹¹⁰⁹ Members of the Bratunac Civilian Protection assisted in loading the bodies onto trucks.¹¹¹⁰ The trucks left together for Glogova.¹¹¹¹

307. Krsto Simić testified that at the Glogova grave site the bodies were unloaded in the presence of Momir Nikolić and members of the Military Police.¹¹¹² Radenko Djurković dug two graves at the Glogova site, as ordered by Drago Mirković and Momir Nikolić.¹¹¹³ The excavator used to dig the second grave was brought from Bratunac. It was yellow and had a license plate

¹¹⁰³ Krsto Simić testified that he received this order two or three days after the Srebrenica enclave fell. Considering the evidence presented, the Trial Chamber notes that the only date on which Krsto Simić reasonably could have received the order was 14 July.

¹¹⁰⁴ Krsto Simić stated that the director of the Sase mine, where Krsto Simić was working, sent him and his colleagues to the Rad Utilities Company, after Krsto Simić had seen him talking to military police men. Krsto Simić knew that those men were military police because they wore white belts and camouflage uniforms and he assumed that they were from the Bratunac Brigade; T. 7319-20, 7351-52, 7354. Under the Regulation governing the Military Police, the uniform for a military police member is described: "During the performance of their service in war and in peace, members of the military police wear the official uniform prescribed by the regulations on military garments, a white belt with a should strap, a white pistol holder and a military police badge fastened to the belt buckle." Ex. D15/1, Service Regulations of the SFRY, Armed Forces Military Police, 1985, Article 8.

¹¹⁰⁵ Krsto Simić gave further evidence that at the headquarters he saw VRS officers and MP's, none of which he recognised, Krsto Simić, T. 7320-21, 7354.

¹¹⁰⁶ Krsto Simić, T. 7322-23. According to Witness P-140 the red truck from the Sase mine was driven by Krsto Simić; the driver of a Rad Utilities Company truck was Milivoje Cvjetinović and the driver of a yellow truck owned by the brick factory was Dragoljub Stanojević; Witness P-140, T. 3413-14. Dragoljub Stanojević was a driver at the *Ciglana DD* Company; he drove a truck with bodies from the Kravica Warehouse to Glogova. Dragoljub Stanojević, Ex. P213/1, p. 1-3.

¹¹⁰⁷ Krsto Simić, T. 7325-26.

¹¹⁰⁸ Krsto Simić, T. 7331.

¹¹⁰⁹ Krsto Simić, T. 7329.

¹¹¹⁰ Krsto Simić, T. 7326; Dragoljub Stanojević, Ex. P213/1, p 2; Rajko Đokić, T. 11893-94.

¹¹¹¹ Krsto Simić, T. 7331.

¹¹¹² Krsto Simić, T. 7333. Dragan Mirković claimed that he did not see Momir Nikolić or Ljubiša Beara at the grave site, Krsto Simić, T 7951-52 and did not notice any members of the Bratunac Brigade military police guarding any equipment there; Krsto Simić, T. 7961.

¹¹¹³ Witness P-140, T. 3405, 3427-28. Dragan Mirković stated that when he had told Ljubiša Beara at the SDS premises that Radenko Djurković would be able to use an excavator, but that he was mobilised with the Bratunac Brigade, Beara said that he would take care of it and the next day Radenko Djurković was at the site. Dragan Mirković, T. 7947-48.

from Zvornik.¹¹¹⁴ After the bodies were placed into the graves, earth was spread over the bodies with a large machine, layer by layer. On the second day all bodies had been buried.¹¹¹⁵

308. Ostoja Stanojević, a driver of the engineering company of the Zvornik Brigade, testified that around 09:00 of 14 July Dragan Jokić told him to get his truck ready as he would spend several days in the field. He told him that he had to go to Srebrenica to “clear up some garbage” and that he first had to report to the Civilian Protection in Zvornik, which he did.¹¹¹⁶ Ostoja Stanojević, along with three members of the Civilian Protection including the commander of the *Rad* Utilities Company Dragan Mirković and Rajko Đokić then drove south to Bratunac town. Upon arrival, Ostoja Stanojević reported to the Civilian Protection but was not given any instructions.¹¹¹⁷ He then spent the night of 14 July at a hotel in town.¹¹¹⁸ On 15 July Ostoja Stanojević was told by Đokić that it was not possible to go to Srebrenica. Later, Stanojević was approached by an unknown worker of the Bratunac Civilian Protection who told Stanojević to go to Kravica and who also joined him there as Stanojević did not know where it was.¹¹¹⁹ At the Kravica, corpses were removed from the Warehouse and loaded onto his and other trucks by members of the Civilian Protection using a loader.¹¹²⁰ Stanojević transported them to the Glogova grave site together with workers from the Civilian Protection and unloaded the bodies in a grave that had already been dug.¹¹²¹

309. Ostoja Stanojević testified that he complained to Dragan Jokić on 17 July about his assignment at the Kravica Warehouse.¹¹²² Dragan Jokić told him that:

he hadn't sent me to do that job, but the civilian protection ordered me to do this. I was supposed to go to Srebrenica to drive garbage. I was supposed to be there for another fifteen days. There was quite a lot of work to be done, but he didn't know about what I was doing.¹¹²³

¹¹¹⁴ Witness P-140, T. 3431. Dragan Mirković testified that he had informed Ljubiša Beara that they could not dig the grave with the loader they had but would need an excavator. Beara replied that he would ask for one from the Zvornik Brigade. Witness P-140 did not see anyone from Zvornik operating the excavator while he was in Glogova; Witness P-140, T. 3467

¹¹¹⁵ Witness P-140; T. 3433. There were only five or six additional bodies that were found some days later and buried in an extension of the first grave; Witness P-140, T. 3434-35.

¹¹¹⁶ Ostoja Stanojević, T. 5677.

¹¹¹⁷ Rajko Đokić, T. 11885-90.

¹¹¹⁸ Rajko Đokić, T. 11887-90.

¹¹¹⁹ Ostoja Stanojević, T. 5677-80. Ostoja Stanojević testified that the person who told him to go to Kravica was probably a worker from the Civilian Protection. Ostoja Stanojević further testified that he did not contact Dragan Jokić. Ostoja Stanojević, T. 5680; Rajko Đokić, T. 11891-93.

¹¹²⁰ Ostoja Stanojević, T. 5682; Dragoljub Stanojević, Ex.P.213/1, p. 2-3.

¹¹²¹ Ostoja Stanojević testified that the workers were wearing “blue uniforms, such as worn by people who are in civilian protection or people employed in public utilities companies”; T. 5687 After they had unloaded the bodies at the grave site, Ostoja Stanojević went back to Kravica to transport more bodies to the grave site; Ostoja Stanojević, *referring* to Ex. P669 (Diagram drawn by Witness during OTP interview – letters “K” and “B” refer to road; letter “E” depicts the grave); T. 5688-91.

¹¹²² Ostoja Stanojević, T. 5692-93.

¹¹²³ Ostoja Stanojević, T. 5694. Ostoja Stanojević also stated that Dragan Jokić could not have decided on his own to give Ostoja Stanojević over to the Civilian Protection. Ostoja Stanojević, T. 5693.

310. On 15 July detained DutchBat soldiers were driven from Milići to Bratunac. Between Kravica and Glogova the DutchBat soldiers noticed an intense smell and saw on the side of the road a big truck carrying a container.¹¹²⁴ One of the DutchBat soldiers testified that he saw seven or eight male bodies coming out of the top of the container. The bodies appeared to be of men aged 20 to 40 years; the men had been stripped to the waist and the bodies were swollen and “kind of bluish”.¹¹²⁵ DutchBat then passed a body of another man stripped to the waste and wearing no shoes lying on the side of the road.¹¹²⁶ Andere Stoelinga saw a bulldozer and a “scrapper”¹¹²⁷ next to the body, and two men were trying to get the body into the “scrapper”.¹¹²⁸

311. Nikola Popović testified that he knew that on 19 July, Bratunac Brigade military police was securing public utility workers who were digging graves in Glogova.¹¹²⁹ This evidence is corroborated by the military police logbook of the Bratunac Brigade.¹¹³⁰ The Trial Chamber recalls that during the “clean-up” of Srebrenica and Potočari, bodies were found. Those bodies were subsequently taken to the Glogova grave site.¹¹³¹

(iii) Forensic evidence

312. Forensic evidence corroborates the survivors account of mass executions at the Kravica Warehouse. It shows that two primary graves in Glogova¹¹³² contained the bodies of victims that had been injured as a result of an explosive blast in the form of grenades and shrapnel.¹¹³³ Investigations into debris found in the grave led to the conclusion that these victims had been killed at the Kravica Warehouse.¹¹³⁴ Documents containing the names of men listed as missing by

¹¹²⁴ Andere Stoelinga, KT. 2288. Andere Stoelinga also testified that the bus passed the area around noon; KT. 2305.

¹¹²⁵ Andere Stoelinga, KT. 2289.

¹¹²⁶ Andere Stoelinga, KT. 2291, 2302.

¹¹²⁷ A vehicle with a mechanical shovel on the front. Andere Stoelinga, KT. 2291.

¹¹²⁸ Andere Stoelinga, KT. 2291.

¹¹²⁹ Nikola Popović, T. 11110-11. Witness P-138 testified that he knew that a military police patrol of the Bratunac Brigade went to Glogova on 19 July to secure public utilities workers, but he claimed that he would not have known what those workers were doing there. Witness P-138, T. 3576.

¹¹³⁰ Ex. P449, Bratunac Military Police logbook, entry for 19 July (date to be inferred from the sequence of the pages) that patrols went to secure the public utility workers in Glogov[o] *sic*.

¹¹³¹ See *infra* section II. D. 1. h.

¹¹³² These graves were named Glogova 1 and Glogova 2. Both mass graves consisted of several smaller graves, Ex. P773, Report of Richard Wright, 2001, pp 5, 15, 19; Ex. P741, Report by Jose Baraybar on Glogova 2, p. 6.

¹¹³³ Ex. P773, Report by Richard Wright, 2001, p. 16; Ex. P739, Report by Jose Baraybar, p. 33; Ex. P741, Report by Jose Baraybar, p. 20; Ex. P553, Report by Dean Manning, 2001, p. 3, stating that of the 191 individuals that were found at Glogova 1 grave site, 48 had died as a result of blast injury, while 119 had died of gun shot injuries, one died as a result of blunt force trauma and 8 died as a result of both blast injuries and gun shot injuries. The cause of death for the remainder of the victims could not be determined.

¹¹³⁴ Ex. P773, Report by Richard Wright, 2001, p. 17. Among the debris found were pieces of concrete painted in the same color as the Kravica Warehouse, pieces of a metal door frame and metal panels for covering a door. For a comparison of this debris with the Kravica Warehouse, see Ex. P561, Report by Michael J. Hedley, pp 19-20. Hedley concluded that there exists substantial evidence that the men who were killed in the Kravica Warehouse in July 1995 were among the same men whose remains were recovered at the Glogova 1 grave.

the ICRC were found in one of the graves.¹¹³⁵ Using aerial imagery, forensic expert Richard Wright determined that the graves at Glogova had been disturbed and excavated somewhere between 27 July and 30 October 1995.¹¹³⁶ A total of 191 bodies were found in several graves named Glogova 1, of which at least 172 victims appeared to have been killed in the Kravica Warehouse.¹¹³⁷ The Glogova 2 grave site contained at least 110 bodies showed signs of charring, as did some of the clothing that was found.¹¹³⁸ The forensic anthropologist John Clark determined that all 126 victims of the Glogova 2 had been male and that the men were relatively young, with 67% of the victims younger than 50 and 32% younger than 25 years old.¹¹³⁹ At least 98 victims from the Glogova 2 grave site died as a result of gunshot wounds.¹¹⁴⁰

313. Aerial imagery of the area around Glogova shows that sometime between 17 and 27 July the surface in a location, later identified as Glogova L, which is part of the Glogova 1 grave, was disturbed.¹¹⁴¹ Richard Wright headed the forensic investigation into the Glogova grave site in the year 2000.¹¹⁴² The forensic investigators found the bodies of 12 men in grave Glogova L.¹¹⁴³ Evidence gathered at the scene shows that these 12 men have been shot in that location and were not victims of the Kravica Warehouse killings.¹¹⁴⁴ The victims in Glogova L had been tied together in pairs and were shot.¹¹⁴⁵

314. The graves at the Glogova site contained a total of 317 individuals executed in the Kravica Warehouse.¹¹⁴⁶ Evidence was found that bodies from the Glogova burial site were moved to Zeleni Jadar.¹¹⁴⁷

¹¹³⁵ Ex. P739, Report by Jose Baraybar, p. 35.

¹¹³⁶ Ex. P773, Report by Richard Wright, 2001, pp 19-21.

¹¹³⁷ Ex. P773, Report by Richard Wright, 2001, p. 15-16. Twelve victims who had been tied together in pairs were found in a separate grave. *See also* Ex. P746, Report of John Clark, 1999, pp 20-24. Ex. P746 reflects that at least 147 of the individuals buried in Glogova 1 had been executed at the Kravica Warehouse; *See also* Ex. P555, Map indicating Srebrenica mass graves, primary and secondary graves.

¹¹³⁸ Ex. P741, Report by Jose Baraybar, p. 4.

¹¹³⁹ Ex. P748, Report by John Clark, 2003, p. 19.

¹¹⁴⁰ Ex. P748, Report by John Clark, 2003, p. 20.

¹¹⁴¹ Ex. P11.3, aerial photograph of the Glogova area, 17 July 1995; Ex. P773, Richard Wright report, 2001, pp 20-21.

¹¹⁴² Ex. P773, Report by Richard Wright, 2001, p. 3.

¹¹⁴³ Ex. P773, Report by Richard Wright, 2001 p. 15.

¹¹⁴⁴ Ex. P773, Report by Richard Wright, 2001, p. 15. The victims found in the other graves showed signs of being exposed to explosive devices in the form of grenades and shrapnel. The victims found in Glogova L did not show signs of blast injury. *See also* Ex. P561, Report by Michael Hedley, p. 18, stating that there were no traces in Glogova L associated with the Kravica Warehouse.

¹¹⁴⁵ Ex. P.773, Report by Richard Wright, 2001, p. 16; Ex. P747, Report by John Clark, pp 21-22.

¹¹⁴⁶ Ex. P748, Report of John Clark, 2001, p. 22. Ex. P748 reflects that most of the individuals were male; that 69% died from gunshot injuries and 14% from blast injuries; *See also* Ex. P555, Map indicating Srebrenica mass graves, primary and secondary graves

¹¹⁴⁷ Ex. P739, Report by Jose Baraybar, p. 6. This was established through pollen analysis; Ex. P741, Report by Jose Baraybar on Glogova 2, p. 18, 20, indicating that the graves at Glogova 2 had been "robbed" and the remains were moved to Zeleni Jadar.

(e) Tišća

315. On 13 July VRS soldiers detained 22 Bosnian Muslim men at the Luke school.¹¹⁴⁸ The men were taken on the buses and trucks that drove along the road near the school.¹¹⁴⁹ Some of the men were kept at the school the whole day with their hands tied behind their back.¹¹⁵⁰ In the evening, they were all taken into the school house and were questioned by VRS soldiers.¹¹⁵¹ One detainee and survivor of a subsequent execution was Witness P-101, who described how he and twenty-one other Bosnian Muslim men were mistreated in the school by their Bosnian Serb captors on 13 July, who used their fists, rifle butts, knives and boots.¹¹⁵² An elderly man was hit with the metal rod he used as a walking stick.¹¹⁵³ At midnight, the Bosnian Serb soldiers made the men board a former JNA truck, and were driven to a wooded location called Rasica Gaj outside Vlasenica.¹¹⁵⁴ There, the Bosnian Serb soldiers pushed the Bosnian Muslim men, already very weak from the physical abuse, off the truck and “finish[ed] them off” with bursts of automatic gun fire.¹¹⁵⁵

(f) Orahovac

(i) Transport to Grbavci School

316. Three men testified that around noon on 14 July, they and other Bosnian Muslim prisoners left Bratunac in a convoy consisting of at least 30 vehicles.¹¹⁵⁶ Some buses had an armed guard on board.¹¹⁵⁷ They had been told that they would be taken to Kladanj to be exchanged as prisoners of war. Instead, the convoy went to Zvornik and further up to Karakaj where it turned right in the direction of Orahovac. When the buses made the turn, it became clear to the men that they were not going to be exchanged.¹¹⁵⁸ Instead, they were driven to the Grbavci School in Orahovac in the Zvornik municipality and temporarily detained there.¹¹⁵⁹

¹¹⁴⁸ Witness P-101, KT. 1268-69. Witness P-101 recognised several of the VRS soldiers: Stanimir, who lived in Vlasenica; Savo Ristanović and Spomenko Garić who was according to Savo Ristanović a commander of a “Special Intervention Unit”. Witness P-101, KT. 1271, 1276, 1283.

¹¹⁴⁹ Witness P-101, KT. 1261, 1268.

¹¹⁵⁰ Witness P-101, KT. 1281-82.

¹¹⁵¹ Witness P-101, KT. 1285.

¹¹⁵² Witness P-101, KT. 1285-88. According to Witness P-101 the soldiers who were beating the Bosnian Muslim men were different from the ones that had guarded them during the day and were also wearing a different uniform. Witness P-101, KT. 1287-88.

¹¹⁵³ Witness P-101, KT. 1286.

¹¹⁵⁴ Witness P-101, KT. 1293-95.

¹¹⁵⁵ Witness P-101, KT. 1296.

¹¹⁵⁶ Kemal Mehmedović, T. 1277-78; Mevludin Orić, T. 1349-50. *See also* Witness P-110, KT. 2812. The convoy was approximately 1-2 kilometres long. Nikola Popović, T. 11110.

¹¹⁵⁷ Witness P-110, KT. 2813.

¹¹⁵⁸ Kemal Mehmedović, T. 1279. The Trial Chamber followed the route of the buses from Bratunac to Zvornik during its Site Visit in September 2004, and saw the juncture in the road described by witnesses where,

317. The convoy included an APC marked “UN”. One Bosnian Muslim survivor testified that he saw men in the APC with UNPROFOR rifles and helmets but he did not think that they were members of UNPROFOR because they were greeting the soldiers guarding the buses and raised three fingers in a salute used in Serbia and the Republika Srpska by Serbs.¹¹⁶⁰ It has been established that the APC was driven by members of the Bratunac Brigade Military Police.¹¹⁶¹ Nikola Popović and Mile Petrović, both members of the Bratunac Brigade Military Police, testified that on the morning of 14 July, Momir Nikolić ordered them to report to Mirko Janković, the commander of the Bratunac Brigade Military Police, at the Military Police headquarters.¹¹⁶² Once there, Mirko Janković, who was standing next to the APC which had previously belonged to UNPROFOR, ordered the two men to join him in escorting a convoy of vehicles filled with Bosnian Muslim men to Zvornik.¹¹⁶³ After the men got into the APC, Mirko Janković drove to the power supply station in Bratunac, where they waited for the convoy of buses. Once the buses arrived, the three men set off in the APC, serving as an escort for the convoy as it went to Zvornik.¹¹⁶⁴ The convoy was led by a Golf car with Colonel Vujadin Popović, Chief of Security in the Drina Corps, in it.¹¹⁶⁵

318. Mirko Janković drove the APC through Zvornik, past Karakaj, eventually stopping at a big school 2-3 kilometres from Karakaj.¹¹⁶⁶ About 30 soldiers, whom Nikola Popović did not recognise, were waiting for them.¹¹⁶⁷ According to Nikola Popović, the soldiers were dressed in

according to their testimony, they realised that their fate would not be an exchange as General Mladić had promised.

¹¹⁵⁹ Kemal Mehmedović, T. 1279-80; Mevludin Orić, T. 1349-52, 1369. Ex. P13.1 Photo: Orahovac school taken by Jean-René Ruez in January 1996; Ex. P13.2, Photo of entrance of Orahovac school; Ex. P13.3, Photo: inside the gymnasium of Orahovac school; and Ex. P 13.6, Photo panoramic of school and execution sites LZ-02 and LZ-01. *See also* Jean-René Ruez, T. 488-494. The Trial Chamber recalls that it drove from the Grbavci School to the areas marked as “LZ-01” and “LZ-02” during its Site Visit in September 2004 and confirms the estimate of 800 metres from the school to these sites given by Mr. Ruez during his testimony.

¹¹⁶⁰ Mevludin Orić, T. 1350.

¹¹⁶¹ In addition to the testimony of Nikola Popović, Mile Petrović and P-138, (private session) *see* Ex. D163/1, Appropriation of Equipment from the Former Enclave of Srebrenica, to the Drina Corps Command, dated 24 July 1995; Dragoslav Trišić, T. 9386-88.

¹¹⁶² Nikola Popović, T. 11081-82; Mile Petrović, NT. 1597-98.

¹¹⁶³ Nikola Popović, T. 11082, 11087; Ex. P449, Bratunac Brigade Military Police Log book, entry of 14/15 July 1995. Witness P-138 testified that he believed the prisoners were being transported to the Zvornik area in order to be exchanged in Tuzla. Witness P-138, T. 3562, 3680-82.

¹¹⁶⁴ Nikola Popović, T. 11083-85; Witness P-138, T. 3559-65.

¹¹⁶⁵ Witness P-138, T. 3678-79. Nikola Popović did not recognise the officers in the Golf car. Nikola Popović, T. 11083-85. Mile Petrović testified that Momir Nikolić was also in the Golf car, but did not accompany the convoy all the way to Zvornik; he got out in Konjević Polje. Mile Petrović, NT. 1595-99 and Ex. D220/1, p. 3.

¹¹⁶⁶ Nikola Popović, T. 11085. Nikola Popović estimates that they arrived at the school at approximately 14:00 or sometime in the afternoon. Nikola Popović, T. 11093. *See also* Witness P-138 who testified that the convoy of vehicles arrived in the Zvornik area at approximately 15:00-15:30. Witness P-138, T. 3678-80.

¹¹⁶⁷ Kemal Mehmedović testified that “at least 30” men were guarding the school. Kemal Mehmedović, T. 1280-81

“special” uniforms, bluish-black overalls with caps,¹¹⁶⁸ while according to one survivor, the men guarding the school, “wearing police uniforms and camouflage uniforms.”¹¹⁶⁹

319. The APC marked “UN” was parked in front of the school with its anti-aircraft gun pointed at the Bosnian Muslim men.¹¹⁷⁰ When the Bosnian Muslim men arrived at the school, armed VRS soldiers guarding the school forced them to leave their belongings outside before entering the school.¹¹⁷¹ Between five and ten buses were unloaded in front of the school.¹¹⁷² After 15-30 minutes, Nikola Popović testified that he left the school, having witnessed no abuse of the Bosnian Muslim men.¹¹⁷³

320. There are estimates that between 1,000 and 2,500 Bosnian Muslim men were detained in the gymnasium of the school.¹¹⁷⁴ They were not given any food and were only given a little water. People fainted due to the heat.¹¹⁷⁵ At one point, two Bosnian Muslim men were taken outside and shot.¹¹⁷⁶ In the late afternoon, General Mladić arrived and looked at the prisoners. After he left, the prisoners were told they would be taken to Batkovići camp.¹¹⁷⁷

321. Drago Nikolić, chief of security of the Zvornik Brigade, was in charge of the Bosnian Muslim men detained in Orahovac.¹¹⁷⁸ Drago Nikolić informed Dragan Obrenović that he had been called by Lieutenant Colonel Popović, chief of security of the Drina Corps, and told to prepare for the arrival of a large number of prisoners who were being brought from Bratunac to the Zvornik municipality.¹¹⁷⁹ Drago Nikolić further informed him that the men were not being sent to a camp in Batkovići because the Red Cross and UNPROFOR knew about that camp; instead, they were being brought to Zvornik to be executed.¹¹⁸⁰ Drago Nikolić told Dragan Obrenović that he was expecting a man to come with concrete, specific information as to what was to be done in

¹¹⁶⁸ Nikola Popović, T. 11085-86.

¹¹⁶⁹ Kemal Mehmedović, T. 1280-81

¹¹⁷⁰ Mevludin Orić, T. 1352; Kemal Mehmedović, T. 1278-80.

¹¹⁷¹ Mevludin Orić, T. 1352-53, 1369; Kemal Mehmedović, T. 1280-81.

¹¹⁷² Witness P-138, T. 3563.

¹¹⁷³ Nikola Popović, T. 11086.

¹¹⁷⁴ According to Kemal Mehmedović there were about 1000 men, Kemal Mehmedović, T. 1281. Mevludin Orić testified that 2,500 people were “pressed together” in the gym. Mevludin Orić, T. 1353-54. Witness P-110 estimated that about 2,500 Muslim men were detained there. Witness P-110, KT. 2822.

¹¹⁷⁵ Kemal Mehmedović, T. 1282; Mevludin Orić, T. 1353-54.

¹¹⁷⁶ Kemal Mehmedović, T. 1283-84. Witness P-130’s testimony corroborates this incident; T. 6609. *See also*, Mevludin Orić, T. 1355.

¹¹⁷⁷ Mevludin Orić, T. 1355. Witness P-110’s account varies slightly. He testified that General Mladić was asked by the men “why are you torturing us here” and that he answered “well, your government does not want you, and I have to take care of you.” General Mladić then told the prisoners that they would be taken to Kladusa and Bijeljina. Witness P-110, KT. 2822.

¹¹⁷⁸ Dragan Obrenović, T. 2468-70; Witness P-130, T. 6603.

¹¹⁷⁹ Dragan Obrenović, T. 2468-70.

¹¹⁸⁰ Dragan Obrenović, T. 2468-70.

this regard in the future.¹¹⁸¹ Drago Nikolić said that this order came personally from General Mladić and that “everybody knew about it, including [the] commander, Lieutenant Pandurević.”¹¹⁸² The order would be implemented by Colonel Beara and Lieutenant Colonel Popović, with Drago Nikolić being included.¹¹⁸³ Drago Nikolić then asked Dragan Obrenović to place the Zvornik Brigade Military Police company at his disposal. After informing him that the Military Police company was 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.¹¹⁸⁴ Dragan Obrenović testified that militarily, Drago Nikolić, as chief of security of the Zvornik Brigade, did not have the authority to take units of the Military Police without asking Dragan Obrenović.¹¹⁸⁵

322. Dragan Obrenović testified that on the evening of 13 July, he allowed Drago Nikolić to be released from his duties at the Zvornik Brigade IKM whereby he tacitly approved Drago Nikolić’s participation in the murder operation,¹¹⁸⁶ and further allowed Miomir Jasikovac, the commander of the Military Police of the Zvornik Brigade, and five members a Zvornik Brigade Military Police platoon to assist Drago Nikolić.¹¹⁸⁷

323. Witness P-130, a security officer from the Zvornik Brigade, also testified about the involvement of the Zvornik Brigade and Dragan Jokić in the detention of the Bosnian Muslim prisoners in Orahovac and, as will be discussed below, their execution. The Trial Chamber recalls that nearly five months after he appeared before the Trial Chamber, Witness P-130 admitted to the Prosecution that he did not tell “the entire truth” when he testified.¹¹⁸⁸ During Closing Arguments, the Prosecution submitted that the parts of Witness P-130’s testimony were not truthful; both Defence teams made similar submissions.¹¹⁸⁹ The Trial Chamber has carefully assessed the reliability of Witness P-130’s testimony and has decided that weight can only be given to those parts of his testimony where sufficient corroboration is found in the record.

¹¹⁸¹ Dragan Obrenović, T. 2469. The Trial Chamber recalls that Momir Nikolić testified that, acting upon the orders of Colonel Beara, he went to Zvornik to brief Drago Nikolić on the fact that thousands of Bosnian Muslims would be transferred from Bratunac to Zvornik for detention and execution. Momir Nikolić, T. 1743-50.

¹¹⁸² Dragan Obrenović, T. 2469.

¹¹⁸³ Dragan Obrenović, T. 2469.

¹¹⁸⁴ Dragan Obrenović, T. 2470.

¹¹⁸⁵ Dragan Obrenović, T. 2471.

¹¹⁸⁶ Dragan Obrenović, T. 2471-72.

¹¹⁸⁷ Dragan Obrenović, T. 2468-70.

¹¹⁸⁸ Prosecution’s Motion to Admit Evidence in Rebuttal and Incorporated Motion to Admit Evidence under Rule 92 *bis* in its Case on Rebuttal and to Re-Open its Case for a Limited Purpose, filed confidentially on 26 August 2004, fn. 19. *See also* Decision on Prosecution’s Motion to Admit Evidence in Rebuttal and Incorporated Motion to Admit Evidence under Rule 92 *bis* in its Case on Rebuttal and to Re-Open its Case for a Limited Purpose, 13 September 2004, para. 52.

¹¹⁸⁹ Submissions by the Prosecution, Blagojević Defence and Jokić Defence during the Closing Arguments, Trial Proceedings, 1 October 2004, T. 12626-29. The Blagojević Defence called Witness P-130 a “perjurer” while the Jokić Defence qualified the testimony of Witness P-130 as “perjury or false testimony.”

324. Witness P-130 testified that Drago Nikolić ordered him to go to Orahovac together with Miomir Jasikovac and members of the Zvornik Brigade Military Police in the late evening of 13 July.¹¹⁹⁰ They were told to prepare for the detention of approximately 600 Bosnian Muslims from Srebrenica at the Orahovac elementary school.¹¹⁹¹ The Trial Chamber finds that this aspect of Witness P-130's testimony is sufficiently corroborated through the testimony of Dragan Obrenović.

325. Witness P-130 further testified that in the afternoon of 14 July between 13:00 and 16:00 he called the duty officer at the Zvornik Brigade headquarters¹¹⁹² because he wanted to find Drago Nikolić and tell him that it was not possible to provide sufficient security for so many prisoners.¹¹⁹³ Witness P-130 testified that he did not mention anything about the possible execution of the prisoners, but only said that more guards were needed.¹¹⁹⁴ According to Witness P-130, the duty officer, replied that no men were available at the time, but that he would see what he could do.¹¹⁹⁵ There is documentary evidence reflecting that on the evening of 14 July, Dragan Jokić, in his capacity as duty officer, was looking for Colonel Beara. When he spoke with Beara, he said: "There are big problems. Well with the people, I mean, with the parcel."¹¹⁹⁶

326. Witness P-130 called Lazar Ristić, the deputy commander of the 4th Battalion of the Zvornik Brigade, to see if he had any men available to assist in guarding the prisoner.¹¹⁹⁷ The 4th Battalion of the Zvornik Brigade was located nearby to the school at Orahovac.¹¹⁹⁸ About one hour after the phone call to Dragan Jokić, five or six members from the Zvornik Brigade arrived at the school in Orahovac to provide security; these members of the Zvornik Brigade were not members of the Engineering Company.¹¹⁹⁹ Among them was Captain Sreten Milošević, the assistant commander for logistics, and Milenko Jovanović, commander of the headquarters administration. Two hours after the phone call with Lazar Ristić, four to six soldiers of the 4th Battalion of the Zvornik Brigade arrived.¹²⁰⁰ These soldiers had been sent by Lazar Ristić.¹²⁰¹

¹¹⁹⁰ Witness P-130, T. 6599.

¹¹⁹¹ Witness P-130, T. 6599, 6605-07.

¹¹⁹² When Witness P-130 was interviewed by the Prosecution in 2002 he did not remember who the duty officer of the Zvornik Brigade was at the time. The Prosecution investigator "reminded" him of who it was when he said the name of Dragan Jokić. Witness P-130, T. 6766.

¹¹⁹³ Witness P-130, T. 6609, 6766.

¹¹⁹⁴ Witness P-130, T. 6768-69.

¹¹⁹⁵ Witness P-130, T. 6610.

¹¹⁹⁶ Ex. P232 (intercept dated 14 July, 21:00).

¹¹⁹⁷ Witness P-130, T. 6609, 6611. It is corroborated by Dragan Obrenović, that Lazar Ristić was called by Witness P-130 who asked for soldiers to be sent to Orahovac. Dragan Obrenović, T. 2536, 3042.

¹¹⁹⁸ Witness P-130, T. 6614.

¹¹⁹⁹ Witness P-130, T. 6612-13; Ex. P511, Log of Military Police of Zvornik Brigade, July 1995, listing Čedo Jović and Milan Savić as members of the Military Police. *See also* Tanacko Tanić, T. 11999-12002 (private session).

¹²⁰⁰ Witness P-130 did not recognise the soldiers, but assumed, on the basis of his request and that they came from the Kitovnice direction, that they were from the 4th Battalion of the Zvornik Brigade. Witness P-130, T. 6614. This is confirmed by Dragan Obrenović, T. 2506, 2536.

Tanacko Tanić, finance clerk at the Zvornik Brigade, also arrived with five or six men, whom he thought belonged to a unit from Jelicići.¹²⁰² Miladin Mijatović, a procurer at the Zvornik Brigade told him to go to Orahovac.¹²⁰³ Vehicle logs of the Zvornik Brigade Military Police show that some members of the Military Police travelled to Orahovac on 14 July.¹²⁰⁴

(ii) Executions at Orahovac

327. Later on 14 July, the Bosnian Muslim prisoners inside the gym were blindfolded and given some water by a woman in a camouflage uniform¹²⁰⁵ and taken outside to TAM trucks that had arrived.¹²⁰⁶ Approximately 30 men were loaded onto each truck.¹²⁰⁷ They were driven to a field where they were ordered off the trucks and told to line up, still wearing the blindfolds. One of the survivors described what happened as follows:

We got off the lorry, and we were told to line up as quickly as possible. When we did so, I was together with my cousin Hariz, and we held hands. And he said they would kill us. And I said they wouldn't. He didn't even finish speaking when the bursts of fire started. [...] The burst of fire killed my cousin. He was shouting, screaming. I fell on the ground. He fell on top of me. That's when screaming and groaning of injured men started. [...] Afterwards, they continued to bring more shifts, more groups. They continued to execute those injured people who were screaming.¹²⁰⁸

One group of men after another was executed in this manner.¹²⁰⁹ After the first burst of fire, the men doing the executions walked among the fallen men and shot at each person individually to ensure that men who had survived the first round of shooting were killed.¹²¹⁰

328. The shooting continued until dark when a loader and an excavator appeared at the site to dig a mass grave.¹²¹¹ There were still Bosnian Muslim men being brought by VRS soldiers and put in front of the headlights of one of the machines to be shot.¹²¹² Kemal Mehmedović testified that he recognised a colleague of his, Gojko Simić, among the soldiers that had executed the Bosnian

¹²⁰¹ Dragan Obrenović, T. 2506, 2536, 3042.

¹²⁰² Tanacko Tanić, T. 11997.

¹²⁰³ Tanacko Tanić, T. 11993-94.

¹²⁰⁴ Ex. P510, Vehicle work log, Opel Rekord, listing Milorad Birčaković, Mirko Ristić and Miško Arapović as drivers. All three men are listed on the Military Police log, Ex. P511.

¹²⁰⁵ Kemal Mehmedović, T. 1285; Mevludin Orić, T. 1356. According to Witness P-130, a policewoman from the military police company of the Zvornik Brigade, was present at Orahovac on 14 July; Witness P-130, T. 6619.

¹²⁰⁶ Kemal Mehmedović, T. 1284-85; Mevludin Orić, T. 1355-56; Witness P-110, KT. 2825.

¹²⁰⁷ Kemal Mehmedović, T. 1285.

¹²⁰⁸ Mevludin Orić, T. 1357.

¹²⁰⁹ Kemal Mehmedović, T. 1285-86; Mevludin Orić, T. 1356-57.

¹²¹⁰ Kemal Mehmedović, T. 1285-86. The survivors described the men doing the executions as "soldiers" or "Serbian soldiers" but there is no evidence before the Trial Chamber to confirm that they were soldiers, members of the MUP or civilians, and what their ethnicity or nationality was, including whether they were from Bosnia and Herzegovina or Serbia.

¹²¹¹ Kemal Mehmedović, T. 1286-89; Mevludin Orić, T. 1358; Witness P-110, KT. 2825.

¹²¹² Mevludin Orić, T. 1358. According to Witness P-110 they shot the men in front of a second excavator that had arrived at the site, KT. 2827.

Muslim men.¹²¹³ Dragan Obrenović testified that he learned from Lazar Ristić, that Gojko Simić, a member of the 4th Battalion of the Zvornik Brigade, had joined the first group of soldiers who were guarding the school and had later volunteered to participate in the killings.¹²¹⁴

329. Kemal Mehmedović further testified that the soldiers at one point said: “Let’s go to the meadow to kill the people.”¹²¹⁵ A second survivor testified that as he was trying to escape, he crossed a second field about 300 metres from the field where he had been shot at that was also covered with men who had been executed.¹²¹⁶

330. Witness P-130 testified that in the early evening of 14 July, immediately before the executions started, Drago Nikolić arrived at Orahovac together with the chief of security of the Main Staff Colonel Vujadin Popović.¹²¹⁷ Drago Nikolić told Witness P-130 that he had been absent because Colonel Beara had arrived in the meantime, “that he had things to do” and could not come earlier. He then said that all the Muslims were to be executed immediately.¹²¹⁸ Witness P-130 prepared the prisoners to be taken out to the trucks that had come from the Zvornik Brigade.¹²¹⁹ Miomir Jasikovac organised the blindfolds for the prisoners and prepared with Drago Nikolić the volunteers who were going to carry out the executions.¹²²⁰ Dragan Obrenović testified that both Drago Nikolić and Vujadin Popović were present in Orahovac, and that while the executions started under orders from Popović, Drago Nikolić took part in the executions himself.¹²²¹

331. Tanacko Tanić testified that when he returned to the Standard Barracks from Orahovac around midnight of 14 July, members of the Zvornik Brigade, who had been at Orahovac, gathered at the Zvornik Brigade headquarters in an office adjacent to the Duty officer’s office.¹²²² He heard the men talking about “a job well done”, and how the soldiers should be rewarded.¹²²³

¹²¹³ Kemal Mehmedović, T. 1286-87. Kemal Mehmedović recognised the voice of his colleague, and he heard that the other soldiers used the name Gojko. Kemal Mehmedović, T. 1287.

¹²¹⁴ Dragan Obrenović, T. 2537-38. Dragan Obrenović testified that he learned that Gojko Simić was on leave on 14 July. Dragan Obrenović, T. 2537.

¹²¹⁵ Kemal Mehmedović, T. 1287.

¹²¹⁶ Kemal Mehmedović, T. 1289-90. *See also* Witness P-130, who gave evidence that there were two sites; T. 6779.

¹²¹⁷ Witness P-130, T. 6615, 6764.

¹²¹⁸ Witness P-130, T. 6605, 6616.

¹²¹⁹ Witness P-130, T. 6618.

¹²²⁰ Witness P-130, T. 6619.

¹²²¹ Dragan Obrenović was told by Lazar Ristić that Drago Nikolić participated in the killings; T. 2536-38, 3042.

¹²²² Tanacko Tanić, T. 12009-10 (private session).

¹²²³ Tanacko Tanić, T. 12009-10, 12021 (private session).

Tanacko Tanić did not inform the brigade command about the executions, because “on the following day everybody commented on what had happened”.¹²²⁴

(iii) Digging of Mass Graves and Burials

332. According to Witness P-130 the Engineering Company of the Zvornik Brigade arranged for heavy equipment to be brought to Orahovac and was digging the grave following instructions from Drago Nikolić.¹²²⁵ The “clean-up operation” at the school was organised by Miomir Jasikovac. It was carried out from midnight until the early morning hours of 15 July. Around a dozen Bosnian Muslims had died in the sports hall and were taken to the execution site to be buried in the mass grave. On 15 July around 05:00 the last truck left from the school to the execution site.¹²²⁶ Vehicle logs show that a backhoe excavator and an excavator were deployed at Orahovac “digging trenches.”¹²²⁷

333. Cvijetin Ristanović, a member of the Engineering Company of the Zvornik Brigade, corroborated that the Engineering Company took part in the burials at Orahovac. He testified that on 14 July¹²²⁸ Dragan Jokić, then serving as duty officer, told him and Milan Maksimović, a truck driver in the Engineering Company, to load the excavator Ristanović was in charge of and to take it to the school in Orahovac. Jokić did not specify what Ristanović’s task was going to be.¹²²⁹ This order was given to Ristanović in the presence of Slavko Bogičević, deputy commander of the Engineering Company.¹²³⁰

334. Cvijetin Ristanović stated that when they took the road to the school at Orahovac, he saw soldiers whom he thought belonged to the Military Police along the road.¹²³¹ They had gone on for another 500 metres to 1 kilometre on the road between Orahovac and Kirizević when they were told to stop.¹²³² Cvijetin Ristanović was then ordered by Slavko Bogičević to dig a grave in the meadows.¹²³³ While he was digging the grave, trucks with Bosnian Muslim men arrived several times and Cvijetin Ristanović was interrupted by the soldiers who were carrying out the executions. He was told to turn around so that he was not facing the hole he was digging. After

¹²²⁴ Tanacko Tanić, T. 12026. While this witness initially testified that everybody knew about the executions on 14 July, he later clarified that nobody knew that there were going to be executions, but that it became common knowledge immediately after the executions occurred. Tanacko Tanić, T. 12024-25.

¹²²⁵ Witness P-130, T. 6622, 6779.

¹²²⁶ Witness P-130, T. 6621.

¹²²⁷ Ex. P515, Zvornik Brigade Vehicle Log for backhoe excavator, for July 1995, and Ex. P516, Zvornik Brigade Vehicle Log for Rovakopac Torpedo from Birac Holding for July 1995.

¹²²⁸ Cvijetin Ristanović believes that it was around noon, but can not be certain of that. Cvijetin Ristanović, T. 5408.

¹²²⁹ Cvijetin Ristanović, T. 5364-65, 5406-07.

¹²³⁰ Cvijetin Ristanović, T. 5365; Dragan Obrenović, T. 2910.

¹²³¹ Cvijetin Ristanović did not know which brigade they were from. Cvijetin Ristanović, T. 5368-69.

¹²³² Cvijetin Ristanović, T. 5369.

bursts of gunfire ended, he saw the bodies of men dressed in civilian clothes and wearing blindfolds lying near the hole he had been digging.¹²³⁴ In the afternoon, Miladinović, another machinist of the Engineering Company of the Zvornik Brigade, took over Cvijetin Ristanović's machine to continue the digging.¹²³⁵ Miladinović had been together with Dragan Obrenović and Dragan Jevtić at Snagovo on 14 July. He was released by Dragan Obrenović and sent to Zvornik after Dragan Jevtić had conveyed the message from the operations centre that Miladinović and another machinist, Miloš Mitrović, should be sent there.¹²³⁶

335. On 15 July, Cvijetin Ristanović was ordered to go back to Orahovac by the commander of the fortification platoon of the Zvornik Brigade, Damjan Lazarević.¹²³⁷ Damjan Lazarević was present the entire time while Cvijetin Ristanović was digging the grave.¹²³⁸ Cvijetin Ristanović was working at the site with members of the Civilian Protection and the public utility company from Zvornik.¹²³⁹

336. The witness testimonies are corroborated by forensic evidence of two primary graves at Lažete, next to Orahovac, and secondary graves along the Hodžići Road. The investigation of the geographic composition of the surrounding area showed that bodies in graves at Hodžići Road came from the primary grave site at Lažete.¹²⁴⁰ During the exhumations 294 individuals were recovered from the primary mass graves, who were all wearing civilian clothes and most of whom were blindfolded and died through gunshots.¹²⁴¹ All individuals were male with ages ranging from 13 to 85.¹²⁴² Evidence of affiliation with the Muslim religion was found on 12 individuals.¹²⁴³ The secondary graves at Hodžići Road contained 178 bodies, of which all were wearing civilian clothes and the majority was male.¹²⁴⁴ Most of them had blindfolds and died from gunshots.¹²⁴⁵

¹²³³ Cvijetin Ristanović testified that he thinks that it was Slavko Bogičević, who gave him this order; T. 5370-71, 5408

¹²³⁴ Cvijetin Ristanović, T. 5373-75.

¹²³⁵ The other machinist was named Milovan Milodonović. Cvijetin Ristanović, T. 5376-77

¹²³⁶ Dragan Obrenović, T. 2498-501. Dragan Obrenović testified that he was informed that they were being requested to assist in the murder operation. Dragan Obrenović, T. 2499. *See also* Miloš Mitrović, who testified that they were ordered to go to Standard, T. 5599-6000.

¹²³⁷ Dragan Obrenović testified that Damjan Lazarević assumed a command position when Slavko Bogičević, was not present, T. 2910. Minja Radović, T. 11922-23.

¹²³⁸ Cvijetin Ristanović, T. 5382, 5387.

¹²³⁹ Cvijetin Ristanović, 5383-84.

¹²⁴⁰ Ex. P740, Report by Jose Baraybar, pp 8, 10; Ex. P771, Report by Richard Wright, 1999, pp 22, 23.

¹²⁴¹ Ex. P752, Report of William Haglund, forensic investigation of the Lažete 2 grave site, p. ix-x; Ex P747, ICTY operations in Bosnia-Herzegovina 2000 season, report of chief pathologist John Clark, Srebrenica graves, p.7-13; Ex. P769, Fredy Peccerelli, excavation and exhumation report on Lažete 1, Bosnia-Herzegovina, pp 2, 3.

¹²⁴² Ex. P747, ICTY operations in Bosnia-Herzegovina 2000 season, report of chief pathologist John Clark, Srebrenica graves, p. 16; Ex. P752, Report of William Haglund, forensic investigation of the Lažete 2 grave site, p. x.

¹²⁴³ Ex. P752, Report of William Haglund, forensic investigation of the Lažete 2 grave site, p. ix-x.

¹²⁴⁴ Ex. P771 (Report by Richard Wright, 1999, pp 27, 32; Ex. P738 (Report by Jose Baraybar, p. 11; Ex. P740 (Report by Jose Baraybar, pp 8-11).

(g) Petkovci School and Dam near Petkovci

337. On 14 July, Bosnian Muslim prisoners, who had been detained in Bratunac and Kravica, were taken by bus to the Petkovci School in the Zvornik municipality.¹²⁴⁶ Survivors gave evidence that when the prisoners arrived at Petkovci School and got off the trucks, VRS soldiers forced them to chant pro-Serb slogans.¹²⁴⁷ The Bosnian Muslim men had to run into the school through two lines formed by VRS soldiers, who were beating them with their rifle butts. They were then detained upstairs in the classrooms.¹²⁴⁸ One survivor, Witness P-112, stated that when he entered a classroom he saw two men, who were badly beaten.¹²⁴⁹ Soldiers asked for money and threatened to kill twenty of the men if they did not hand over a certain amount of money.¹²⁵⁰

338. Another survivor, Witness P-111, who was only 17 years old at the time of the events, described the situation in the classrooms. The prisoners were not allowed to go to the toilet, and everyone was “soaked” with urine.¹²⁵¹ When the men started to beg for water, a soldier told them that if they did not stay quiet, two young men, whom the soldiers made responsible for keeping everyone quiet, would be killed.¹²⁵² At one point a Bosnian Serb soldier called out names of villages¹²⁵³ and asked if any men were from those villages. Some men responded and were taken out of the classroom. After they had left the classroom, the sound of the men being beaten and moaning in pain could be heard. The men did not come back.¹²⁵⁴

339. Witness P-111 further testified that during the night of 14 July, prisoners were taken out of the classrooms, after which shooting could be heard.¹²⁵⁵ Witness P-111 depicted the situation in one of the classrooms:

[P]eople were talking amongst themselves, and it was clear to us that they were killing people from the other classrooms, that it would be better for us if we all ran out at the same time. They couldn't kill everyone. Because there were many more of us in comparison with the soldiers,

¹²⁴⁵ Ex. P762 (Expert Report of Christopher Lawrence on autopsies of human remains from Hodžići Road site 3, October 1998), p. 2-3; Ex. P763 (Expert Report of Christopher Lawrence on autopsies of human remains from Hodžići Road site 4, October 1998), p. 2-3; Ex. P764 (Expert Report of Christopher Lawrence on autopsies of human remains from Hodžići Road site 5, October 1998), p.2-3. Ex. P555

¹²⁴⁶ Witness P-111, T. 1404, who also identified the school on Ex.P14.2 (photograph of Petkovci school); Witness P-112, KT. 2961-64.

¹²⁴⁷ Witness P-112, T. 2965. Witness P-111 testified that the Muslim men were asked rhetorically whose land is this and the soldiers replied “this is Serbia” and made the prisoners repeat this. He further stated that one soldier said: “Whose is Serbia? Srebrenica has always been Serbian and will continue to be that”. Witness P-111, T. 1405.

¹²⁴⁸ Witness P-111, T. 1404-06. Witness P-112 testified that he believed that the school was full of people, both on the ground floor and the first floor, based on the voices he heard. Witness P-112, KT, 2995.

¹²⁴⁹ Witness P-112, KT. 2964-66.

¹²⁵⁰ Witness P-112, KT. 2967-68. This witness testified that there were 200 men in total in the classroom.

¹²⁵¹ Witness P-111, T. 1406.

¹²⁵² Witness P-111, T. 1407; Witness P-112, KT. 2967.

¹²⁵³ The villages that the witness could remember were: Cerska, Konjević Polje, Glogova and Osmice. Witness P-111, T. 1407.

¹²⁵⁴ Witness P-111, T. 1407-08.

¹²⁵⁵ Witness P-111, T. 1408.

although they had weapons. Many people didn't want to do that. They said: "Well, maybe we'll survive. We shouldn't run out." Nobody wanted to die.¹²⁵⁶

340. At one point the Bosnian Muslim men were told that they would be going for "some kind of examination".¹²⁵⁷ When they were taken out of the school to trucks, they had to take off some of their clothes and their shoes, and their hands were tied behind their backs.¹²⁵⁸ They had to walk over many dead bodies barefooted in order to get onto the trucks. When the trucks were about to leave, the VRS soldiers started shooting at the men.¹²⁵⁹

341. After a short drive, the trucks stopped next to the Petkovci dam.¹²⁶⁰ The Bosnian Muslim men were ordered to leave the trucks in groups of five and ten. They were lined up in rows and shot with automatic rifles. Those who were not immediately killed were then shot individually.¹²⁶¹

Witness P-111 described the scene:

[M]any people were screaming "give us water and then kill us." We were really so thirsty, we just couldn't take it any more, even if we were going to be killed within moments of that. [...] We were playing for time. We were just living for another extra few seconds. [...] As others were killing, as others were being killed, I was praying that I be killed, too, because I was in terrible pain. But I dared not call out to them. So I just thought that my mother would never know where I was, as I was thinking that I'd like to die.¹²⁶²

342. Both survivors gave evidence that in the morning a loader appeared at the site and was loading the dead bodies onto a tractor.¹²⁶³ Witness P-112 also saw a "caterpillar" bulldozer with a sort of blade in front.¹²⁶⁴ Witness P-112 estimated that there were approximately 1,500 to 2,000 dead bodies on the execution field.¹²⁶⁵

343. Marko Milošević, deputy commander of the 6th Battalion of the Zvornik Brigade,¹²⁶⁶ testified that on 14 July between 11:00 and 12:00 he received a phone call from the duty officer of the Zvornik Brigade at the battalion command.¹²⁶⁷ The Trial Chamber recalls that Dragan Jokić was the duty officer of the Zvornik Brigade at the time.¹²⁶⁸ Marko Milošević was told by the duty

¹²⁵⁶ Witness P-111, T. 1408-09.

¹²⁵⁷ Witness P-111, T. 1408.

¹²⁵⁸ Witness P-111, T. 1409; Witness P-112 testified that he saw a pile of clothing and documents in the corridor of the school, KT. 2968-69.

¹²⁵⁹ Witness P-111, T. 1416; Witness P-112, KT. 2969-71, 2974.

¹²⁶⁰ Witness P-112, KT. 3006-07.

¹²⁶¹ Witness P-111, T. 1416-20; Witness P-112, KT. 2976-77.

¹²⁶² Witness P-111, T. 1418; 1421.

¹²⁶³ Witness P-111, T. 1423. Witness P-112 believed the loader to be an ULT 160; KT. 2983-84.

¹²⁶⁴ Witness P-112, KT. 2983-84.

¹²⁶⁵ Witness P-112, KT. 2983, testifying that this estimate is based on the number of people in the school, which was about 600 per floor and on the observation of the area in daylight; KT. 3001.

¹²⁶⁶ The headquarters of the 6th Battalion of the Zvornik Brigade were located near the Petkovci School. Dragan Obrenović, T. 2538; Marko Milošević, T. 5642.

¹²⁶⁷ Marko Milošević testified that the call was received on the wire communication line, which was an inductor from the command connected to the battalion duty officer; T. 5646-47.

¹²⁶⁸ Marko Milošević testified that the duty officer did not introduce himself and Marko Milošević does not know who he was; Marko Milošević, T. 5661-62.

officer that in two hours Muslim prisoners would arrive from Srebrenica to be detained at the Petkovci School.¹²⁶⁹

344. Around two hours later, Marko Milošević informed his commander, Captain Ostoja Stanišić, about the call.¹²⁷⁰ Ostoja Stanišić called the duty officer of the Zvornik Brigade.¹²⁷¹ The duty officer told them to find Colonel Beara, who should call the brigade command.¹²⁷² Marko Milošević was sent by his commander to look for Beara. Marko Milošević went in the direction of the Petkovci School, which was about 600 metres from the battalion headquarters. He found Colonel Beara with Drago Nikolić, the assistant commander for security of the Zvornik Brigade, and a few military policemen he did not know, at the crossroads on the main road in Petkovci.¹²⁷³

345. From the crossroads Marko Milošević could see the school and soldiers guarding it. The soldiers were unknown to him.¹²⁷⁴ Marko Milošević passed on the message to Colonel Beara to call the brigade immediately and then returned to the 6th Battalion headquarters. From there, he heard gunfire late in the afternoon coming from the direction of the school.¹²⁷⁵ Marko Milošević was later told that the detainees from the Petkovci School had been killed at the dam, but he does not remember who gave him this information.¹²⁷⁶ Dragan Obrenović testified that on 16 July Ostoja Stanišić informed him that a group of prisoners had been killed in the Petkovci School.¹²⁷⁷ He later learned that the participants to these killings were members of the 10th Sabotage Detachment.¹²⁷⁸

346. There is forensic evidence of a grave site at Petkovci Dam where at least 46 individuals were found. Most of the individuals died from gunshots and all of the bodies of which sex could be determined were male.¹²⁷⁹ Approximately 14 kilometres from the Dam, a secondary grave was discovered, which contained bodies that were first buried at the Dam.¹²⁸⁰ According to one report there were 192 bodies, all dressed in civilian clothes.¹²⁸¹ Another forensic expert, Jose Baraybar,

¹²⁶⁹ Marko Milošević, T. 5646.

¹²⁷⁰ Ostoja Stanišić had been at the Zvornik Brigade command with about 30 soldiers of the Battalion to be sent to Snagovo; Marko Milošević, T. 5647.

¹²⁷¹ Marko Milošević, T. 5649.

¹²⁷² The Duty Officer's Logbook of the Zvornik Brigade contains a note of 14 July, which states that; "Colonel Salapura called – Drago and Beara to report to Golić", Ex. P133.

¹²⁷³ Marko Milošević, T. 5648-51.

¹²⁷⁴ Marko Milošević, T. 5651.

¹²⁷⁵ Marko Milošević, T. 5650, 5652-53.

¹²⁷⁶ Marko Milošević, T. 5656.

¹²⁷⁷ Dragan Obrenović, T. 2538-39.

¹²⁷⁸ Dragan Obrenović, T. 2539.

¹²⁷⁹ Some ligatures and a blindfold were also found. Ex. P759 (Expert Report of Christopher Lawrence on autopsies of human remains from the Dam site, June 1998, p. 2-3.

¹²⁸⁰ Ex. P771, Report by Richard Wright, 1999, pp 20, 25. The site of the secondary grave is called Liplje 2. *See also* Ex. P766 (Expert Report of Christopher Lawrence on autopsies of human remains from Liplje site 2, October 1998, p. 2-3. Ex P555.

¹²⁸¹ Ex. P771, Report by Richard Wright, 1999, pp. 27, 32.

calculated the minimum number of individuals found in the secondary grave to have been 219 victims.¹²⁸² Of those victims, one was determined to have been between 8 and 12 years old, 38 were determined to have been between 13 and 24 years old and 180 were determined to have been older than 25 years old.¹²⁸³

(h) Pilica School

347. On 14 July, Bosnian Muslim prisoners were taken by bus from Bratunac through Zvornik to Pilica, where they were detained in the sports hall of the Pilica School.¹²⁸⁴ Pero Petrović, the president of the Pilica local commune and mobilised at the rear services of the 1st Battalion of the Zvornik Brigade,¹²⁸⁵ testified that on 14 July he was told by Slavko Perić, a security officer of the 1st Battalion of the Zvornik Brigade,¹²⁸⁶ that Perić had received orders that the school premises should be prepared to receive prisoners.¹²⁸⁷ As Pero Petrović did not believe Slavko Perić and wanted to get more information, he called the Zvornik Brigade's Headquarters and was put through to the duty officer, Dragan Jokić.¹²⁸⁸ Pero Petrović testified that he recognised Dragan Jokić's voice, and that in any case Dragan Jokić also introduced himself as "the duty officer, Dragan Jokić". Pero Petrović that this is how Dragan Jokić "introduced himself at all times."¹²⁸⁹ When Petrović asked what was going on in Pilica and whether it was true that prisoners were being brought there, Dragan Jokić answered that "this was not any of his concern and that he should mind his own business". Dragan Jokić also told him that there were people taking care of

¹²⁸² Ex. P738, Report by Jose Baraybar, p. 4; Ex. P740, Report by Jose Baraybar, p. 5.

¹²⁸³ Ex. P738, Report by Jose Baraybar, p. 12.

¹²⁸⁴ The Pilica School was also called Kula School Witness P-113, KT. 3027, 3029-32, indicating where the sportshall was on Ex. P17.1 (photograph of Pilica school, Ruez), KT. 3034-35. *See also* Witness P-116, Ex. P455, p. ERN 03391123.

¹²⁸⁵ According to Pero Petrović's testimony the battalion's names and commanders changed often. He did not specify of which battalion he was a member, but stated that his commanders were Mihajlo Galić, Stevo Petrović and Milan Stanojević. Pero Petrović, T. 5493-94. Milan Stanojević had been assistant commander for security of the Kiseljak or 3rd Battalion and was then transferred to the 1st Battalion of which he became the commander. Witness P-130, T. 6722. Pero Petrović testified that during the relevant time period he was on leave with respect to the army. Pero Petrović T. 5496-97.

¹²⁸⁶ Pero Petrović, T. 5546-47.

¹²⁸⁷ Pero Petrović, T. 5499-5500. Pero Petrović stated that even though Slavko Perić only spoke about the "premises" he had understood this to be the school premises as they had met in front of the school. Pero Petrović, T. 5547-48.

¹²⁸⁸ Pero Petrović, T. 5503-04. Pero Petrović stated that he had to go to the adjacent village of Sepak in order to make the phone call because the phone lines in Pilica were not working on that day. Pero Petrović, T. 5553. Zoran Radosavljević, testified that on 14 and 15 July the telephones were working in Pilica, but did not exclude that "the lines may have been down" on 14 July. Zoran Radosavljević, T. 12968-71. Pero Petrović stated that he was not sure if the call was on 14 July, but that it was around 12 July. Pero Petrović, T. 5561-64. The Trial Chamber concludes that it was on 14 July as Dragan Jokić was not duty officer on 12 July. As for further evidence confirming that on 14 July Dragan Jokić was Duty Officer, *see* Dragan Obrenović, T. 2611; Ex. P133: Zvornik Brigade duty officer workbook for 29 May until 27 July 1995.

¹²⁸⁹ Pero Petrović, T. 5545-46.

this.¹²⁹⁰ The Trial Chamber concludes that Dragan Jokić knew about the Bosnian Muslim prisoners in the Pilica School.

348. The prisoners were guarded by VRS soldiers who rotated in shifts.¹²⁹¹ During the night “two or three men died [...] from lack of air.”¹²⁹² There was not enough water for all the detainees in the crowded hall.¹²⁹³ Shooting and people crying for help were heard from behind the school.¹²⁹⁴ The next day, 15 July, the soldiers took jewellery, watches and money from the prisoners. They also asked for 10,000 Deutsch Marks and told the Bosnian Muslim men that they would be killed unless they collected the money.¹²⁹⁵ The prisoners were not always allowed to go to the toilet. When they were allowed, some of them were beaten by the soldiers with their rifles.¹²⁹⁶ During the night of 15 July men were taken out and screaming was heard. Some of the men did not return.¹²⁹⁷

(i) Branjevo Military Farm

349. On 16 July, the prisoners were told that everybody could leave for Tuzla.¹²⁹⁸ Their hands were tied behind their backs and they were taken to buses.¹²⁹⁹ The VRS soldiers were swearing at the Bosnian Muslim men and occasionally, a prisoner was hit with a rifle butt.¹³⁰⁰ The prisoners were taken to Branjevo Military farm,¹³⁰¹ which is part of Pilica local commune. Members of the Drina Corps Military Police Battalion escorted the buses.¹³⁰² The prisoners were taken off the

¹²⁹⁰ Pero Petrović, T. 5503-04, 5527-28. Pero Petrović’s memory was also refreshed with his former statement given to the Prosecutor, where it says: “*Mr. Jokić told Mr. Petrović over the telephone that the prisoners he spoke of where military prisoners and it was not the concern of Petrović and that there were people taking care of this*”. Pero Petrović, T. 5528.

¹²⁹¹ Witness P-113, KT. 3038-39; Witness P-116, Ex. P455, p. ERN 03391124. Zoran Radosavljević, a local from Pilica, testified that on 14 July he saw buses with prisoners behind the school (which he identified on Ex. P17.2 (photo of elementary school Kula in Pilica) that were guarded by 20 to 30 soldiers. Some of the soldiers were wearing white belts, some without belts. Zoran Radosavljević, T. 12056-59. Pero Petrović, who was the president of the Pilica local commune and mobilised at the rear of an infantry battalion belonging to the Zvornik Brigade, also testified that he saw approximately 20 buses with men inside in front of the school that were guarded by soldiers in different uniforms whom he did not know. Pero Petrović, T. 5506-07, 5510. The Trial Chamber recalls that members of the military police were required to wear a white belt with a shoulder strap. *See* D15/1, Service Regulations of the SFRY, Armed Forces Military Police, 1985, Art 8.

¹²⁹² Witness P-113, KT. 3036.

¹²⁹³ Witness P-113, KT. 3036-37.

¹²⁹⁴ Witness P-113 testified that at night, after he had been allowed to leave the school to get some water from a fountain, he heard a bus approaching and then shooting and people crying; KT. 3050.

¹²⁹⁵ Witness P-113, KT. 3037-39.

¹²⁹⁶ Witness P-105, T. 1192.

¹²⁹⁷ Witness P-105, T. 1191; Witness P-113, KT. 3038.

¹²⁹⁸ Witness P-105, T. 1193. Witness P-113 gave evidence that a soldier said that all young men were to leave the sportshall in order to be exchanged. Witness P-113, KT. 3040.

¹²⁹⁹ Witness P-105, T. 1193; Witness P-113, KT. 3040. *See also* Witness P-116, Ex. P455, p. ERN 03391124.

¹³⁰⁰ Witness P-105, T. 1194.

¹³⁰¹ Witness P-113 *referring* to Ex. P18.1 (photograph of Branjevo Military Farm); KT. 3042-43; Ex. P455 (statement of Witness P-116), ERN 03391124.

¹³⁰² Dražen Erdemović, KMT. 843-44.

buses in groups and brought to a meadow.¹³⁰³ Soldiers, standing in a line, told the men to turn their backs and shot the prisoners with automatic rifles and machine guns.¹³⁰⁴ After every group of Bosnian Muslim men was executed, the soldiers asked if there was anybody still alive. The men who responded were then also killed.¹³⁰⁵ According to a VRS soldier, the execution started around 10:00 and ended around 15:00 or 16:00.¹³⁰⁶ A survivor testified that the shooting only stopped after about four hours when the buses stopped arriving.¹³⁰⁷ The killing field was covered with around 1000 dead bodies¹³⁰⁸ when heavy machinery arrived to bury them at the site.¹³⁰⁹

350. Dražen Erdemović, a member of the 10th Sabotage Detachment who was convicted for his participation in the killings, testified that they received orders for the execution of the Muslim prisoners from “a Lieutenant Colonel” escorted by two military police men.¹³¹⁰ The Trial Chamber finds that members of the 10th Sabotage Detachment of the Main Staff took part in the killings at Branjevo Military Farm.

351. Dražen Erdemović further testified that he had heard that “men from Bratunac [were] coming to assist” without any specification from which unit or brigade they were.¹³¹¹ Those men arrived around 14:00-15:00 and first mistreated several Bosnian Muslim men¹³¹² and then started to kill them.¹³¹³ There is no evidence that would support a finding beyond reasonable doubt that those “men from Bratunac” were members of the Bratunac Brigade.¹³¹⁴

¹³⁰³ Witness P-105 gave evidence that while escorting him to the execution site one soldier asked him for German marks and kicked him in the stomach when he told the soldier that he had none, T. 1194-95. Witness P-113, KT. 3040.

¹³⁰⁴ Witness P-105, T. 1195; P 113, KT. 3041. The soldiers were also ordered to shoot the Muslim men individually. Dražen Erdemović testified that men who did not die immediately were “finished off” with pistols; KT. 3181.

¹³⁰⁵ Witness P-105, T. 1195-96; P 113 testified that a soldier asked if anyone was wounded and said that the wounded would be bandaged; KT. 3040-42.

¹³⁰⁶ Dražen Erdemović, KT. 3137.

¹³⁰⁷ Witness P-113, KT. 3042.

¹³⁰⁸ Witness P-105, T. 1198. Dražen Erdemović estimated that around 1000 Muslim men were killed at Branjevo Military Farm. All men were dressed in civilian clothes, except for one who was wearing camouflage pants; KT. 3137-38, MT. 25122.

¹³⁰⁹ Dražen Erdemović testified that “the Lieutenant Colonel” was present, while the Muslim men who had been brought with the last bus, were shot and said that the men would be buried at the farm, MT. 25157.

¹³¹⁰ Dražen Erdemović further testified that “the Lieutenant Colonel” left before the first buses were arriving and returned with the same two military police men when the last bus with Muslim men to be executed arrived at the site; Dražen Erdemović, MT. 25154, 25157.

¹³¹¹ According to Dražen Erdemović it was Brano Gojković, from whom he received his orders, who had said this. Brano Gojković received his orders from a Lieutenant Colonel; Dražen Erdemović, KT. 3167-68, MT. 25122.

¹³¹² “They beat them from steel rods. They kicked them, they hit them.” Dražen Erdemović, KT. 3135.

¹³¹³ Dražen Erdemović, MT. 25156.

¹³¹⁴ Richard Butler testified that his opinion as to the participation of members of the Bratunac Brigade changed during the *Krstić* trial because of the new interpretation of Ex. P257 (intercept of 16 July at 21:16); Richard Butler, T. 4620. In relation to Ex. P257 (intercept), in which Popović mentions Blagojević’s men having arrived “up there” to help out, Dragan Obrenović testified that “up there” means the hill in Baljkovica. Dragan Obrenović testified that if Popović had wanted to mention Pilica he would have said “down there”, because the Drina River flows down towards Pilica. Dragan Obrenović, T. 2675-79. When Popović continues that “it was horrible,” he means the fighting. That something arrived there now from Vidoje Blagojević refers to

352. The Zvornik Brigade duty officer's workbook shows that on 16 July at 22:10 the 1st Battalion of the Zvornik Brigade, which was stationed at the farm,¹³¹⁵ requested a loader, an excavator and a dump truck to be in Pilica at 08:00 on 17 July.¹³¹⁶ A note in the workbook reflects that this request was conveyed to "Jokić" and "Milošević".¹³¹⁷ Witness P-130 testified that "Jokić" refers to the chief of engineering of the Zvornik Brigade and "Milošević" to the brigade's assistant commander for logistics, and that both men were notified that the machinery had to be sent to the requested area.¹³¹⁸ Witness P-130 further stated that he notified Dragan Jokić by telephone at the command of the engineering company,¹³¹⁹ which is corroborated by the workbook.¹³²⁰

353. On 17 July, Cvijetin Ristanović, a member of the Engineering Company of the Zvornik Brigade, was sent by Damjan Lazarević, commander of the fortification platoon of the Engineering Company, to Branjevo Military Farm.¹³²¹ When Cvijetin Ristanović arrived there with his machine, an excavator, he saw bodies laying on the meadow.¹³²² He was told by Damjan Lazarević to dig a hole behind the building.¹³²³ Later a loader arrived at the site, but Cvijetin Ristanović did not see it being used.¹³²⁴ After dark Cvijetin Ristanović returned with the excavator to the base of the Engineering Company.¹³²⁵

354. There is forensic evidence that at least 132 male individuals, all wearing civilian clothes, were buried in a large cultivated field approximately 130 metres north from Branjevo Military

reinforcements from the Bratunac Brigade that arrived on 16 July. Dragan Obrenović had asked for reinforcements on the morning of 14 July and asked again on 15 July. They did not arrive and so the column of the 28th Division could not be stopped in time. Instead it reached the front end of the battalion. Dragan Obrenović, T. 2602. Richard Butler has changed his opinion on "up there" since *Krstić* in line with Obrenović's opinion. Richard Butler, T. 4615.

¹³¹⁵ Zoran Radosavljević testified that during the war the Branjevo Farm was used by the army and that a battalion was located there whose commander was Milan Stanojević, T. 12047, 12075-76. Milan Stanojević was the commander of the Zvornik Brigade 1st Battalion; Witness P-130, T. 6722. *See also* Ex. P873 (Article from *Drinks Magazine* titled, "They Produce Their Own Food", dated June 1995), which talks about the Branjevo Military Farm as being in the area of responsibility of Milan Stanojević's unit; Ex P390 (report on the combat readiness of the Zvornik Infantry Brigade for the period 1 January- 31 December 1994), where the Branjevo military farm is included in the logistics support of the Zvornik Brigade, p. 8-9.

¹³¹⁶ Ex. P133 (Zvornik Brigade Duty officer workbook), p 34. There is also an entry in Ex. P133, p. 36, at 05:40 on 17 July that the 1st Battalion asked if the engineering machines had been secured.

¹³¹⁷ Ex. P133, p 34.

¹³¹⁸ Witness P-130 stated that the logistics commander was notified in case that the engineering company did not have a truck; T. 6647.

¹³¹⁹ Witness P-130, T. 6647.

¹³²⁰ Ex. P133 for 16 July 1995.

¹³²¹ Cvijetin Ristanović, T. 5389.

¹³²² Cvijetin Ristanović referring to the meadow depicted to the left of the building on Ex. P661 (drawings by Witness during OTP interview); T. 5390-93. Cvijetin Ristanović further testified that he saw a few men in working clothes in front of the workshop of the farm and that he assumed that the men were working there; Cvijetin Ristanović, T. 5392; *See also* Ex. P522, Vehicle log for a ULT 220 loader for 17 July. This vehicle log shows that a loader went to Branjevo Farm on 17 July.

¹³²³ Cvijetin Ristanović gave evidence that the grave had about the same size as the ones that he had dug in Orahovac. Cvijetin Ristanović, T. 5392.

¹³²⁴ Cvijetin Ristanović referred to the loader depicted on Ex. P63 as being similar to the one he saw at Branjevo Military Farm. Cvijetin Ristanović, T. 5394.

¹³²⁵ Cvijetin Ristanović, T. 5395-96.

Farm. Ligatures were recovered from 82 individuals and evidence of affiliation with the Muslim religion was found on five individuals.¹³²⁶ In a secondary grave along the Čančari road, the remains of people initially buried at the Branjevo Farm were discovered.¹³²⁷ According to one report 177 victims were found in the grave along the Čančari Road who all wore civilian clothes.¹³²⁸ Another forensic expert calculated that the minimum number of individuals found in the secondary grave was 283 victims.¹³²⁹ Of those victims, three were determined to have been between 8 and 12 years old, 49 were determined to have been between 13 and 24 years old and 231 were determined to have been older than 24.¹³³⁰ At least 269 victims were male.¹³³¹

(j) Pilica Cultural Centre

355. On 16 July, approximately 500 Bosnian Muslim men were killed by VRS soldiers in the Pilica Cultural Centre.¹³³² Due to the size of the building and the large number of men, it appears that the men were crammed into the main room and were standing on the stage.¹³³³ Shots and detonations from grenades were heard across the road for about 20 minutes.¹³³⁴ There is evidence that the next day the dead bodies were loaded onto a truck and buried at Branjevo Military Farm,¹³³⁵ which is about three kilometres from the Pilica Cultural Centre.¹³³⁶ There are no known survivors of this massacre.¹³³⁷

356. There is forensic evidence that corroborates the killings. A DNA analysis of blood and tissue samples collected at the Pilica Cultural Centre identified the samples as being of human origin.¹³³⁸ According to the locations of markings on the walls from both grenades and artillery

¹³²⁶ Ex. P754 (Expert Report of William Haglund, forensic investigation of the Pilica (Branjevo Farm) grave site).

¹³²⁷ Ex. P771, Report by Richard Wright, 1999, p. 20-21. This gravesite is called Čančari Road 12.

¹³²⁸ Ex. P.771, Report by Richard Wright, 1999, pp 27, 32.

¹³²⁹ Ex. P738, Report by Jose Baraybar, p. 4.

¹³³⁰ Ex. P740, Report by Jose Baraybar, p. 5.

¹³³¹ Ex. P738, Report by Jose Baraybar, p.11.

¹³³² The Pilica Cultural Centre is also called "Pilica Dom".

¹³³³ The Trial Chamber toured the Pilica Cultural Centre during its Site Visit to the region. The interior of the building has not been fully cleaned since the events in July 1995.

¹³³⁴ Dražen Erdemović testified that he had left Branjevo Military Farm and was in the café on the opposite side with "the Lieutenant Colonel" when the killings happened. He could see people lying down and could hear shots. He also heard the Lieutenant Colonel saying that 500 people were in the building. After the shooting had continued for 20 minutes, the "man from Bratunac", who was identified by Erdemović came to the café and said that everything was over; Dražen Erdemović, KT. 3143-48, MT 25161. *See also* Dean Manning's testimony as to the fact that an execution took place in that building, Dean Manning, T. 7214-15.

¹³³⁵ Pero Petrović, the president of the Pilica local commune, testified that he had been asked by a member of the military for the key to the Cultural Centre (he did not have, but someone else), because they wanted to detain prisoners there. Pero Petrović then witnessed prisoners leaving buses and going towards the entrance of the hall belonging to the centre. Two days later, he saw the soldiers loading bodies onto a truck and a few days later he was told by several people that the bodies were buried at Branjevo Farm; T. 5511-12, 5514-15, 5518-19.

¹³³⁶ Jean René Ruez, T. 534.

¹³³⁷ Jean René Ruez, T. 541.

¹³³⁸ Ex. P565 (Report of Investigation at the Kravica Warehouse and the Pilica Dom by Mickael Maloney and Mickael Brown), p. 1; Ex. P563 (Report on blood and tissue found at Grbavić School, Kravica Warehouse and Pilica Dom from samples taken by the US Navy Intelligence Service), p. 5-11.

fire, it appears that some victims may have sought some protection by crouching in the corners of the main room or may have been lined up against the wall before being shot. Additionally, markings from gun shots were found on the wall behind the stage, indicating that men were put on the stage before being executed and appear to have been shot at by soldiers located in the balcony overlooking the stage.¹³³⁹

(k) Kozluk

357. A large scale execution and burial operation was carried out at Kozluk between 15 and 16 July. Extensive forensic evidence exists that around 500 men were executed at the edge of the Drina River.¹³⁴⁰ There are no known survivors of this execution site.¹³⁴¹

358. On 16 July at around 08:00, Miloš Mitrović, a member of the fortification platoon of the engineering company of the Zvornik Brigade, who was assigned to operate an excavator,¹³⁴² was told by Dragan Jokić to take the machine and go together with Nikola Ricanović, a member of the road construction platoon of the engineering company,¹³⁴³ to Kozluk and report to Damjan Lazarević, Zvornik Brigade fortification platoon commander.¹³⁴⁴ Miloš Mitrović testified that Dragan Jokić did not tell him what his task in Kozluk was supposed to be, but told him that Damjan Lazarević would give them all necessary instructions on location.¹³⁴⁵ Miloš Mitrović further testified that on 14 July he had been sent back from Snagovo to Zvornik on a request conveyed through the operations centre to Dragan Jevtić.¹³⁴⁶

¹³³⁹ Dean Manning, T. 7214-15:

[The U.S. Naval Investigation Service] representative samples of blood, human tissue, and explosive residue from that building. They also identified large amounts of blood and explosive damage to the stage, blood dripping from the stage, artefacts such as shell cases, identification documents, and shoes, and other material which indicated or confirmed that an execution had taken place in that building [...] [Ex. P19.7] is a photograph of the stairway area leading to the stage of the Pilica Dom. That is a blood splatter pattern. You can see it's dripping down the wall, and there's another pattern on the left of the photograph. And it also indicates damage to the walls and the structure of the Dom.

¹³⁴⁰ Jean René Ruez, T. 515-16. Ex. P746: ICTY operations in Bosnia –Herzegovina 1999 season, Report of chief pathologist John Clark, Srebrenica graves, p. 6-12; Dean Manning: Team 6 – Srebrenica Investigation – Forensic Summary – Annex A, p. 46; Ex. P772, Report by Richard Wright, 2000, pp 12-13; Ex. P738, Report by Jose Baraybar, p. 12; Ex. P740, Report by Jose Baraybar, p. 5; Ex. P771, Report by Richard Wright, 1999, p. 21; Ex. P743, expert report Antony G. Brown, p. 10; Ex. P555.

¹³⁴¹ J.R.Ruez, T. 515; Ex. P358, Butler Military Narrative, p 72, para. 7.54.

¹³⁴² Miloš Mitrović was assigned to the fortification platoon of the engineering company where his task was to operate a Skip; Miloš Mitrović, T. 5595; Ex. P514 (Zvornik Brigade engineering company attendance roster for July 1995).

¹³⁴³ Ex. P514 (Zvornik Brigade engineering company attendance roster for July 1995).

¹³⁴⁴ Ex. P 516 (Zvornik Brigade vehicle logbook entry for a Torpedo excavator) corroborates that the excavator was used by the VRS on 16 July 1995 and went from the base to Kozluk and back to the base.

¹³⁴⁵ Miloš Mitrović also testified that Dragan Jevtić was still at Snagovo at this point in time. Miloš Mitrović, T. 5603-04, 5619-20.

¹³⁴⁶ Miloš Mitrović, T. 5599-5600. The Trial Chamber notes that it was Dragan Obrenović who released Miloš Mitrović and another machinist from the Zvornik Brigade. *See supra* section II. E. 1. (f).

359. Damjan Lazarević was waiting for Miloš Mitrović and Nikola Ricanović on the road and took them along a path next to the road leading to Kozluk. Along this path, Miloš Mitrović saw the bodies of people who had been killed. Holes had already been dug in the area. Some of the smaller holes were filled with the bodies of men dressed in civilian clothes, piled one on top of another.¹³⁴⁷

360. Damjan Lazarević told Miloš Mitrović to put earth on top of the bodies using the excavator.¹³⁴⁸ There were no instructions to check if anybody was still alive.¹³⁴⁹ Miloš Mitrović had been covering the bodies with soil for about thirty minutes, when a loader arrived.¹³⁵⁰ Miloš Mitrović testified that his excavator could not do the work he was tasked with as it was a construction machine for minor road works was working only at 30% of its normal capacity.¹³⁵¹ He testified that the command of the Engineering Company and the chief of engineering knew that the excavator was not in working order.¹³⁵² Rade Bosković, who had a work obligation with the *Josanica* company and was not a member of the Engineering Company, brought the machine and operated it.¹³⁵³ Rade Bosković continued to cover the bodies with earth while Miloš Mitrović stopped working as there was no need for his service anymore.¹³⁵⁴

361. Later, Miloš Mitrović and Nikola Ricanović were ordered by Damjan Lazarević to go back to the base in Karakaj.¹³⁵⁵ Miloš Mitrović gave evidence that they did not report back to anyone at the base because Damjan Lazarević arrived 15 minutes later and, as he was the platoon commander, the message would have been relayed.¹³⁵⁶

362. Forensic investigators discovered two secondary graves along the Cančari Road, which contained broken bottles and unused labels with the name of a bottling factory in Kozluk.¹³⁵⁷ Further investigation confirmed that the bodies in the graves along the Cančari Road came from the primary graves in Kozluk.¹³⁵⁸ When investigating the area surrounding the bottling factory in

¹³⁴⁷ Miloš Mitrović, T. 5604-06, 5621-22.

¹³⁴⁸ Miloš Mitrović, T. 5606, 5621.

¹³⁴⁹ No one checked for identification papers or registered the victims; no bodies were put into body bags. Miloš Mitrović, T. 5635.

¹³⁵⁰ Miloš Mitrović, T. 5606.

¹³⁵¹ Miloš Mitrović, T. 5608-09, 5622-23.

¹³⁵² Miloš Mitrović, T. 5609. The loader belonged to the *Josanica* Company, which was a quarry for stone used in road construction, but when necessary was commandeered by the Zvornik Brigade for the use of the Engineering Company. Miloš Mitrović stated that the loader had been commandeered on previous occasions; T. 5607-08, 5630-31.

¹³⁵³ Miloš Mitrović, T. 5631.

¹³⁵⁴ Miloš Mitrović, T. 5609-10.

¹³⁵⁵ Miloš Mitrović, T. 5610.

¹³⁵⁶ Miloš Mitrović, T. 5610-11. Miloš Mitrović further stated that after the meeting in the morning he did not see Dragan Jokić again; Miloš Mitrović, T. 5623-24. At the base Damjan Lazarević told him that he could go home; T. 5611.

¹³⁵⁷ Ex. P771, Report by Richard Wright, 1999, p. 21. This gravesite is called Čančari Road 03.

¹³⁵⁸ Ex. P771, Report by Richard Wright, 1999, p. 21; Ex. P743 (Expert Report of Anthony G. Brown), p. 10.

Kozluk, the forensic investigators found evidence of three primary graves, which still contained human remains and clothes.¹³⁵⁹ The victims in the primary graves had been executed at that location.¹³⁶⁰ All victims that were found in the primary and secondary graves wore civilian clothing.¹³⁶¹ Forensic experts have calculated that the minimum number of individuals related to the executions in Kozluk is between 451 and 506 persons,¹³⁶² Of whom two were determined to have been between 8 and 12 years old, 47 were determined to have been between 13 and 24 years old and 457 were determined to have been older than 24 years.¹³⁶³ One victim was found still clutching a piece of shrubbery. Subsequent investigation of plant specimens found in the graves proved that the executions of the victims occurred around the middle of July.¹³⁶⁴

2. Conclusions and Findings related to the Role of Bratunac Brigade

363. The Trial Chamber finds that there is insufficient evidence to support a finding beyond reasonable doubt that members of the Bratunac Brigade were involved in the mass executions at Potočari, the Jadar River, Cerska Valley,¹³⁶⁵ Tišća, Petkovci School and Dam, Pilica School, Branjevo Military Farm, Pilica Cultural Center and Kozluk.

364. The evidence as to the presence of members of the Bratunac Brigade members at the Kravica Warehouse is limited. There is documentary evidence that a member of the Red Berets, an intervention platoon of the Bratunac Brigade, was wounded at Kravica on 13 July.¹³⁶⁶ However, this documentary evidence only lists the word “Kravica”, without any further indication on location where the soldier was wounded.¹³⁶⁷ A member of the 1st Battalion of the Bratunac Brigade testified that when he arrived at the battalion command in Magasići on 13 July,¹³⁶⁸ he

¹³⁵⁹ Ex. P772, Report by Richard Wright, 2000, p. 10. Kozluk 1 contained three bodies that appeared to have been left behind after Kozluk 2 had been excavated.

¹³⁶⁰ Ex. P772, Report by Richard Wright, 2000, p. 10-11. The positioning of the bodies and the location of the bullets showed that this was an execution site. See also Ex. P746 (ICTY operations in Bosnia-Herzegovina 1999 season, report of chief pathologist John Clark, Srebrenica graves), p. 6-12, saying that most of the victims died from gunshots and many of them had blindfolds and ligatures.

¹³⁶¹ Ex. P771, Report by Richard Wright, 2000, pp. 27, 32

¹³⁶² Ex. P772, Report by Richard Wright, 2000, pp. 12-13.

¹³⁶³ Ex. P738, Report by Jose Baraybar, p. 12; Ex. P740, Report by Jose Baraybar, p. 5.

¹³⁶⁴ Ex. P772, Report by Richard Wright, 2000, p. 14; Ex. P738, Report by Jose Baraybar, p. 4.

¹³⁶⁵ While the Witness P-109 testified that he saw an APC escorting buses to what proved to be the execution spot, and returning therefrom, the Trial Chamber finds that it cannot establish whether this APC was one of the UN APCs that had been captured by the Bratunac Brigade.

¹³⁶⁶ Ex. P464, logbook of the Bratunac military medical center of 13 July, reflects that a member of the Red Berets called Miroslav Stanojević was wounded at Kravica on 13 July. The Bratunac Brigade Roster for July 1995 Ex. D143/1, lists Miroslav Stanojević was a member of the Bratunac Brigade, with the specification that he was a member of the 3rd Battalion-Red Berets (“Crveni”).

¹³⁶⁷ Ex. P464, logbook of the Bratunac military medical center for 13 July.

¹³⁶⁸ Based on the testimony of Nikola Gajić, the Trial Chamber notes that the only date on which Nikola Gajić reasonably could have gone to the Kravica Warehouse was 13 July, as Gajić testified that the Bosnian Muslim prisoners were still alive when he was at the warehouse around 15:00 or 16:00. Nikola Gajić, T. 3369, 3373.

heard that many Bosnian Muslims had been detained in the Kravica Warehouse.¹³⁶⁹ He claimed that he travelled on his own, as they were on “time off”, to the warehouse in the afternoon where he saw about 100 Bosnian Muslim men in civilian and military clothes and unknown Bosnian Serb soldiers with automatic weapons.¹³⁷⁰

365. The evidence as to the participation of members of the Bratunac Brigade in the killings is unclear. Momir Nikolić testified that he collected information after the killings,¹³⁷¹ and that two members of the Bratunac Brigade took part in the killings: Nikola Popović, a member of the Military Police platoon, and Milovan Matic from the 1st Battalion of the Bratunac Brigade.¹³⁷² When confronted with this statement, Nikola Popović denied having taken part in the executions.¹³⁷³ The Trial Chamber notes that there is no corroborative evidence as to their participation.

366. The Trial Chamber concludes that while members of the Bratunac Brigade might have been present around the Kravica Warehouse when the mass executions were carried out, there is insufficient evidence to establish beyond reasonable doubt that any members of the Bratunac Brigade participated in the killings at Kravica Warehouse on 13 July.

367. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that elements of the Bratunac Brigade participated in the burial of the victims of the Kravica Warehouse massacre on 14 July at Glogova. Specifically, there is evidence that two members of the Workers Battalion of the Bratunac Brigade operated a loader used to load the bodies of the Bosnian Muslim men.¹³⁷⁴ According to one member of the Workers Battalion, he went to Kravica upon the order of Momir Nikolić, which was given to him in front of the Bratunac Brigade headquarters on the morning of 14 July. Krsto Simić testified that he saw Momir Nikolić in Glogova;¹³⁷⁵ Momir Nikolić, however, did not testify that he was in Kravica on that day.

368. There is evidence before the Trial Chamber to establish beyond reasonable doubt that members of the Bratunac Brigade Military Police participated in the transport of Bosnian Muslim men from Bratunac to the Grbaveci school in Orahovac, in the Zvornik municipality, in the early afternoon of 14 July. Specifically, driving in an APC marked “UN” they served as an escort for a

¹³⁶⁹ Nikola Gajić, T. 3367-68.

¹³⁷⁰ He heard a day later from other soldiers that people were killed at the warehouse; Nikola Gajić, T. 3369-71, 3373-74, 3387.

¹³⁷¹ Momir Nikolić stated that he learned this information from “sources” or “collaborators” who worked at Kravica. These people “cooperate[d] with the security organ.” Momir Nikolić, T. 2383.

¹³⁷² Momir Nikolić, T. 2354-55; Ex. D143/1, Roster of the Bratunac Brigade, Milovan Matic is listed as a member of the 1st Battalion.

¹³⁷³ Nikola Popović, T. 11068.

¹³⁷⁴ See *supra* section II. F. 1. (d) (ii).

convoy of approximately 30 buses travelling from Bratunac town to locations in the Zvornik municipality.¹³⁷⁶ Grbavci school was used as a temporary detention centre for the men who were subsequently executed in a nearby field. There is no evidence to support a finding that members of the Bratunac Brigade participated in the executions at Orahovac.

369. Survivors who were taken to execution sites in the Zvornik municipality other than Orahovac gave testimony of travelling from Bratunac to Zvornik on the morning of 14 July as part of a convoy.¹³⁷⁷ The Trial Chamber finds there is sufficient evidence to conclude that these vehicles formed part of the same convoy for which members of the Bratunac Brigade Military Police served as escort.

3. Conclusions and Findings related to the Role of Zvornik Brigade

370. The Trial Chamber finds that there is insufficient evidence to support a finding beyond reasonable doubt that members of the Zvornik Brigade were involved in the mass executions at Potočari, the Jadar River, Cerska Valley, Tišća, Petkovci School and Dam, and Pilica Cultural Centre.

371. There is sufficient evidence before the Trial Chamber to establish beyond reasonable doubt that members of the Engineering Company of the Zvornik Brigade participated in the burial operation at Glogova following the mass executions at the Kravica Warehouse on 15 July.¹³⁷⁸ There is insufficient evidence, however, to support a finding that members of the Zvornik Brigade participated in the executions at the Kravica Warehouse.

372. There is sufficient evidence before the Trial Chamber to establish beyond reasonable doubt that members of the Zvornik Brigade participated in the detention, execution and burial of Bosnian Muslim men at the Grbavci School and nearby field in Orahovac. Specifically, the Trial Chamber finds that Drago Nikolić, the chief of security of the Zvornik Brigade, was in charge of the detention of the Bosnian Muslim men in Orahovac.¹³⁷⁹ Furthermore, members of the Zvornik Brigade Military Police assisted in the detention of prisoners, with the approval of Dragan Obrenović, the deputy commander of the Zvornik Brigade, who knew of the murder operation at the time when he allowed the Military Police members to assist Drago Nikolić. Finally, soldiers

¹³⁷⁵ See *supra* section II. F. 1. (d) (ii).

¹³⁷⁶ See *supra* section II. E. 4.

¹³⁷⁷ See *supra* section II.E.4. and section II. F. 1. (g) and (h).

¹³⁷⁸ See *supra* section II. F. 1. (d) (ii).

¹³⁷⁹ See *supra* section II. F. 1. (f), and in particular, para.s 321-325.

from the Zvornik Brigade command and the 4th Battalion of the Zvornik Brigade assisted in guarding the prisoners at the Grbavci School in Orahovac.¹³⁸⁰

373. In relation to the participation of elements of the Zvornik Brigade in the executions in Orahovac, the Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt the involvement of members of the security organ of the Zvornik Brigade in the execution operation.¹³⁸¹ One member of the 4th Battalion of the Zvornik Brigade was identified by a survivor of the executions in Orahovac as having been present at the time the killings were taking place.¹³⁸²

374. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that members of the Zvornik Brigade participated in the burial of the Bosnian Muslim men murdered in Orahovac. Specifically, the Trial Chamber finds that the evidence establishes that members of the Zvornik Brigade Engineering Company participated in the burials from the night of 14 July through the morning of 15 July, using the equipment belonging to the Zvornik Brigade Engineering Company.¹³⁸³

375. There is sufficient evidence before the Trial Chamber to establish beyond reasonable doubt that members of the Zvornik Brigade were near the Petkovci School and Dam at the time that prisoners were detained and subsequently executed at the Petkovci Dam.¹³⁸⁴ There is no evidence, however, to support a finding that members of the Zvornik Brigade participated in the detention, execution or burial of Bosnian Muslim men at these locations.

376. There is sufficient evidence before the Trial Chamber to establish that some elements of the Zvornik Brigade were aware that Bosnian Muslim men were being detained at the Pilica school;¹³⁸⁵ however, there is insufficient evidence to establish beyond reasonable doubt that members of the Zvornik Brigade took part in guarding or detaining the men there.

377. There is sufficient evidence before the Trial Chamber to establish beyond reasonable doubt that on 17 July members of the Zvornik Brigade Engineering Company participated in digging the mass graves following the execution of approximately 1,000 Bosnian Muslim men at the Branjevo Military Farm.¹³⁸⁶ There is insufficient evidence, however, to support a finding beyond reasonable doubt that any member of the Zvornik Brigade participated in the executions at the Branjevo Military Farm on 16 July.

¹³⁸⁰ See *supra* section II. F. 1. (f). (i), and specifically, para. 326.

¹³⁸¹ See *supra* para. 330.

¹³⁸² See *supra* para. 328.

¹³⁸³ See *supra* section II. F. 1. (f). (iii).

¹³⁸⁴ See *supra* section II. F. 1. (f), and in particular, paras 343-45.

¹³⁸⁵ See *supra* section II. F. 1. (h).

¹³⁸⁶ See *supra* section II. F. 1. (i), paras 352 and 353.

378. There is insufficient evidence to support a finding that any member of the Zvornik Brigade participated in the mass execution at the Pilica Cultural Centre on 16 July. There is one witness who testified that he saw bodies being loaded onto a truck in front of the Pilica Cultural Centre and that he heard that the bodies were buried at Branjevo Farm. The Trial Chamber does not find that this evidence is sufficient to make a finding that the bodies were buried at the Branjevo Military Farm and indeed, that the Zvornik Brigade Engineering Company was involved in the burial.

379. Finally, the Trial Chamber finds that there is sufficient evidence to support a finding that members of the Zvornik Brigade Engineering Company participated in the burial of Bosnian Muslim men in mass graves at Kozluk on 16 July.¹³⁸⁷

¹³⁸⁷ See *supra* section II. F. 1. (k).

G. Reburial Operation 1 August -1 November 1995

380. Concern grew within the International Community as vast numbers of Bosnian Muslim men remained unaccounted for and the VRS continued to prevent access to the Srebrenica region.¹³⁸⁸ A series of meetings were held with President Slobodan Milošević and General Ratko Mladić between the 14 July and 19 July to negotiate access for UNHCR and the ICRC to the area.¹³⁸⁹ Despite an agreement being reached, the VRS continued to refuse entry to the areas where the Bosnian Muslim Men were being detained.¹³⁹⁰ Around 17 or 18 July, the first reports of the executions and detention centres came as some of the Bosnian Muslim men who had survived from the column arrived in Tuzla.¹³⁹¹ From 20 July, a preliminary report from UNPROFOR investigators in Tuzla and reports from DutchBat personnel also indicated that grave human rights abuses had taken place.¹³⁹² On 10 August 1995, the Security Council was briefed by the United States representative, who showed the Council aerial photographs indicating the existence of mass graves near Konjević Polje and Nova Kasaba.¹³⁹³ On the same date, the Security Council passed Resolution 1010, demanding that the Bosnian Serb authorities allow UN and ICRC observers to enter into Srebrenica.¹³⁹⁴

381. Investigators of the Office of the Prosecutor were first allowed to visit the area in January 1996;¹³⁹⁵ in April 1996 they commenced forensic examinations of suspected execution points and exhumation of mass graves.¹³⁹⁶ It became apparent to the investigators from an analysis of tire tracks and soil composition, that the mass graves had been disturbed.¹³⁹⁷ Forensic evidence

¹³⁸⁸ Ex. P825, Secretary-General's Report, p. 384. Ex. D210/1, NIOD Report, Part IV, Ch. 3, sect 3: "On 16 July, a convoy from the Norwegian Logistics Battalion based in Tuzla attempted to cross through Serb-held territory to Potočari, to pick up the remaining wounded at the Dutchbat compound. The convoy was forced to turn back after being fired upon by the [VRS]".

¹³⁸⁹ Ex. P825, Secretary-General's Report, paras 357-59.

¹³⁹⁰ On 17-18 July, the ICRC was able to gain access to the wounded being held in Potočari and Bratunac. They were able to evacuate 65 of the men to safety, but the VRS detained the remaining 23 as prisoners of war. The VRS continued to deny access to other areas. Ex. P825, Secretary-General's Report, para. 384. *See also* Momir Nikolić, T. 2235 and Robert Franken, T. 1512-13.

¹³⁹¹ Ex. P825, Secretary-General's Report, p. 384. Ex. D210/1, NIOD Report, Part IV, Ch. 3, sect 3.

¹³⁹² Ex. P825, Secretary-General's Report, paras 388-390.

¹³⁹³ Ex. D210/1, NIOD Report, Part IV, Ch. 3, sect 3.

¹³⁹⁴ *Id.*

¹³⁹⁵ Ex. D210/1, NIOD Report, Part IV, Ch. 3, sect4; Jean-Rene Ruez, T. 489. The Dayton Agreement granted investigators access to all areas in Bosnia and Herzegovina, but made no provisions for the protection of their work. Only in Mid-January 1996 was an agreement reached on protection of members of the international community visiting the area. The American Assistant Secretary of State for Human Rights was the first to visit the area. On his visit to the gravesites he was accompanied by ICTY representatives.

¹³⁹⁶ Ex. P552, Summary of Forensic Evidence, Execution Points and Mass Graves, Dean Manning, 16 May 2000, p.2-21; Jean-Rene Ruez, T. 370; Ex. P751, Forensic Investigation of the Cerska Grave site, Report by William Haglund, pp. vii and 1; Ex. P754, Forensic Investigation of the Pilica (Branjevo Farm) Grave Site, Report by William Haglund, pp. ix and 1.

¹³⁹⁷ Ex. P552, Summary of Forensic Evidence – Execution Points and Mass Graves, p. 16. To this date five disturbed primary graves have been located. Dean Manning, T. 7164. The aerial images also showed disturbed earth at the grave sites. *See* Ex. P569 through Ex. P571 (Glogova); Ex. P573 through Ex. P575 (Orahovac); Ex. P578 and Ex. P579 (Dam near Petkovci); Ex. P581 and Ex. P582 (Kozluk); Ex. P584 through Ex. P586

showed that there were two types of mass graves, “primary graves”, in which individuals were placed soon after their deaths and “secondary graves”, into which the same individuals were later reburied.¹³⁹⁸ This disturbance of the primary graves “seriously hampered the investigations” into the executions.¹³⁹⁹

382. The Trial Chamber finds that the evidence is sufficient to prove that mass graves at the Dam near Petkovci, Kozluk, Glogova, Orahovac, and Branjevo Military Farm were disturbed and that bodies were exhumed from those graves.¹⁴⁰⁰ The Trial Chamber is also of the opinion that the opening of the mass graves and the reburial of the victims in other locations was an attempt to conceal the evidence of the mass killings. The Trial Chamber further finds: that the bodies in the primary graves in Glogova contained the bodies of victims from the Kravica Warehouse massacre¹⁴⁰¹ and that the bodies of these victims were subsequently moved to graves in the area around Zeleni Jadar;¹⁴⁰² that the bodies in the graves at Branjevo Military Farm and Kozluk¹⁴⁰³ were taken to secondary graves along the Čančari road;¹⁴⁰⁴ that the bodies from the graves near Orahovac were moved to smaller graves near the Hodžići road;¹⁴⁰⁵ and that the bodies in the grave at the Dam near Petkovci were reburied at a location near Lipje.¹⁴⁰⁶

(Branjevo Farm); Ex. P588 through Ex. P598 (Zeleni Jadar); Ex. P600 through Ex. P610 (Hodžići road); Ex. P612 through Ex. P617 (Liplje) and Ex. P620 through Ex. 645 (Čančari road).

¹³⁹⁸ Dean Manning, T. 7149-54. The aerial images showed disturbed earth in areas removed from the primary graves, which disturbances appeared at simultaneously with the disturbance of the primary graves. That is how the investigators found some secondary graves. These secondary graves contained pollen samples, cloth blindfolds and ligatures and shell cases. One secondary grave contained broken green glass and bottle labels, indicating that this was a secondary grave to the grave near the Kozluk bottling factory. The investigators have also found evidence that suggests that bodies were taken from a secondary grave and were then moved to a tertiary grave. For a full summary of the forensic evidence regarding mass graves and executions, *See* Ex. P552 through Ex. P554, Reports on Srebrenica Investigation, Summary of Forensic Evidence, by Dean Manning.

¹³⁹⁹ Dean Manning, T. 7167. The damage to the bodies and the distribution of artefacts and identification material made it difficult to determine the cause of death, the number of victims and the identity of victims.

¹⁴⁰⁰ Dean Manning, T. 7147-48. Ex. P555, map showing locations of primary and secondary grave sites.

¹⁴⁰¹ Ex. P556, chart of movement of bodies; Dean Manning, T. 7205-10. Witness DP-101, T. 7886, 7923-24, 7920. (closed session). Witness DP-101 also testified that bodies of victims in the Vuk Karadžić School in Bratunac and from Potočari were taken to Glogova.

¹⁴⁰² Dean Manning, T. 7151-53; Krsto Simić, T. 7337-39. *See also* Milovan Mitrović, Ex. D222/1, statement p. 3; Dragoljub Stanojević, Ex. D213/1, statement p. 3, Dragiša Jovanović, Ex. D218/1, statement, p 2 and Milan Gvozdinović, Ex. D225/1, statement p. 3. Stanojević mentions the bauxite mine as a secondary mass grave. Gvozdinović mentions Blječeva as one of the secondary grave sites. *See also* Ex. P561, Report on examination and recovery of evidence from Kravica Warehouse, M. Hedley, March 2001, and Ex. P565, Report of investigation, U.S. Naval Criminal Investigative service, 16 January 1998.

¹⁴⁰³ Dean Manning, T. 7233; The mass grave at Kozluk contained over a hundred bodies.

¹⁴⁰⁴ Ex. P552 through Ex. P554, summaries of forensic evidence, Dean Manning; Ex P562, laboratory report by Bureau for Alcohol Tobacco and Firearms, 24 February 2000; Ex. P564, Report on textile investigation, Netherlands Forensic Institute, 11 February 2000. Ex. P771, Report by Richard Wright, 1999, p. 20-21, and 27, 32. This report concludes that at the gravesite called Čančari Road 12 the remains were found of victims who were killed at Branjevo Farm, *id.* Re: the victims of Branjevo Farm and their exhumation, *see also* Ex. P738, Report by Jose Baraybar, p. 4.

¹⁴⁰⁵ Ex. P740, Report by Jose Baraybar, pp. 8, 10; Ex. P771, Report by Richard Wright, 1999, pp. 22, 23; Ex. P771 (Report by Richard Wright, 1999, pp. 27, 32; Ex. P738 (Report by Jose Baraybar, p. 11; Ex. P740 (Report by Jose Baraybar, pp. 8-11); and Ex. P762 (Expert Report of Christopher Lawrence on autopsies of human remains from Hodžići Road site 3, October 1998); Ex. P763 (Expert Report of Christopher Lawrence on

383. The evidence establishes that the reburial operation, which took place some time in September and October 1995,¹⁴⁰⁷ was ordered by the VRS Main Staff.¹⁴⁰⁸ Colonel Beara, Chief of Security of the Main Staff, and Lieutenant Colonel Popović, Assistant Commander for Security of the Drina Corps, directed this operation.¹⁴⁰⁹ The operation was carried out on the ground by the Bratunac and Zvornik Brigades. Within the Bratunac Brigade, Captain Nikolić, the Chief of Security and Intelligence, was tasked with the organisation of the operation.¹⁴¹⁰ Within the Zvornik Brigade the Assistant Commander for Security, 2nd Lieutenant Drago Nikolić, was responsible for the operation.

1. Reburials in the area of responsibility of the Bratunac Brigade

384. Captain Nikolić testified that shortly after he received the task to rebury from Lieutenant Colonel Popović, he informed Colonel Blagojević¹⁴¹¹ and obtained his authorisation to contact the civilian authorities.¹⁴¹² According to Momir Nikolić, due to the large number of people and vehicles involved, it was not possible to perform the reburials by way of a secret operation.¹⁴¹³ There is evidence that the reburials being were discussed at a working meeting of Colonel Blagojević with the command staff and battalion commanders, held on 16 October 1995. At this meeting, Captain Nikolić is reported as saying that “we are currently engaged in tasks issued by the Army of Republika Srpska General Staff (sanitation)”.¹⁴¹⁴ The Trial Chamber finds that this is a reference to the reburial operation that was ongoing at the time.

autopsies of human remains from Hodžići Road site 4, October 1998); Ex. P764 (Expert Report of Christopher Lawrence on autopsies of human remains from Hodžići Road site 5, October 1998). Ex. P555.

¹⁴⁰⁶ Ex. P771, Report by Richard Wright, 1999, pp. 20, 25. The site of the secondary grave is called Lipje 2. See also Ex. P766 (Expert Report of Christopher Lawrence on autopsies of human remains from Liplje site 2, October 1998, p. 2-3. Ex P555; Ex. P771, Report by Richard Wright, 1999, pp. 27, 32; Ex. P738, Report by Jose Baraybar, p. 4; Ex. P740, Report by Jose Baraybar, p. 5; and Ex. P738, Report by Jose Baraybar, p. 12.

¹⁴⁰⁷ Nenad Đokić, T. 5460; Witness DP 101, T. 7886 (closed session);

¹⁴⁰⁸ Momir Nikolić, T. 1766-67; Ex. P541, Main Staff order for allocation of fuel, signed by General Mladić, 14 September 1995 and Ex. P 403, Bratunac Brigade minutes of meetings, entry for 16 October 1995.

¹⁴⁰⁹ Dragan Obrenović, T. 2541-2544; Momir Nikolić, T. 1766, 2355; Witness P-138, T. 3582-83. Lieutenant Colonel Pandurević had told Major Obrenović that Lieutenant Colonel Popović was in charge of the reburial operation.

¹⁴¹⁰ Momir Nikolić, T. 2355.

¹⁴¹¹ Momir Nikolić, T. 1767, 2355.

¹⁴¹² Momir Nikolić, T. 1767-68.

¹⁴¹³ Momir Nikolić, T. 2294-96.

¹⁴¹⁴ Ex. P403, Bratunac Brigade minutes of meetings, entry for 16 October 1995. Colonel Blagojević, Momir Nikolić, Ljubomir Beatović and Dragoslav Trišić were among those present at the meeting. See Ex. P. 403 and Ljubomir Beatović, T. 9715-17, Dragoslav Trišić, T. 9393-94 and Dragiša Jovanović, Ex. D218/1, interview 26 November 2001, pp. 21-22. Jovanović also stated that a search unit was active after this meeting. This unit, headed by Sreten Petrović, found six or seven Muslims still in the woods. They were brought to the Bratunac Brigade. Dragiša Jovanović, Ex. D218/1, statement 1 April 2004, p. 2.

385. In September or October 1995, members of the Civilian Protection of Bratunac were tasked by Captain Momir Nikolić to go to Glogova.¹⁴¹⁵ The Bratunac Brigade Military Police, following orders by Captain Nikolić,¹⁴¹⁶ provided security for these workers at the primary and secondary grave sites, and also secured traffic along the road from Bratunac to Srebrenica and Zeleni Jadar.¹⁴¹⁷

386. During the reburial operation, which lasted a couple of nights,¹⁴¹⁸ the members of the Civilian Protection used at least one loader and an excavator for the exhumations at the Glogova grave site.¹⁴¹⁹ Trucks were used for transportation of the bodies to the new burial locations.¹⁴²⁰ The evidence shows that fuel was provided by the fuel station in Bratunac.¹⁴²¹ Some of the trucks used in this operation had been used during the initial burial operation.¹⁴²² The trucks drove through Bratunac town on their way to the secondary graves¹⁴²³ and spread the smell of decaying bodies as they passed by.¹⁴²⁴ Witness P-135, who lived in Bratunac at that time, describes:

I remember that I was sitting at home. The window was open, my room window, and I felt this incredible stench. I know what the stench of decaying human bodies is. The following day I heard stories that children in the street saw some legs, parts of human bodies. That's all I know about this. This may mean that some graves were being relocated or something like that.¹⁴²⁵

Witness P-138 also described his observations:

Q: Did the trucks carrying the bodies go right through the town of Bratunac?

A. Right through the town of Bratunac, yes, and continued on towards Srebrenica.

Q. Did people in town know this was going on?

¹⁴¹⁵ Krsto Simić, T. 7337-39, 7359, Dragoljub Stanojević, Ex. D213/1, p 3; Witness P-140, T. 3436-37; Witness DP 101, T. 7886,7893, 7929 (closed session); Milan Gvozdenović, Ex. D225/1, p 3.

¹⁴¹⁶ Nenad Đokić, T. 5460, 5486-5487; Milovan Mitrović, Ex. D222/1, statement, p. 3. Nenad Đokić was ordered to make sure that women and children would not be traumatised.

¹⁴¹⁷ Borivoje Jakovljević, T. 9972; Witness P-138, T. 3582-83; Nenad Đokić, T. 5460; Boško Lazić, Ex. D226/1, p 3-4; Milovan Mitrović, Ex. D222/1, p 3. Lazić stated that he was assigned to secure the road leading to Jasenova. When driving from Bratunac to Jasenova, one first travels through Zeleni Jadar. See Ex. P767, map indicating the route to the bauxite mines in Dunja, as drawn by Milan Nedeljković. One route goes through Jasenova.

¹⁴¹⁸ Witness P-138, T. 3583; Krsto Simić, T. 7344; Milovan Mitrović, Ex. D222/1, p. 3 and Dragiša Jovanović, Ex. D218/1, statement 1 April 2004, p. 2.

¹⁴¹⁹ Witness P-140, T. 3437-39, 3445; Krsto Simić, T. 7337-38; Dragan Obrenović, T. 2544. Obrenović testified that the Drina Corps Military Police were providing security on the road, regulating traffic. The excavators that were used are depicted on Ex. P354.

¹⁴²⁰ Witness DP 101, T. 9727-29, 7887-88 (closed session); Witness P-140, T. 3435-37, 3439; Witness P-138, T. 3582-83. The Civilian Protection of Bratunac was also requested to carry out removal of bodies from Buljim. Witness DP 101 testified that he refused to carry out this request.

¹⁴²¹ Krsto Simić, T. 7337-39 and Dragoljub Stanojević, Ex. D213/1, statement, p. 3.

¹⁴²² Witness P-140, T. 3439. Witness P-140 was involved in the initial burial. At that time a lorry of the brick factory in Bratunac was used. During the reburials Witness P-140 used a loader that belonged to the brick factory too; Nenad Đokić, T. 5462. Đokić could not describe precisely what kind of vehicles was used but he testified that the army was using civilian vehicles and military trucks.

¹⁴²³ Witness P-140, T. 3439; Witness P-138, T. 3582-83; Nenad Đokić, T. 5487.

¹⁴²⁴ Witness P-135, T. 5768-69; Borivoje Jakovljević, T. 9972-73; Boško Lazić, Ex. D226/1, statement, pp. 3-4.

¹⁴²⁵ Witness P-135, T. 5768-69.

A. They probably did. Those who were outside in the street could see it, could feel it. You could feel the stench. So probably people talked and told one another about what was happening. Many people probably knew that those bodies were being moved.¹⁴²⁶

2. Reburials in the area of responsibility of the Zvornik Brigade

387. 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.¹⁴²⁷ On 14 July 1995, Dragan Obrenović heard of the fuel delivery and he then contacted Lieutenant Colonel Popović of the Drina Corps for clarification. Popović told Obrenović that he himself would take care of the fuel and that the Drina Corps would be in charge of transferring the bodies from the original burial sites to other sites.¹⁴²⁸ The evidence further suggests that Lieutenant Colonel Popović communicated directly with Lieutenant Colonel Pandurević and 2nd Lieutenant Drago Nikolić.¹⁴²⁹

388. The reburial operation took place some time in late September to late October, while Dragan Obrenović was not present at the Zvornik Brigade.¹⁴³⁰ Upon his return, Obrenović learned that the reburials had taken place and that Lieutenant Colonel Popović and Colonel Beara had organised the operation.¹⁴³¹ Furthermore, Obrenović learned that 2nd Lieutenant Drago Nikolić and the Zvornik Brigade Military Police provided traffic security during the operation.¹⁴³²

389. The Trial Chamber has heard evidence that members of the Zvornik Brigade Engineering Company exhumed bodies in primary graves and transported them to the new graves, using Zvornik Brigade equipment.¹⁴³³ The evidence, however, also indicates that Lieutenant Colonel Popović brought in other, non-Zvornik Brigade troops to dig the secondary graves.¹⁴³⁴ According to Witness P-130, Damjan Lazarević, who had also been involved in the primary burials, was the contact person within the Engineering Company during the reburial operation.¹⁴³⁵ Miloš Mitrović,

¹⁴²⁶ Witness P-138, T. 3583.

¹⁴²⁷ Dragan Obrenović, T. 2541-42; Ex. P541, VRS Main Staff Order, assigning five tonnes of fuel to the Zvornik Brigade for engineering works, as commented on by Obrenović, T. 2623-24. The order mentions a Captain Milorad Trpić. According to Obrenović, "Trpić" refers to "Trbić".

¹⁴²⁸ Dragan Obrenović, T. 2541-42. The 5,000 litres of fuel were allocated to the Zvornik Brigade were stored separately at the petrol station. Witness P-130, T. 6799.

¹⁴²⁹ Dragan Obrenović, T. 2542-43; Witness P-130, T. 6658. Obrenović testified that he met Lieutenant Colonel Popović on 26 September 1995 at the entrance of the Brigade headquarters. Popović asked him if the Brigade Commander Pandurević and Drago Nikolić were present at the Zvornik Brigade headquarters. Witness P-130 saw 2nd Lieutenant Drago Nikolić and Lieutenant Colonel Popović leave the office of the Brigade Commander.

¹⁴³⁰ Dragan Obrenović, T. 2543. Witness P-130, T. 6788.

¹⁴³¹ Dragan Obrenović, T. 2544.

¹⁴³² Dragan Obrenović, T. 2544.

¹⁴³³ Dragan Obrenović, T. 2544-45. Witness P-130, T. 6656, testifying that as a reward for taking part in the reburials those involved got three days off and three kilos of washing powder.

¹⁴³⁴ Dragan Obrenović, T. 2545; Witness P-130, T. 6656. Witness P-130 testified that these troops belonged to the 5th Engineering Battalion of the Drina Corps.

¹⁴³⁵ Witness P-130, T. 6654-55. Witness P-130 testified that his contact within the Zvornik Brigade Engineering Company was called Lazarević. The evidence suggests that this was Damjan Lazarević, the commander of Road

a member of the Zvornik Brigade Engineering Company who had been involved in the primary burial of the bodies, testified that he was not asked to take part in the reburial operation and did not hear that any members of the Zvornik Brigade Engineering Company took part in the reburial operation.¹⁴³⁶

390. Witness P-130 testified that Major Dragan Jokić was involved in the operation.¹⁴³⁷ However, Major Obrenović, who as Chief of Staff was Jokić's superior, testified that he did not have any information that Jokić was involved in the reburials.¹⁴³⁸ The Trial Chamber was not provided with any documentary evidence proving the involvement of Jokić in the reburial operation. In light of the contradictory evidence, and in particular considering that the Trial Chamber has concerns regarding Witness P-130's reliability, the Trial Chamber finds that the evidence does not support a finding beyond reasonable doubt that Major Dragan Jokić was aware of and involved in the reburial operation.

Construction platoon of the Zvornik Brigade Engineering Company. *See* Dragan Obrenović, T. 2910; Cvijetin Ristanović, T. 5364; Milovan Mitrović, T. 5594 and Minja Radović, T. 11927. *See supra* section II. F. 1. paras 335, 353 and 358-361.

¹⁴³⁶ Miloš Mitrović, T. 5632.

¹⁴³⁷ Witness P-130 testified that Major Dragan Jokić informed him that a group of the Engineering Company had been assigned to take part in the reburial and that Major Dragan Jokić had provided Witness P-130 with figures of average use of fuel for the machinery that was used during the operation, Witness P-130, T. 6654-55, 6797.

¹⁴³⁸ Dragan Obrenović, T. 2545-56.

III. FACTUAL FINDINGS RELATED TO THE INDIVIDUAL CRIMINAL RESPONSIBILITY OF VIDOJE BLAGOJEVIĆ

A. Findings related to Colonel Blagojević as Commander of the Bratunac Brigade

1. Competencies

391. Article 115 of the Brigade Rules for Infantry, Motorised, Mountain, Alpine, Marine, and Light Brigades (“Brigade Rules”) regulates a brigade commander’s responsibilities. It provides that the brigade commander:

has the exclusive right to command all brigade units and attached units. He bears full responsibility for the work of the brigade command and subordinate commands, for the state of morale, for security and combat readiness, for training, and for the proper performance of tasks. The commander takes decisions, assigns tasks to units, monitors their fulfilment, and demands their strict execution regardless of the difficulties that arise.¹⁴³⁹

392. The functional representatives of the command of the brigade, *i.e.* the assistant commanders and the chiefs of the staff organs, make proposals to the brigade commander within their respective functional area of responsibility or competence.¹⁴⁴⁰ The commander accepts, makes changes to, or rejects these proposals¹⁴⁴¹ and then takes decisions and issues orders.¹⁴⁴² After this, the respective functional representatives of the command convey the orders to the relevant subordinate units and monitor their implementation.¹⁴⁴³ Thus, the functional representatives are responsible to the brigade commander,¹⁴⁴⁴ who always remains in command of the units regarding the deployment of which the functional representatives have made proposals.

¹⁴³⁹ Ex. P84, Brigade Rules, Article 115.

¹⁴⁴⁰ See Articles 117-123 of the Brigade Rules, Ex. P83, which describe the duties of the various organs as to ‘recommend’ and ‘suggest’. See also Mićo Gavrić, T. 8538-39.

¹⁴⁴¹ Momir Nikolić, T. 1607 (testifying that he proposed “the most economical way to use the military police in carrying out missions”); Mićo Gavrić, T. 8538-39 (testifying that it was “his duty to make proposals to the brigade commander”), and 8475-76 (testifying that the brigade commander was duty-bound to study the proposals put forth by the head of artillery).

¹⁴⁴² Momir Nikolić, T. 1608; Mićo Gavrić, T. 8538. This is confirmed by Colonel Petar Salapura, the head of administration for intelligence in the VRS Main Staff in 1995, who testified that a security officer would recommend how to use the military police. The commander would decide whether or not to take that recommendation and then issue orders accordingly to the military police. Petar Salapura, T. 10543-44. See Ex. P84, Brigade Rules, Articles 125-149, which describe in detail the process of a brigade command in preparing and organising combat operations.

¹⁴⁴³ Momir Nikolić, T. 1607-09. Momir Nikolić, at T. 1908-09, testified:

my role was to propose to the commander the best possible ways and means of deploying [the Military Police Platoon], in keeping with the rules and regulations governing military police deployment. It was also my job to control the implementation of orders and measures issued by the commander, and then also that the military police platoon should be given all forms of professional aid and assistance in the sense of being able to carry out the orders issued by the commander.

¹⁴⁴⁴ Momir Nikolić, T. 1607, 1610; Mićo Gavrić, T. 8476; Dragoslav Trišić, T. 9320.

2. Functional – or Parallel – Chain of Command?

(a) Arguments of the Defence for Vidoje Blagojević

393. The Defence for Vidoje Blagojević has argued that, with respect to the events charged in the Indictment, “the Bratunac Brigade Security and Intelligence Organ, under the effective command and control of the Drina Corps Security Organ and the Main Staff Security Organ, formed an independent command line where operations were conducted independently and clandestinely from the Bratunac Brigade Command.”¹⁴⁴⁵ Furthermore, it maintained that due to a “parallel chain of command in the security organ of the VRS”, “a brigade commander would have no effective command and control over its security organ concerning activities characterised by the security organ as ‘counter intelligence’, an amorphous array of activities, self-determined by the security organ.”¹⁴⁴⁶ When it came to matters deemed by the security organ to be “official secrets”, the brigade commander “would be excluded from having knowledge of or involvement in the activities of its own security organ.”¹⁴⁴⁷

394. The Blagojević Defence further submits that the brigade security organ was expected to inform the brigade commander of its activities that did not involve counter-intelligence, but that “the involvement in the execution of thousands of Bosnian Muslim men is not the sort of activity that realistically would have been disclosed.”¹⁴⁴⁸ The Blagojević Defence argues that the evidence, “viewed in its entirety, supports the view that the Main Staff and the Drina Corps Security Organs were carrying out activities relating to the executions without the knowledge of the Bratunac Brigade [...]. Though they may have been communicating and perhaps engaging with Momir Nikolić, Colonel Blagojević was never informed.”¹⁴⁴⁹ Finally, it submits that Colonel Blagojević did not have effective control over the brigade security organ and that “[t]he command role of the Bratunac Brigade was suspended as a result of the involvement of the VRS Main Staff, Drina Corps and their respective security organs in the Srebrenica follow-up activity.”¹⁴⁵⁰ With respect to the Bratunac Brigade Military Police, the Blagojević Defence submits that during the critical

¹⁴⁴⁵ Blagojević Defence Final Brief, para. 97.

¹⁴⁴⁶ *Id.*

¹⁴⁴⁷ *Id.*, citing Ex. P84, para. 49, part 2: a security officer “may pass on information that constitutes an official secret to other authorised security organ officers or other persons only with the authorisation of his superior officer in the security organ.”

¹⁴⁴⁸ Blagojević Defence Final Brief, para. 98.

¹⁴⁴⁹ *Id.*

¹⁴⁵⁰ *Id.*

period, they were “directed by Momir Nikolić, outside the knowledge of the Bratunac Brigade Commander.”¹⁴⁵¹

395. The Prosecution opposes the Blagojević Defence theory of a parallel chain of command, asserting that there is no evidence to support such a finding.¹⁴⁵²

(b) Functional Relationship within the Security and Intelligence Organs

396. In addition to the established superior-subordinate command relationship within a VRS unit, the rules that were in force in 1995 provided for a “functional relationship” between higher and lower levels of functional representatives in military staffs. In this respect, the Manual for the Work of Commands and Staff, provides that:

Functional relationships are established by the organs of the command/staff or other commanding officers in order for the tasks to be executed in a coordinated manner. Functional relationships are characterised by interrelation and exchange of information necessary for the execution of a joint task. Functional relationships are established by the organs of the command/staff and other organs participating in the execution of the task. The task in its entirety and the set of activities determine the level of functional connections. Functional relationships are the basis for the organisation of cooperation and collaboration and for coordinating in the course of the execution of missions. Functional isolation results in increasing autonomy and loss of contact with the whole, and in particular in the lack of information on the part of the commanding officers and commands about the condition of the enemy and their own unit.¹⁴⁵³

(i) Duties of the Security and Intelligence Organs

397. Before the functional relationship can be considered in so far as it pertained to the security and intelligence organ in the Bratunac Brigade, a brief review of the duties of the security and intelligence organs is necessary. As will be seen, the tasks of the security organs and the intelligence organs were largely similar in character.

a. Duties of the Security Organs

398. The overall objective of security support within a brigade was to eliminate “all forms of danger stemming from the activities of the external and internal enemy.”¹⁴⁵⁴ The security organs were concerned with the detection, tracking and prevention of activities of military and non-military organisations, intelligence services, and individuals.¹⁴⁵⁵ The security organs would

¹⁴⁵¹ Closing Arguments for Vidoje Blagojević, T. 12503. *See also* Blagojević Defence Final Brief, paras 48 and 64. But *see also* Blagojević Defence Final Brief, para. 54, referring to evidence as to instructions by Colonel Blagojević to Momir Nikolić to check the professional conduct of the military police guarding the Bosnian Muslim men detained in the Vuk Karadžić School.

¹⁴⁵² Prosecution Final Brief, paras 394-418.

¹⁴⁵³ Ex. D84/1, Manual for the Work of Commands and Staffs, 1983, section 6.

¹⁴⁵⁴ Ex. P83, Brigade Rules, item 225.

¹⁴⁵⁵ Ex. P84, Rules of Service for Security Organs in the Armed Forces of the SFRY, 1984, item 6 (a).

evaluate manifested and expected intelligence activities and other subversive enemy activities, as well as the security situation in the VRS commands.¹⁴⁵⁶ Of importance was the security organ's duties regarding counter-intelligence. The security organs would:

collaborate directly with other organs and security services in matters concerning counter-intelligence security and the use of the military police. They take the initiative and submit requests on behalf of commands and staffs to these organs and services regarding their involvement in the organisation and implementation of measures of counter-intelligence security of combat activities.¹⁴⁵⁷

Thus, it was the security officer's duty to familiarise the commanding officer with the counter-intelligence situation and recommend measures, including the use of the military police.¹⁴⁵⁸

b. Duties of the Security Organ in Relation to the Military Police

399. With respect to the relationship between the security organ and the military police of a VRS unit, the "Service Regulations of the SFRY: Armed Forces Military Police"¹⁴⁵⁹ specify that the officer in charge of the military unit within which the military police is established, *i.e.* the brigade commander, "commands and controls" the military police.¹⁴⁶⁰ It further provides that the officer in charge of the security organ of the military unit within which the military police is established "controls" the military police with respect to "speciality". While "speciality" is not defined, the regulation provides that the security officer among other things "makes suggestions to the officer in charge of the military unit or institution on the use of military police units and is responsible for the combat readiness of the military police unit and the performance of their tasks."¹⁴⁶¹ The Trial Chamber observes that this is in line with the duties of all organs of the command of a VRS brigade.¹⁴⁶²

c. Duties of the Intelligence Organs

¹⁴⁵⁶ Ex. P84, Rules of Service for Security Organs in the Armed Forces of the SFRY, 1984, item 86.

¹⁴⁵⁷ Ex. P84, Rules of Service for Security Organs in the Armed Forces of the SFRY, 1984, item 89. Momir Nikolić, the Bratunac Brigade chief of security and intelligence, defined counter-intelligence activities as "mostly related to gathering, monitoring and processing information, operative information on the enemy". This included monitoring all activities, assessing the strength, the equipment and weapons at the enemy's disposal, and analysing the movement of the forces and their intentions. Momir Nikolić, T. 1606. Dragomir Keserović, Lieutenant-Colonel and chief of the military police department of the sector for security and intelligence affairs of the VRS Main Staff, testified that counter-intelligence also included gathering information on security threats within or addressed against the VRS unit proper, which needed additional investigation. Dragomir Keserović, T. 10638-39.

¹⁴⁵⁸ Ex. P84, Rules of Service for Security Organs in the Armed Forces of the SFRY, 1984, item 87.

¹⁴⁵⁹ Ex. D15/1, Service Regulations of the SFRY: Armed Forces Military Police, 1985.

¹⁴⁶⁰ Ex. D15/1, Service Regulations of the SFRY: Armed Forces Military Police, 1985, para. 12.

¹⁴⁶¹ D15/1, Service Regulations of the SFRY: Armed Forces Military Police, 1985, para. 13.

¹⁴⁶² Ex. P84, Brigade Rules, Articles 117-122.

400. The intelligence organs gathered and processed intelligence about the enemy's actions and intentions and the area of combat operations on an on-going basis.¹⁴⁶³ Such information could come from reconnaissance or sabotage operations, data gathering among the local population, electronic operations and from prisoners of war.¹⁴⁶⁴ The intelligence organ would then make assessments of the enemy's combat capabilities¹⁴⁶⁵ and report the enemy's condition to those concerned in the command of the brigade.¹⁴⁶⁶ The objective was to gather data relevant for the brigade commander's decisions regarding the deployment of its forces.¹⁴⁶⁷

(ii) "Functional Chain of Command"

401. By establishment, a brigade assistant commander for security was directly subordinated to the brigade commander, whereas a brigade chief of staff for intelligence formed part of the brigade staff and as a consequence would be subordinated to the chief of staff.¹⁴⁶⁸ A special feature of the VRS system of command and control in July 1995¹⁴⁶⁹ was that both the security officer and the intelligence officer were responsible to two commanders. They were directly subordinated to the commander or the chief of staff, respectively and they were subordinated to the head of the respective organ within the superior VRS echelon.¹⁴⁷⁰

a. The Functional Chain of Command in Security Organs

¹⁴⁶³ Ex. P83, Brigade Rules, item 208.

¹⁴⁶⁴ Duško Vukotić, T. 11424-26.

¹⁴⁶⁵ Ex. D14/1, Intelligence Support of the Armed Forces, Manual, 1987, item 11 d). *See* this item for further explanation of the basic intelligence support tasks in wartime. *See also* Duško Vukotić, assistant chief of staff for intelligence affairs in the Zvornik Brigade, T. 11424-26.

¹⁴⁶⁶ Ex. P83, Brigade Rules, item 118.

¹⁴⁶⁷ Ex. P83, Brigade Rules, item 208.

¹⁴⁶⁸ Ex. P84, Rules of Service of Security Organs in the Armed Forces of the SFRY, item 16, which reads that the security organ "is directly subordinate to the commanding officer of the command, unit, institution or staff of the armed forces in whose strength it is placed in the establishment, and it is responsible to that officer for its work". Duško Vukotić, T. 11537, testifying that "in disciplinary terms and in every other way [he, as assistant chief of staff for intelligence, was] responsible to the Chief of Staff". Dragomir Keserović, T. 10688, testifying that "what is quite beyond doubt is that the intelligence service is a staff service." Petar Salapura, T. 10504, testifying that "the intelligence organ is attached to the staff." *See also* Ex. P83, Brigade Rules, which in item 114 provides that "the brigade command has the following specialized organs: commander, staff, organ for political work, security organ, logistics organ and headquarters command." Moreover, item 116 lists the brigade staff as consisting of the operations and trainings organ, the intelligence organ, the recruitment and personnel organ and organs for the various combat arms.

¹⁴⁶⁹ Witness DP-105 testified that "the double-pronged command in the security organs that was effective at the time [...] doesn't exist anymore", T. 10233.

¹⁴⁷⁰ For subordination of security officers, *see* Ex. P84, Rules of Service of Security Organs in the Armed Forces of the SFRY, 1984, items. 16 and 18; Bogoljub Gajić, T. 10823, Dragomir Keserović, T. 10628; Witness DP 105, T. 10232-33. According to Dragomir Keserović, with respect to the security tasks, the security organ was responsible to the commander of his army unit. With respect to counter-intelligence activities, the brigade security officer was subordinated to the security organ at the Corps level, which in turn was subordinate to the security organ within the Main Staff. Dragomir Keserović, T. 10637; *See also* Mirko Trivić, T. 10758 and Momir Nikolić, T. 1896.

402. As for the relationship between different levels in the functional security chain, General Keserović testified that roughly one-third of a brigade security officer's activities concerned security matters which were not counter-intelligence. When a security officer received such information, he would contact the brigade commander for advice and instructions.¹⁴⁷¹ The remaining two-thirds of a brigade security officer's work concerned counter-intelligence.

403. The evidence establishes that the VRS security organs enjoyed a wide discretion in determining which information would be considered as counter-intelligence information. General Dragomir Keserović, who was a Lieutenant-Colonel and chief of the military police department of the sector for security and intelligence affairs of the VRS Main Staff in 1995, testified that the scope of counter-intelligence would normally be defined by the security organ in the higher VRS echelon.¹⁴⁷² He also testified that this discretionary power carried with it the risk of being abused by insufficiently trained security officers.¹⁴⁷³

404. Dragomir Keserović testified that with respect to counter-intelligence, the brigade security organ is:

professionally speaking, under the command and control of a superior officer, in the security organ itself. The security organ goes about these tasks and activities without necessarily informing the brigade commander every single time. They do provide some sort of general information as to their potential whereabouts or the general nature of certain tasks and duties in the sphere of counter-intelligence-related activity, or perhaps not even that much; they can only say, "I have some jobs and duties that I have to carry out personally or pursuant to an order from the security organ," and now a professionally trained commander will not ask any further questions of the security organ at this point.¹⁴⁷⁴

Dragan Obrenović, chief of staff of the Zvornik Brigade, expressed this in more categorical terms: "Under the rules it was in the discretion of the chief of the security organ of the brigade to decide whether to disclose the information to the brigade commander or not."¹⁴⁷⁵ General Keserović further testified that once the security officer's work bears fruit and counter-intelligence information has been proved, then he has a duty to inform the commander. However, the superior security officer would provide "recommendations and advice to his subordinates as to what extent

¹⁴⁷¹ Dragomir Keserović, T. 10632.

¹⁴⁷² Dragomir Keserović, T. 10638.

¹⁴⁷³ Dragomir Keserović, T. 10639 (testifying that at the brigade level, the security organ can decide to inform his commander, but most often he is told to do so by his own superior), and T. 10640 (testifying that it could be that the security officer "keeps all information back from the commander or that he entirely neglects the basic fundamental principles of counter-intelligence work and shares all information at the very outset with the commander – rather, informs the commander about everything"). *See also* Dragan Obrenović, T. 2744-45 (testifying that counter-intelligence information was part of the mail that was sent by the security officer without review by the commander).

¹⁴⁷⁴ Dragomir Keserović, T. 10633 (who also testified that "as far as the relations between the commander and the security organ, it has always been the stumbling-block of the exact ratio and the amount of reporting and information that was supposed to go on").

¹⁴⁷⁵ Dragan Obrenović, T. 2744-45.

exactly the brigade commander should be informed.”¹⁴⁷⁶ In this respect, General Keserović testified that there would only be functional contacts between the nearest superior and subordinate echelons and that it would not be permitted for security officers to bypass one echelon.¹⁴⁷⁷

b. The Functional Chain of Command in Intelligence Organs

405. The situation was different in the functional intelligence chain. Petar Salapura, who was the VRS Main Staff chief of intelligence operations in 1995, testified that his organ would pass on intelligence to the lower-echelon commands and intelligence organs. The lower-echelon intelligence organs would in turn inform the superior intelligence organs of any intelligence information gathered.¹⁴⁷⁸ Salapura also testified that it was not possible for him as a Main Staff chief of intelligence operations to issue orders to the Drina Corps chief of intelligence, Lieutenant-Colonel Svetozar Kosorić. This could only be done by the latter’s commanding officer.¹⁴⁷⁹ The same was the case between Lieutenant-Colonel Kosorić and Captain Momir Nikolić with regard to intelligence matters.¹⁴⁸⁰ In this respect, Captain Duško Vukotić, who was the Zvornik Brigade assistant chief of staff for intelligence in 1995, testified that there were rare occasions when an intelligence organ had to obtain approval from the superior echelon chief of intelligence. Such a situation would be, for instance, when the information came from an unusual source, specifically if the intelligence officer wanted to collaborate with somebody from the enemy ranks.¹⁴⁸¹

c. General Mladić’s Instructions

406. In late 1994, the VRS Main Staff commander General Ratko Mladić issued a set of instructions to define the rights and duties of the security and intelligence organs in light of “frequent problems, failures and irregularities [...] in command and control over these organs” (“Instructions”).¹⁴⁸² The Instructions provide that:

with regard to professional activities [the security and intelligence organs] are controlled centrally by the security and intelligence organs of the superior command. This indicates their full independence in the implementation of intelligence and counter-intelligence tasks [...].¹⁴⁸³

These Instructions appear to be combined for both intelligence and security and do not distinguish between the tasks of each organ.¹⁴⁸⁴ The Trial Chamber recalls in this respect the testimony of

¹⁴⁷⁶ Dragomir Keserović, T. 10635.

¹⁴⁷⁷ Dragomir Keserović, T. 10636.

¹⁴⁷⁸ Petar Salapura, T. 10614; Duško Vukotić, T. 11537-38.

¹⁴⁷⁹ Petar Salapura, T. 10615.

¹⁴⁸⁰ Petar Salapura, T. 10617.

¹⁴⁸¹ Duško Vukotić, T. 11429.

¹⁴⁸² Ex. D22/1, Instructions on command and control over the security and intelligence organs of the VRS, dated 24 October 1994, type-signed by General Mladić (“Instructions”).

¹⁴⁸³ Ex. D22/1, p. 1.

Petar Salapura that the sections for Security and Intelligence worked together and shared information.¹⁴⁸⁵

407. As regarding the sharing of information with the commander of the unit in which the intelligence or security officer serves, the Instructions provide that:

to the extent and in the measure necessary, members of the security and intelligence organs must provide their immediate superiors with information, assessments and observations regarding the security of units or institutions.¹⁴⁸⁶

Dragomir Keserović testified that the words “to the extent necessary” are difficult to translate into a definition¹⁴⁸⁷ but that, as a general rule, information of a public nature would be shared with the superior officer within the VRS unit.¹⁴⁸⁸ However, information pertaining to a broader security issue was first sent to the security officer of the higher VRS echelon for re-evaluation.¹⁴⁸⁹ The Instructions provide further that:

All telegrams and mail of the members of the security and intelligence organs shall be delivered exclusively to them personally and no other organs of the command, including the commander, have the right to inspect their contents.¹⁴⁹⁰

In this respect, Momir Nikolić testified that Colonel Blagojević did not have the right to open sealed mail addressed to Momir Nikolić personally. All other mail, however, was open for Colonel Blagojević to familiarise himself with.¹⁴⁹¹

d. The Functional Chain of Command in Relation to Security within the Bratunac Brigade

408. In the Bratunac Brigade, there was only one organ for security and intelligence, and Captain Nikolić was assistant commander for security and intelligence.¹⁴⁹²

¹⁴⁸⁴ For instance it is provided that “[t]he field of work of the VRS security and intelligence organs primarily includes intelligence and counter-intelligence tasks which, depending on the situation, make up about 80% of their total engagement. The remaining 20% of their engagement consist of administrative and staff, military police and criminal-legal tasks and duties”, Ex. D22/1, p. 1. As for these percentages, compare with testimony of Dragomir Keserović that two-thirds of the time of a security officer should be spent on counter-intelligence-related tasks, T. 10633.

¹⁴⁸⁵ Petar Salapura, T. 10503 and 10560-62, commenting on Ex. P445, report from the Drina Corps Intelligence section, signed by General Tolimir, dated 12 July 1995.

¹⁴⁸⁶ Ex. D22/1, p. 2.

¹⁴⁸⁷ Dragomir Keserović, T. 10637.

¹⁴⁸⁸ Dragomir Keserović, T. 10631.

¹⁴⁸⁹ Dragomir Keserović, T. 10631.

¹⁴⁹⁰ Ex. D22/1, p. 2. In this context, Dragan Obrenović, chief of staff of the Zvornik Brigade, testified that subsequent to the issuance of the Instructions, the brigade’s commander Colonel Pandurević had to rescind a prior order that all mail, including reports from the chief of security Lieutenant Drago Nikolić could only go out from the brigade command with the commander’s signature. Dragan Obrenović, T. 2736-39.

¹⁴⁹¹ Momir Nikolić, T. 2074.

409. Colonel Blagojević, as commander of the Bratunac Brigade, could issue orders to the Military Police Platoon and exercised command and control over the platoon.¹⁴⁹³ Captain Nikolić, as the chief of the security organ, was responsible for the management of the Military Police Platoon¹⁴⁹⁴ and made proposals to Colonel Blagojević concerning security of the VRS units and the deployment of the Military Police Platoon.¹⁴⁹⁵ Members of the Military Police Platoon testified that they received orders from Momir Nikolić¹⁴⁹⁶ and that they believed that he was responsible for the military police, as he was in charge of security for the Bratunac Brigade.¹⁴⁹⁷ Witness P-138, a senior member of the Bratunac Brigade Military Police, testified that he did not see, or receive orders from, Colonel Blagojević at all during the relevant time.¹⁴⁹⁸ Additionally, the commander of the Military Police Platoon took orders from outside the brigade, including from Lieutenant-Colonel Popović, the Drina Corps assistant commander for security; Colonel Ljubiša Beara, the Main Staff chief of security; and General Mladić, commander of the VRS Main Staff.¹⁴⁹⁹

410. According to Mirko Trivić, the 2nd Romanija Brigade commander, when a higher echelon chief of organ requested a lower-echelon counter-part to perform a task, no prior permission of the lower-echelon unit commander was generally required.¹⁵⁰⁰ However, the lower-echelon chief of organ had to inform his unit commander of the assignment in order to prevent deployment of troops without the knowledge of the commander.¹⁵⁰¹

411. As has been discussed, Dragomir Keserović testified that the functional chain of command within the security organs would not allow Colonel Beara, the chief of security in the security administration of the Main Staff, to bypass the Drina Corps echelon and issue orders directly to Captain Nikolić.¹⁵⁰² This evidence is, however, contradicted by Witness P-138 who testified that

¹⁴⁹² Momir Nikolić, T. 1597. According to Dragomir Keserović, the rules concerning brigade functions could be adapted to fit the situation of a brigade. Dragomir Keserović, T. 10686-87. During the spring of 1995, Dragiša Jovanović was assigned to become the Bratunac Brigade assistant chief of staff for intelligence, however as he did not have appropriate training, Momir Nikolić continued to perform both security and intelligence tasks. Momir Nikolić, T. 1623 and Dragiša Jovanović, Ex. 218/1, pp 7-9.

¹⁴⁹³ Momir Nikolić, T. 1603. *See also* Dragomir Keserović, T. 10641 and 10742.

¹⁴⁹⁴ P84, Art 23; Momir Nikolić, T. 2042-43 (testifying that the immediate commander of the Bratunac Brigade Military Police Platoon was Colonel Blagojević). *See also* Witness P-138, T. 3500 (private session).

¹⁴⁹⁵ Milan Milinković, T. 3124; Dragomir Keserović, T. 10628; Ex. P83, Brigade Rules for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades, 1984, Article 122; Momir Nikolić, T. 1607, 2280. *See also* Ex. P84, of Service for Security Organs in the Armed Forces of the SFRY, 1984, item 87: “[...] in the process of the work of commands [...] security organs recommend necessary security measures and the use of military police.”

¹⁴⁹⁶ Radenko Zarić, Ex. P685, p 6.

¹⁴⁹⁷ Radenko Zarić, Ex. P685, p 5.

¹⁴⁹⁸ Witness P-138, T. 3626-27.

¹⁴⁹⁹ Witness P-138, T. 3622.

¹⁵⁰⁰ Mirko Trivić, T. 7530.

¹⁵⁰¹ Mirko Trivić, T. 7530-31.

¹⁵⁰² Dragomir Keserović, T. 10635-36.

in July 1995 higher echelon security officers, namely Colonel Beara and Lieutenant-Colonel Popović could, and did, issue orders to Momir Nikolić as well as the Bratunac Brigade Military Police Platoon.¹⁵⁰³ Also, Momir Nikolić testified that he could receive orders from higher echelon security and intelligence officers concerning the prisoners held at the various detention facilities, since “refugees and prisoners, their assembly, their securing and transportation, was within the competence of the intelligence and security organ.”¹⁵⁰⁴ The Trial Chamber observes in this regard that the order for operation “Krivaja 95” charged security organs with securing prisoners of war.¹⁵⁰⁵

412. With regard to whether information that prisoners of war were being abused by their guards could be seen as counter-intelligence, General Keserović testified that this was a public matter which it was imperative that both the superior security command and the brigade commander be informed.¹⁵⁰⁶

413. The evidence establishes that on 12 July, Captain Nikolić met with Lieutenant-Colonel Svetozar Kosorić, chief of intelligence of the Drina Corps, and Lieutenant-Colonel Vujadin Popović, assistant commander for security of the Drina Corps, in front of Hotel Fontana.¹⁵⁰⁷ According to Momir Nikolić, the three officers discussed the fate of the Bosnian Muslim civilians who were present in Potočari.¹⁵⁰⁸ Momir Nikolić testified that at this point he was told that the separated men would be killed.¹⁵⁰⁹ He was then tasked to coordinate the forces that would be engaged in Potočari in separations, temporary detention and the later killing of the Bosnian Muslim men.¹⁵¹⁰ Momir Nikolić suggested a number of buildings that could be used as temporary detention sites for detaining the Bosnian Muslim men, as well as two possible execution sites.¹⁵¹¹ Momir Nikolić then met Colonel Janković of the intelligence administration of the Main Staff outside the Hotel Fontana, and Colonel Janković assigned Momir Nikolić to co-ordinate the

¹⁵⁰³ Witness P-138, T. 3622-23; *See also* Momir Nikolić, T. 1920-22, 1897-98.

¹⁵⁰⁴ Momir Nikolić, T. 1921.

¹⁵⁰⁵ Ex. P 543, Order for active combat activities, Drina Corps Command, dated 2 July, p. 7: “Security organs and military police will indicate the areas for gathering and securing prisoners of war and war booty.” Mirko Trivić commented that this order, in combination with Ex. D22/1, Instruction on Command and Control over Security and Intelligence Organs of the VRS, may have been reason for subordinate security organs to view securing prisoners of war as their main task. Mirko Trivić, T. 10759

¹⁵⁰⁶ Dragomir Keserović, T. 10691-92.

¹⁵⁰⁷ Momir Nikolić, T. 1674; Ex. P21, video compilation.

¹⁵⁰⁸ Momir Nikolić, T. 1676-77.

¹⁵⁰⁹ Momir Nikolić, T. 1676-77. Momir Nikolić’s testimony in this part reads: “Also that on that day, the men, the able-bodied men, would be separated and that those men would be temporarily detained once they had been separated. And when I asked what would happen to them next, [Lieutenant-Colonel Popović] told me that all balijas needed to be killed”.

¹⁵¹⁰ Momir Nikolić, T. 1677-78.

¹⁵¹¹ Momir Nikolić, T. 1676-78.

evacuation of the women and children in Potočari, the separation of the men, and their detention.¹⁵¹²

414. Dragomir Keserović was of the opinion, however, that under the rules that were in place at the time, Momir Nikolić was not allowed to carry out tasks without prior knowledge of his commander.¹⁵¹³ However, in Captain Nikolić's opinion, he did not need prior permission for performing this task as this fell within his competencies.¹⁵¹⁴ He testified that he believed that there was no need to inform his commander immediately after he was assigned this task, since he assumed that such a large scale operation could only be undertaken with prior knowledge of the brigade commander.¹⁵¹⁵

415. The Trial Chamber recalls in this context the evidence regarding the reburial operation. This operation was ordered by the Main Staff.¹⁵¹⁶ Within the Bratunac Brigade, Captain Nikolić was tasked by Lieutenant-Colonel Popović with organising the operation of exhuming the bodies buried in Glogova and reburying them at other locations.¹⁵¹⁷ The evidence also shows that the Bratunac Brigade Military Police Platoon provided security for the reburial operation following Captain Nikolić's orders.¹⁵¹⁸ According to Captain Nikolić, he informed Colonel Blagojević of the reburial operation shortly after, at most within two days, having been given this task by Lieutenant-Colonel Popović.¹⁵¹⁹

416. The Trial Chamber also recalls in respect to the issuance of orders from higher echelon security officers to lower-echelon counter-parts the testimony of Dragan Obrenović concerning the Zvornik Brigade. Major Obrenović testified that Drago Nikolić, assistant commander for security in the Zvornik Brigade, was tasked by Lieutenant-Colonel Popović with preparations for the detention and execution of the prisoners in the Zvornik area. Drago Nikolić informed Major Obrenović, deputy commander of the Zvornik Brigade at the time, about this task and told him that he needed to be replaced at the IKM in order to carry it out. He further asked for the release of military policemen to assist him. When Dragan Obrenović told Drago Nikolić in response that

¹⁵¹² Momir Nikolić, T. 1683-85. Colonel Janković of the intelligence administration of the Main Staff shared the office with Momir Nikolić from 8 July onwards. Momir Nikolić, T. 1640.

¹⁵¹³ Dragomir Keserović, T. 10655-56.

¹⁵¹⁴ Momir Nikolić, T. 1901. Questioning of prisoners of war was also one of the tasks of an intelligence organ, Duško Vukotić, T. 11424-26.

¹⁵¹⁵ Momir Nikolić, T. 1900-01.

¹⁵¹⁶ See *supra* section II.G.

¹⁵¹⁷ Momir Nikolić, T. 2355 (testifying that Popović informed him of the operation, and that it had been ordered by the Main Staff, in a meeting between just the two of them).

¹⁵¹⁸ Nenad Đokić, T. 5460, 5486-5487; Milovan Mitrović, Ex. D222/1, p 3. See also Momir Nikolić, T. 1766-67, 2294.

¹⁵¹⁹ Momir Nikolić, T. 1767, 2355.

they could not accept an obligation of that kind without informing their commander Lieutenant Pandurević, Obrenović was told that Pandurević already knew.¹⁵²⁰

417. The Trial Chamber concludes that a functional chain of command in relation to security existed that could be considered as parallel to, but not as disconnected from, the unit or brigade command. The Trial Chamber finds that the security organs could receive orders from two commanders, the superior command for security and the unit commander. It finds that due to the instructions issued by General Mladić the security and intelligence organs were controlled centrally by the security and intelligence of the superior command. However, the instructions also stated that:

the security and intelligence organs are directly commanded by the unit or institution of which they form part.¹⁵²¹

418. The Trial Chamber further finds that the functional chain of command was not operating in isolation from the military chain of command of the unit. The Trial Chamber reiterates that the instructions provided for a duty of the security and intelligence organs to report to their unit commander to “the extent necessary”. The Trial Chamber finds that while there were matters that the security organ was not mandated to disclose to his commander (*i.e.* matters considered as counter-intelligence or cases when a commander was under investigation himself), there were matters it was duty-bound to disclose. The Trial Chamber finds that the planning and organisation of the killing of thousands of Bosnian Muslim men is one such matter that the security organ was duty-bound to disclose, particularly to the unit commanders in whose area of responsibility the operation was implemented.

419. Accordingly, the Trial Chamber finds 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, and thus continued to bear responsibility for the actions of all members and units of the Bratunac Brigade throughout the Indictment period.

3. Actions to punish crimes committed

(a) Relevant laws and regulations in the Republika Srpska

420. At the time the crimes were committed, a functioning judicial system existed within the VRS to address criminal or disciplinary matters related to members of the VRS.¹⁵²² The RS Law on the Army regulated the implementation of the duty of VRS senior or superior officers to ensure

¹⁵²⁰ Dragan Obrenović, T. 2468-70.

¹⁵²¹ Ex. D22/1, p. 1.

proper military conduct through disciplinary measures and court-martials.¹⁵²³ The SFRY Criminal Law, which was in force in the Republika Srpska in 1995, prohibited the commission of crimes against humanity and international law.¹⁵²⁴ 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 law during armed conflict.¹⁵²⁵

421. Under the provisions of the RS Law on Military Courts, military personnel, and civilians performing particular military duties, could be tried by a Military Court for serious violations of military regulations and criminal laws, including criminal offences against humanity and international law.¹⁵²⁶

422. In 1992, the Military Prosecutor's Office of the Main Staff issued guidelines for determining the criteria for criminal punishment, to be deployed by Military Prosecutors and VRS officers.¹⁵²⁷ Predrag Drinić, who was the Military Prosecutor at the appellate level in Zvornik in July 1995,¹⁵²⁸ testified that these guidelines remained in effect in the period relevant to the Indictment.¹⁵²⁹ They assigned the "explicit responsibility" to "take uncompromising action and prevent" "criminal offences against humanity and international law" to the officer corps of the VRS.¹⁵³⁰ An officer was under an obligation to report any information to the Military Prosecutor¹⁵³¹ concerning incidents that may be regarded as criminal offences against humanity

¹⁵²² The Trial Chamber will only discuss the most relevant Rules and regulations relating to this issue.

¹⁵²³ See Ex. P357, Brigade Command Responsibility Report, Butler (Butler Command Responsibility Report), para. 4.2. Butler cites Article 64 of the RS Law on the Army, 1 June 1992, as amended 31 December 1992 ("RS Law on the Army").

¹⁵²⁴ Ex. P715, SFRY Criminal Law, chapter 16, criminal offences against humanity and international law. The SFRY Criminal Law was in force in the RS as of 1992. See Ex. P358, Butler Military Narrative, para. 5.12 and Novak Kovačević, T. 6831-32. See also Ex. P380, Guidelines for determining criteria for criminal prosecution, Military Prosecutor's office at the Main Staff of the Armed Forces (Guidelines for Criminal Prosecution), under 3, p 7, stating that Chapter 16 of the criminal law of the RS defines 16 criminal offences, including genocide, war crimes against the civilian population, the wounded and sick and prisoners of war. Novak Kovačević testified that the section of the Criminal Code of the SFRY on crimes against humanity and international law were included in these guidelines.

¹⁵²⁵ Ex. P378, Order on the Application of the Rules of International Laws of War in the Army of the Serbian Republic of Bosnia and Herzegovina, R. Karadžić, published in the Official Gazette of the Serbian People in Bosnia and Herzegovina on 13 June 1992. See also Predrag Drinić, T. 10909.

¹⁵²⁶ Ex. P381, RS Law on Military Courts, Article 11; Novak Kovačević, T. 6875; Zlatan Čelanović, T. 9468. Minor violations of military regulations were considered misdemeanours, which fell outside the scope of initiating a court-martial. Ex. P357, para. 4.6, referring to the RS Law on the Army, Articles 65 and 67.

¹⁵²⁷ Ex. P380, Guidelines in determining the criteria for criminal punishment.

¹⁵²⁸ Predrag Drinić, T. 10843.

¹⁵²⁹ Novak Kovačević, T. 6829.

¹⁵³⁰ Ex. P380, Guidelines in determining the criteria for criminal punishment, under 3, p 8.

¹⁵³¹ Novak Kovačević, T. 6830, Predrag Drinić, T. 10852. See also Ex. P 378, RS Law on Military Court, Article 65.

and international law.¹⁵³² Officers who failed to report could be held responsible for not preventing or for concealing a crime.¹⁵³³

(b) The conduct of investigations and judicial proceedings

423. In 1995, investigations into alleged serious crimes were generally initiated through a complaint, by a citizen or army personnel, filed with the Military Police or the Military Prosecutor.¹⁵³⁴ The investigations were conducted by Military Police and the security organ within an army unit.¹⁵³⁵ Where a member of the security organ was suspected of committing a crime, the investigations would be conducted by higher level security organs.¹⁵³⁶

424. Within the Bratunac Brigade, Zlatan Čelanović, desk officer of the Legal, Moral and Religious Affairs Branch, was tasked to “deal with” alleged breaches of discipline, including the alleged commission of criminal offences.¹⁵³⁷ Following the questioning of a suspect¹⁵³⁸ Zlatan Čelanović would inform the commanding officer of the suspect of the outcome of his investigation and advise the commanding officer on what course of action to take. In case of a misdemeanour, the commanding officer of the suspect was authorised to sign an order for punishment of a soldier.¹⁵³⁹

425. Once the investigation was completed and the officer of the Legal, Moral and Religious Affairs Branch found that a serious violation of the law had occurred, a report was filed, through the brigade command, with the Military Prosecutor.¹⁵⁴⁰ If there were sufficient grounds for further investigations, the Military Prosecutor would file a motion with the Investigative Judge in the relevant district.¹⁵⁴¹ After the completion of the ensuing investigation by the Investigative Judge, the Military Prosecutor would decide whether to continue the proceedings.¹⁵⁴²

¹⁵³² Ex. P380, Guidelines in determining the criteria for criminal punishment, under 3, p 8.

¹⁵³³ Ex. P380, Guidelines in determining the criteria for criminal punishment, under 3, p 8; Novak Kovačević, T. 6866.

¹⁵³⁴ Predrag Drinić, T. 10845; Novak Kovačević, T. 6832-33; Bogoljub Gajić, T. 10814-15.

¹⁵³⁵ Bogoljub Gajić, T. 10809-10813; Predrag Drinić, T. 10843.

¹⁵³⁶ Predrag Drinić, T. 10853-54.

¹⁵³⁷ Zlatan Čelanović, T. 9467, 9471-72. The Trial Chamber notes that the commission of a war crime was considered a criminal offense under the laws of the SFRY and the RS.

¹⁵³⁸ Zlatan Čelanović, T. 9467-68.

¹⁵³⁹ Zlatan Čelanović, T. 9469-70; Ex. P357, Butler Report on Command Responsibility, para. 4.2, referring to Article 77 of the RS Law on the Army.

¹⁵⁴⁰ Bogoljub Gajić, T. 10817; Predrag Drinić, T. 10845; Novak Kovačević, T. 6882; Zlatan Čelanović, T. 9471-72. See also Ex. P357, Butler Report on Command Responsibility, para. 4.2, stating that under Article 79 and 92 of the RS Law on the Army Brigade Commanders and superior officers holding high ranks were empowered to initiate disciplinary proceedings for violations and further initiate investigations for a military disciplinary court. Under Article 62 the same officers and Brigade Commanders could initiate proceedings for violations of the SFRY Criminal Law.

¹⁵⁴¹ Novak Kovačević, T. 6842-43. In 1995 there were four first instance military courts in the RS. The military court of the Sarajevo Romanija Corps had jurisdiction of the Srebrenica, Bratunac and Zvornik area. When this Corps

426. Even though there was a law enabling prosecutors to keep proceedings confidential from the public, this law did not enable investigating bodies to shield information from one another.¹⁵⁴³ The name of the person filing the complaint would always be recorded.¹⁵⁴⁴ The laws did not provide for protective measures for witnesses either.¹⁵⁴⁵

427. According to Predrag Drinić, it was “highly unlikely” that a complaint would be filed against the security organ and particularly on the higher levels.¹⁵⁴⁶ Investigation of such persons would be even more unlikely. When asked whether it would be possible to investigate a high-ranking officer in the security organ, Bogoljub Gajić, a former investigator with the VRS Military Police, testified: “No, no. It would have been suicide.”¹⁵⁴⁷ When asked to give a reason for that answer, Gajić stated: “Well, it’s a difficult question to answer why. Because of fear, fear of the person, fear of one’s own life and the life of one’s family.”¹⁵⁴⁸ When asked if it would be possible to investigate an officer of a lower rank in the security organ, Gajić testified: “The answer is the same, but the fear would be a little less because he was a lower-ranking officer.”¹⁵⁴⁹ Bogoljub Gajić also testified that any complaints which were in fact filed against security officers had been directed against security officers subordinated to Colonel Beara of the Main Staff.¹⁵⁵⁰ According to Drinić, security officers were members of an elite unit that could control any other unit. Actions against high ranking security officers “would mean risking your life.”¹⁵⁵¹

(c) Investigations into events in Srebrenica

428. Nearly a year after the fall of Srebrenica, President Karadžić ordered that detailed investigations should be carried out into the events in Srebrenica.¹⁵⁵² The investigations never materialised into a serious investigation or prosecution of those responsible.¹⁵⁵³

was dismantled jurisdiction of the areas was transferred to Bijeljina. In July 1995, the Military Court in Bijeljina had jurisdiction of the Bratunac, Srebrenica and Zvornik areas.

¹⁵⁴² Predrag Drinić, T. 10845-48.

¹⁵⁴³ Predrag Drinić, T. 10910-11, discussing Ex. P 867, RS Law on the Mandatory Reporting of Crimes Against Humanity and International Law, RS Official Gazette, No. 27, 31 December 1994, Article 1.

¹⁵⁴⁴ Predrag Drinić, T. 10853; Bogoljub Gajić, T. 10827. Bogoljub Gajić testified that in cases of “large-scale” crimes, the identity of the complainant could not be kept secret.

¹⁵⁴⁵ Predrag Drinić, T. 10849-50; Bogoljub Gajić, T. 10815; Novak Kovačević, T. 6871.

¹⁵⁴⁶ Predrag Drinić, T. 10855-62.

¹⁵⁴⁷ Bogoljub Gajić, T. 10822.

¹⁵⁴⁸ Bogoljub Gajić, T. 10822.

¹⁵⁴⁹ Bogoljub Gajić, T. 10822.

¹⁵⁵⁰ Bogoljub Gajić, T. 10821-22.

¹⁵⁵¹ Predrag Drinić, T. 10855-62.

¹⁵⁵² Ex. P713, order of President Karadžić, 1 April 1996.

¹⁵⁵³ Although meetings were held following these orders, neither Predrag Drinić, nor Novak Kovačević never heard of actions taken following the orders. Predrag Drinić, T. 10886 and Novak Kovačević, T. 6837. See Ex. P714, a response from RS MUP to the investigation ordered by Karadžić on 1 April 1996, dated 23 September 1996. In this response, the MUP focused on killings in the column. The response states that Bosnian Muslim leaders organized these killing in order to create better conditions for another part of the column to break through.

429. The Trial Chamber has been furnished with records from the Military Prosecutor in the district of the Military Court that has jurisdiction over municipalities of Bratunac, Srebrenica and Zvornik, the Bijeljina Military Court.¹⁵⁵⁴ These records are of limited use in determining by and against whom complaints were filed,¹⁵⁵⁵ as they do not list the names of the complainants and generally do not list the names of those who allegedly committed the crime.¹⁵⁵⁶ The few names of suspected perpetrators of crimes against humanity and international law that are mentioned appear to be Bosnian Muslim names.¹⁵⁵⁷ However, these records do show that, in spite of the dangers for the complainant, several complaints concerning alleged war crimes in Srebrenica have been filed in the course of 1995.¹⁵⁵⁸ The highest number of complaints concerning war crimes were filed August 1995.¹⁵⁵⁹ In that month, 450 complaints were filed, 210 of which concerned alleged war crimes. The persons against whom the complaints were filed were all civilians. In the following month, only seven more complaints were filed concerning war crimes, again only against civilians.¹⁵⁶⁰

430. The Trial Chamber has heard several witnesses, including Major Dragan Obrenović, who testified that they are not aware of any investigations into crimes committed by VRS soldiers during the critical period.¹⁵⁶¹ Furthermore, the records of the Military Prosecutor show no indications in the report that any charges were filed against any VRS soldier. Only one person, a civilian, was indicted for committing a war crime.¹⁵⁶²

(d) Actions undertaken by Colonel Blagojević

431. The Trial Chamber has not been provided with any evidence to show that Colonel Blagojević attempted to file a complaint or take measures to punish subordinates for criminal conduct during the critical period.

¹⁵⁵⁴ Novak Kovačević, T. 6842-43.

¹⁵⁵⁵ Ex. P702 through Ex. P711, monthly reports on criminal activity of July 1995 through January 1996, RS Military Prosecutor.

¹⁵⁵⁶ For example, Ex. P703, monthly report on criminal activity in August 1995, dated 18 September 1995, lists 210 complaints filed concerning violations of "International Law of War". The author of this report, P. Predrag Drinić, in the section on "Crimes under chapter 16 of the Criminal Code of the Republika Srpska" only discusses crimes committed against Bosnian Serb civilians and Bosnian Serb soldiers. He mentions nine specific complaints out of the two hundred and ten that were filed in August 1995.

¹⁵⁵⁷ Ex. P703, pp 2-4. One of the suspected perpetrators is a member of the 28th Division of the ABiH.

¹⁵⁵⁸ Ex. P702 through Ex. P 711, monthly reports on criminal, July 1995-January 1996, RS Military Prosecutor; Novak Kovačević, T. 6842-47.

¹⁵⁵⁹ Ex. P703, monthly report on criminal activity in August 1995, dated 18 September 1995.

¹⁵⁶⁰ Ex. P704, monthly report on criminal activity in September 1995, dated 9 October 1995, p 2, and Ex. P705, report of crime trends for September 1995, dated 28 October 1995, p 2.

¹⁵⁶¹ Witness P-138, T. 3583-84; Dragan Obrenović, T. 2546; Miloš Mitrović, T. 5615-16; Marko Milošević, T. 5655-57; Predrag Drinić, T. 10879 and Novak Kovačević, T. 6840-42.

¹⁵⁶² Ex. P704, Monthly Report on criminal activity, RS Military Prosecutor, dated 9 October 1995, regarding crime trends in September 1995, p 7; Ex. P709, Report on the work of the Bijeljina Military Prosecutors Office during 1995, dated 22 January 1996; Dragiša Jovanović, Ex. D 218/1, interview 26 November 2001, p. 36.

B. Evidence Related to Whereabouts and Actions of Vidoje Blagojević

432. The Trial Chamber finds it helpful to highlight the whereabouts of, and actions taken by, Colonel Blagojević during the relevant period. Much of this evidence has been addressed above under the relevant sub-section in “Preliminary Factual Findings”; this section is intended not to be an exhaustive account of the facts but rather as a summary of evidence related to Colonel Blagojević.

433. On 3 July, a day after the Krivaja 95 order had been issued, Colonel Blagojević led a meeting at the Bratunac Brigade headquarters. Colonel Blagojević met with his infantry battalion commanders and tasked them.¹⁵⁶³

434. The Bratunac Brigade daily combat report, dated 4 July, states that Colonel Blagojević was visiting the Brigade’s artillery firing positions.¹⁵⁶⁴

435. On 5 July, a meeting was held at the Bratunac Brigade Headquarters with the commander of the units participating in the attack in which General Krstić outlined the operation. The Trial Chamber finds that there is insufficient evidence to clearly establish that Colonel Blagojević was present at that meeting.¹⁵⁶⁵ The evidence does establish that Colonel Blagojević had two meetings with his staff at which he presented the Drina Corps Order and issued specific orders to the units of the Bratunac Brigade.¹⁵⁶⁶ Colonel Blagojević’s instructions to his subordinated units were written in an order for active combat operations.¹⁵⁶⁷

436. Through the period of 6 to 11 July, Colonel Blagojević was at the Bratunac Brigade IKM, which was located at Pribićeovac.¹⁵⁶⁸ There is evidence that Colonel Blagojević toured the right

¹⁵⁶³ See *supra* para. 121.

¹⁵⁶⁴ Ex. P405, Bratunac Brigade daily combat report, 4 July 1995, signed for Colonel Blagojević.

¹⁵⁶⁵ See *supra* paras 123-24.

¹⁵⁶⁶ Ex. P403, Bratunac Brigade minutes of meetings and reports, first and second entry for 5 July 1995. See also Dragoslav Trišić, T. 9406-08. Witness DP-105 confirms that the Chief of Staff visited the 1st Company in order to “arrange the firing system”, which included directing the weapons. Witness DP-105, T. 10166.

¹⁵⁶⁷ Ex. P406, Order for active combat operations from the Bratunac Brigade Command, 5 July 1995 (Blagojević Order for active combat). See also Mirko Trivić, T. 10751-54, Trivić testified that the order is in compliance with VRS Rules and Regulation. Dragomir Keserović noted that, unlike ordered in Ex. P 406, prisoners of war should not be held close to the frontline. Other than that he also believes the order to be in compliance with VRS Rules and regulations. Dragomir Keserović, T. 10647-49.

¹⁵⁶⁸ 6 July 1995: Ex. P411, Bratunac Brigade daily combat report, 6 July 1995, signed for Vidoje Blagojević; Momir Nikolić T. 1990. 7 July 1995: Ex. P412, Bratunac Brigade daily combat report, 7 July 1995, signed for Vidoje Blagojević; Momir Nikolić T. 1990. 8 July 1995: Ex. P413, Bratunac Brigade daily combat report, 8 July 1995, signed for Vidoje Blagojević; Momir Nikolić, T. 1990; Witness P-210, T. 7371-72. 9 July 1995: P415, Bratunac Brigade daily combat report, 9 July 1995, signed for Vidoje Blagojević; Momir Nikolić, T. 1990; Witness P-210, T. 7371-72. 10 July 1995: P411, Bratunac Brigade daily combat report, 10 July 1995, signed for Vidoje Blagojević. Momir Nikolić T. 1990; Witness P-210, T. 7371-72; Witness P-135, T. 5721. Milan Drakula testified that he saw Colonel Blagojević near the trench he was in somewhere between 6-8 July 1995. Milan Drakula, T. 9401. Miroslav Deronjić testified that he saw Colonel Blagojević in the trenches at Pribićeovac on 11 July. Miroslav Deronjić, T. 6132-33. Milan Nedeljković testified that Colonel Blagojević was present at

flank of the Bratunac Brigade lines on 8 July, together with Sreten Petrović, deputy commander 3rd Infantry Battalion Bratunac Brigade.¹⁵⁶⁹ On 10 July, pursuant to an order of the Main Staff, Colonel Blagojević issued an order to mobilise all men fit for military service to the Bratunac Brigade.¹⁵⁷⁰

437. According to Milan Drakula, in the afternoon of 11 July, Blagojević visited his unit stationed 800 metres away from Pribićevac, nearly half-way to the entrance of Srebrenica.¹⁵⁷¹ Three other witnesses testified that Colonel Blagojević went to Srebrenica.¹⁵⁷² He was seen in Srebrenica at approximately 18:00. Witness P-135 testified that he was together with Blagojević when the Serbian flag was raised on the church in Srebrenica, which was at approximately 18:00.¹⁵⁷³ Witness DP-106 testified that he saw Colonel Blagojević talking to Colonel Pandurević and other officers, trying to get a vehicle to drive them back to Bratunac. Witness DP-106 and Colonel Blagojević drove to Bratunac together.¹⁵⁷⁴

438. After his arrival in Bratunac, Colonel Blagojević was at the brigade headquarters.¹⁵⁷⁵ According to Witness DP-106 Colonel Blagojević acquainted himself with the situation of the Brigade, something he always did after he had been away from the Brigade headquarters. At the communications office of the Bratunac Brigade, he would review the orders, report and instructions that had arrived.¹⁵⁷⁶ After this update on the situation of the Brigade, Vidoje

Pribićevac with a driver on 11 July. Milan Nedeljković, T. 7284. All the Daily Combat Reports cited above mention that Colonel Blagojević is at the Bratunac Brigade IKM.

¹⁵⁶⁹ Sreten Petrović, T. 8969-90.

¹⁵⁷⁰ Ex. P417, Bratunac Brigade Order to mobilise men liable for military service, 10 July, signed for Colonel Blagojević. *See* para. 126.

¹⁵⁷¹ Milan Drakula, T. 9051. This appears to be corroborated by Milan Radić, Blagojević's radioman: he stated that he and Blagojević left Pribićevac in the afternoon on 11 July 1995 and went to nearby Kula at which point they saw Mladić in a trench. Some soldiers passed them and said they had been ordered to go to Srebrenica. This happened around 1400-1500 hours. Blagojević and Radić went by foot towards Srebrenica, where they subsequently spent one to two hours before trying to hail a vehicle to go to Bratunac, T. 9120-30.

¹⁵⁷² Witness DP-106, T. 10369; Milan Radić, T. 9127-32; Miroslav Deronjić, T. 6246.

¹⁵⁷³ Witness P-135, T. 5720.

¹⁵⁷⁴ Witness DP-106, T. 10369. This appears to be corroborated by Milan Radić's testimony, testifying that Colonel Blagojević needed a car to get to Bratunac and eventually got a ride. Milan Radić, T. 9120-30.

¹⁵⁷⁵ Witness P-210, T. 7373-75. Witness P-210 testified that Colonel Blagojević was in his office that evening. On cross-examination Witness P-210 no longer was certain that he saw Colonel Blagojević in his office at night. He thought it might also have been in the afternoon. Witness P-210, T. 7402-04.

¹⁵⁷⁶ Witness DP-106, T. 10424-25. Ex. P453, message to the command of the Milići Brigade, 12 July, signed by Z. Spasojević, sent in name of Colonel Blagojević shows that the Bratunac Brigade was keeping abreast of the positions of the neighbouring Milići Brigade, in light of the passage of Bosnian Muslim men. The word "Poturice", used in this message, is a derogatory term for Bosnian Muslims. Dragan Obrenović testified that his document shows that the Bratunac Brigade did not know where the 28th Division of the ABiH and the Bratunac Brigade neighbouring Brigade were located. Dragan Obrenović, T. 2649-50. Butler testified that "it is a normal military practice [...] if a document goes out under the commander's name, he is expected to be aware of the contents of that document." Richard Butler, T. 4448-49.

Blagojević spent the night of 11 July in his apartment some 200 metres from the Bratunac Brigade headquarters.¹⁵⁷⁷

439. Captain Nikolić testified that with regard to intelligence he was obliged to show his intelligence reports to Colonel Blagojević, but that this was not an established practice within the Bratunac Brigade.¹⁵⁷⁸ Momir Nikolić also testified that in the evenings he would report on the day's activities to Colonel Blagojević.¹⁵⁷⁹ The Trial Chamber observes that this is in accordance with the Manual for Intelligence Support of the Armed Forces, a manual used by Momir Nikolić,¹⁵⁸⁰ which holds that intelligence should be submitted to the commander or chief of staff orally.¹⁵⁸¹ In this respect, Momir Nikolić testified that from 12 July he reported to Colonel Blagojević through meetings when just the two men were present.¹⁵⁸²

440. There is no evidence before the Trial Chamber that Colonel Blagojević was in Potočari on 12 or 13 July.¹⁵⁸³

441. Starting in the morning of 12 July, Colonel Blagojević toured the eastern and southern area of the Srebrenica with an officer in the Bratunac Brigade command, Savo Cvjetinović.¹⁵⁸⁴ They were picked up in front of the Bratunac Brigade headquarters and driven by Milan Nedelković.¹⁵⁸⁵ They drove through Sase up to Zalazje, where Colonel Blagojević inspected the troops of the 3rd Battalion.¹⁵⁸⁶ After the inspection, they drove on to the playground in Srebrenica, where Colonel Blagojević again inspected troops.¹⁵⁸⁷ After this inspection the men drove back towards Zalazje, on to the area of Zanik and Likare, where troops of the 3rd Battalion were stationed; Colonel Blagojević inspected these troops too.¹⁵⁸⁸ The men then went back through Srebrenica, toward Jadar and Pribićevac. At Pribićevac, Colonel Blagojević inspected the "logistics troops" stationed

¹⁵⁷⁷ Witness P-210, T. 7375-75.

¹⁵⁷⁸ Momir Nikolić, T. 2037, 2072-74; Ex. P84, Article 12.

¹⁵⁷⁹ Momir Nikolić, T. 2072-74.

¹⁵⁸⁰ Momir Nikolić, T. 1881.

¹⁵⁸¹ Ex. D14/1, Manual for Intelligence Support of the Armed Forces, 1987, item 239 ("Intelligence should be submitted for their use, in the extent to which it is necessary to the following: - commander and chief of staff – orally").

¹⁵⁸² Momir Nikolić, T. 2260-62, 2264, 2268-70.

¹⁵⁸³ Although one or two people might have seen Colonel Blagojević in Potočari on 12 July, nothing can substantiate this. Richard Butler T. 5098. One of these people is Dragoslav Trisić (rear services commander of the Bratunac Brigade). In his OTP interview, he said he had seen Colonel Blagojević in Potočari on 12 July but changed his mind when testifying. Dragoslav Trisić, T. 9366.

¹⁵⁸⁴ Milan Nedelković, T. 7287-96. Milan Nedelković indicated the exact route on Ex. P768.

¹⁵⁸⁵ Milan Nedelković, T. 7287, 7289.

¹⁵⁸⁶ Milan Nedelković, T. 7291. Witness DP-106 testified that Colonel Blagojević inspected the troops of the 3rd Battalion. Witness DP-106, T. 10371.

¹⁵⁸⁷ Milan Nedelković, T. 7291.

¹⁵⁸⁸ Milan Nedelković, T. 9292.

there.¹⁵⁸⁹ According to Milan Nedeljković it was already dark when they were in Pribićevac.¹⁵⁹⁰ The men then returned to Bratunac via Sase.¹⁵⁹¹

442. A meeting was held at the Bratunac Brigade headquarters at around 08:00 on 12 July, with General Mladić, Ljubisav Simić, Aleksandar Tešić, chief of the Department of Defence, Srblav Davidović and a priest.¹⁵⁹² The witnesses present at that meeting are certain Colonel Blagojević was not present.¹⁵⁹³

443. According to Momir Nikolić, another meeting was held at the Bratunac Brigade headquarters in the early morning of 12 July. Momir Nikolić testified that he saw General Mladić, General Krstić, Lieutenant Colonel Popović, Lieutenant Colonel Kosorić, Colonel Janković, and Dragomir Vasić at the Bratunac Brigade headquarters. However, Momir Nikolić was not present at the meeting and did not know whether or not these officers in fact participated in the meeting.¹⁵⁹⁴ Momir Nikolić testified that he saw Colonel Blagojević in the morning of 12 July, before he went to Hotel Fontana in order to make preparations for the third Hotel Fontana meeting at 10:00.¹⁵⁹⁵

444. A daily combat report of the Bratunac Brigade for 12 July, signed for Colonel Blagojević, indicates that the Bratunac Brigade forces were searching the terrain.¹⁵⁹⁶

445. In the evening of 12 July, around 20:00, Ljubisav Simić met Colonel Blagojević at the entrance of the Red Cross “distribution centre” in Bratunac town.¹⁵⁹⁷ Ljubisav Simić asked Colonel Blagojević if there were any problems. According to Ljubisav Simić, Colonel Blagojević only shrugged his shoulders.¹⁵⁹⁸

446. Momir Nikolić testified that a meeting was held at the Bratunac Brigade headquarters in Colonel Blagojević’s office with General Krstić and the commanders of the VRS units that participated in the attack on Srebrenica.¹⁵⁹⁹ He was not sure on which date this meeting took place.¹⁶⁰⁰ He later heard that Colonel Blagojević was present at that meeting and that Colonel

¹⁵⁸⁹ Milan Nedeljković, T. 9292.

¹⁵⁹⁰ Milan Nedeljković, T. 9292.

¹⁵⁹¹ Milan Nedeljković, T. 7296.

¹⁵⁹² Ljubisav Simić, T. 7603-05; Aleksandar Tesić, T. 7790-91; Srblav Davidović, T. 7694-95.

¹⁵⁹³ Ljubisav Simić, T. 7604; Aleksandar Tesić, T. 7791; Srblav Davidović, T. 7693.

¹⁵⁹⁴ Momir Nikolić, T. 1670-75.

¹⁵⁹⁵ Momir Nikolić, T. 1674.

¹⁵⁹⁶ Ex. P441, Daily combat report for 12 July 1995.

¹⁵⁹⁷ Ljubisav Simić, T. 7621.

¹⁵⁹⁸ Ljubisav Simić, T. 7622.

¹⁵⁹⁹ Momir Nikolić, T. 1648.

¹⁶⁰⁰ Momir Nikolić, T. 1647-48, 2374.

Pandurević disagreed with General Krstić on when the Žepa operations would be carried out.¹⁶⁰¹ Colonel Blagojević allegedly also expressed disagreement with the starting time for operations in Žepa as well as about General Krstić's desire that one battalion of the Bratunac Brigade should immediately leave for Žepa. The meeting allegedly ended with Blagojević leaving.¹⁶⁰²

447. According to Mirko Trivić, a second meeting was held with the same participants who attended of the meeting at the repeater station and General Mladić in the Bratunac Brigade headquarters at approximately 21:00 on 12 July. Mirko Trivić was not sure whether Colonel Blagojević attended that meeting but he assumed that he was present as the meeting was held at the Bratunac Brigade headquarters.¹⁶⁰³ This meeting was not held in the Brigade's usual meeting room.¹⁶⁰⁴ At the meeting, General Mladić assigned General Krstić the task of planning an attack on Žepa. According to Mirko Trivić, Colonel Pandurević and himself objected to this, requesting that their troops get some time to rest.¹⁶⁰⁵ At the meeting, General Krstić was also tasked to organise security for the main roads around Potočari.¹⁶⁰⁶ The Trial Chambers considers it likely that this meeting, and the one described by Momir Nikolić, are the same meeting.¹⁶⁰⁷

448. According to Momir Nikolić, he met with Colonel Blagojević in the evening hours of 12 July and reported on his activities of that day.¹⁶⁰⁸ Captain Nikolić testified that he told Colonel Blagojević about the separations in Potočari, about the detention at the White house and the Vuk Karadžić School and that the Bosnian Muslim men were to be killed.¹⁶⁰⁹ According to Momir Nikolić, Colonel Blagojević only said that he was aware of the situation in Potočari.¹⁶¹⁰ Momir Nikolić testified that the meeting lasted 15-20 minutes.¹⁶¹¹

449. The Trial Chamber has been provided with evidence that Colonel Blagojević knew of the detention of the Bosnian Muslim men in Bratunac. Two witnesses testified that Colonel

¹⁶⁰¹ Momir Nikolić himself was not present at the meeting. He saw commanders entering and leaving the Bratunac Brigade headquarters. Momir Nikolić, T. 1654.

¹⁶⁰² Momir Nikolić, T. 1649-50, T. 2363-64, referring to an information report dated 23 June 2003 from an interview on 28-30 May 2003 at the UNDU between the Prosecution and Momir Nikolić.

¹⁶⁰³ Mirko Trivić, T. 7532.

¹⁶⁰⁴ Mirko Trivić, T. 7532.

¹⁶⁰⁵ Mirko Trivić, T. 7491-92.

¹⁶⁰⁶ Mirko Trivić, T. 7493. *See supra* section II, (D).(3)(i).

¹⁶⁰⁷ Momir Nikolić testified that he had difficulty remembering the exact date of each of the meetings. *See e.g.* Momir Nikolić, T. 2383-84.

¹⁶⁰⁸ Momir Nikolić, T. 1699-1700.

¹⁶⁰⁹ Momir Nikolić, T. 1700.

¹⁶¹⁰ Momir Nikolić testified: " I can just say what my impression was at the time, and that was that this operation which was being implemented, that he had been informed about it, that he was well aware of it, and that what I told him was nothing new to him and that these were not new information that he was hearing for the first time." Momir Nikolić, T. 1701.

¹⁶¹¹ Momir Nikolić, T. 1688, 1699-1701.

Blagojević sent them to the Vuk Karadžić School.¹⁶¹² Witness P-210 was sent there on the evening of 12 July.¹⁶¹³

450. Witness P-210 testified that on 12 July he overheard a conversation between Colonel Blagojević, Captain Nikolić, Major Novica Pajić, the Bratunac Brigade chief of staff, and “a lieutenant colonel, a colonel [and] a few generals”.¹⁶¹⁴ The conversation took place at the Bratunac Brigade reception desk as Colonel Blagojević was going home for the evening.¹⁶¹⁵ Witness P-210 testified that Colonel Blagojević told Captain Nikolić:

to make sure everything is as it should be [...] that everything is all right [...] that there should be no problems, and this included the people who were at the school.¹⁶¹⁶

451. Before 07:00 on 13 July, Colonel Blagojević briefly met Witness P-210 at the Bratunac Brigade headquarters as Colonel Blagojević was entering the building and, according to Witness P-210, thereafter spent the rest of the day at the Brigade headquarters.¹⁶¹⁷ A little after 07:00, Colonel Blagojević met with Momir Nikolić, who updated him on the latest intelligence information that the Muslim column was moving in the direction of Konjević Polje and Bosnian Muslim men had been captured in that region.¹⁶¹⁸ Momir Nikolić testified that Colonel Blagojević told him to continue his activities in Potočari.¹⁶¹⁹

452. At around 09:30, a meeting was held at the Bratunac Brigade attended by General Mladić, Dragomir Vasić, Lieutenant Colonel Popović, and General Krstić.¹⁶²⁰ It is unclear whether Colonel Blagojević attended that meeting.¹⁶²¹ According to Momir Nikolić, approximately 15 minutes after the morning meeting with General Mladić, Momir Nikolić met with Colonel Blagojević in Colonel Blagojević’s office. Colonel Blagojević told him to “continue the Potočari operation to transport the Muslim women and children to Kladanj and to separate and detain the able-bodied Muslim men.”¹⁶²²

453. Around 11:00, Ljubomir Beatović, the Bratunac Brigade orderly, met Colonel Blagojević in the Bratunac Brigade duty operation officer’s office. Colonel Blagojević sent Ljubomir

¹⁶¹² Witness P-210, T. 7405-06; Ljubomir Beatović, T. 9701-02, *See supra* para 275.

¹⁶¹³ Witness P-210, T. 7376, 7404. Ljubomir Beatović was sent in the morning of 13 July, *see supra* para 278.

¹⁶¹⁴ Witness P-210, T. 7377-78.

¹⁶¹⁵ Witness P-210, T. 7405-06.

¹⁶¹⁶ Witness P-210, T. 7379.

¹⁶¹⁷ Witness P-210, T. 7384-85.

¹⁶¹⁸ Momir Nikolić, T. 1707-08.

¹⁶¹⁹ Momir Nikolić, T. 1708.

¹⁶²⁰ Momir Nikolić, Ex P82, Statement of Facts, p. 3.

¹⁶²¹ Momir Nikolić, Ex. P82, Statement of Facts, p. 3-4. Momir Nikolić was not present at that meeting and he does not state that Colonel Blagojević was present at that meeting.

¹⁶²² Momir Nikolić, Ex. P82, Statement of Facts, p. 4. *See also* Momir Nikolić, T. 1707-08.

Beatović to the Vuk Karadžić School to check the medical condition of the prisoners.¹⁶²³ Another member of the Bratunac Brigade also went by the Vuk Karadžić School on 13 July, Witness P-135. This witness used the pretext of being ordered by Colonel Blagojević to enter the school. He testified before the Trial Chamber that “there was a strong possibility that I myself concluded that this [was] something that should be done.”¹⁶²⁴

454. Milan Nedelković testified that on 13 July a driver was to take Colonel Blagojević to his mother. However, Colonel Blagojević was driven by Milan Nedelković,¹⁶²⁵ but by Dragan Josipović.¹⁶²⁶ Colonel Blagojević brought a doctor with him, who examined his mother. Colonel Blagojević stayed with his mother until 13:00 or 14:00.¹⁶²⁷

455. Witness P-210 testified that on 13 or 14 July Colonel Blagojević drove along the Bratunac-Konjević Polje/Milići road.¹⁶²⁸ There were soldiers from the Bratunac Brigade standing along that road. According to Witness P-210, Colonel Blagojević asked the soldiers near Konjević Polje whether there were any problems and told them that if they should run into any prisoners they should bring them to the Brigade so that they would not be mistreated or provoked and that they should treat them professionally.¹⁶²⁹

456. Momir Nikolić testified that he again met Colonel Blagojević on the night of 13 July to 14 July. During this conversation, Momir Nikolić informed Colonel Blagojević of the situation in Bratunac town and that the Bosnian Muslim men would be transferred to the Zvornik Brigade area of responsibility the next day where they would be executed. Momir Nikolić testified that Colonel Blagojević did not respond to this information.¹⁶³⁰ According to Captain Nikolić, he did not, discuss the Kravica Warehouse killings with Colonel Blagojević, or that the Bratunac Brigade had been involved in these killings, until several days later¹⁶³¹ upon Colonel Blagojević’s return from Žepa.¹⁶³²

457. Momir Nikolić testified that at 00:45 on 14 July he informed Colonel Blagojević at the Bratunac Brigade headquarters that every man in Bratunac was supposed to help guard the prisoners in Bratunac. He also told Colonel Blagojević that he had met with Drago Nikolić in

¹⁶²³ Ljubomir Beatović, T. 9701-02. *See supra* para. 278

¹⁶²⁴ Witness P-135, T. 5731-32, 5734, 5738. *See supra* para. 276.

¹⁶²⁵ Milan Nedelković, T. 7299.

¹⁶²⁶ Dragan Josipović, Ex. D219/1, statement p. 3.

¹⁶²⁷ Dragan Josipović, Ex. D219/1, statement p. 3.

¹⁶²⁸ Witness P-210, T. 7388.

¹⁶²⁹ Witness P-210, T. 7387.

¹⁶³⁰ Momir Nikolić, T. 1757-59.

¹⁶³¹ Momir Nikolić, T. 1738.

Zvornik and that he had attended a meeting at the SDS offices in Bratunac. He testified that he told Colonel Blagojević that Colonel Beara had told him that the Bosnian Muslims were going to be killed.¹⁶³³

458. Sometime on 14 July, again according to Momir Nikolić, Colonel Blagojević was informed of how the situation had been in Bratunac town during the night of 13 July. Momir Nikolić reportedly informed his commander of what he had found out regarding the killings in the Vuk Karadžić School.¹⁶³⁴ They also discussed the involvement of members of the Bratunac Brigade Military Police in the transportation of captured Muslims to the territory of the Zvornik municipality.¹⁶³⁵ According to Nikolić, Colonel Blagojević did not issue any specific orders to Momir Nikolić.¹⁶³⁶

459. Pursuant to an order of 13 July by General Krstić to search the terrain,¹⁶³⁷ Colonel Blagojević issued an order on 14 July to his battalions to fulfil this task, and assigned specific areas to each battalion.¹⁶³⁸

460. On 14 July, Colonel Blagojević requested that a (temporarily) unit be sent to Trnovo, to relieve another unit of the Bratunac Brigade.¹⁶³⁹ (This temporary unit was established by order of 15 July).¹⁶⁴⁰ In the daily combat report of the same day, Colonel Blagojević reported that in the area where their forces were searching the terrain “no enemy forces were spotted and nor did [they] come across any.”¹⁶⁴¹

461. Just after midnight, *i.e.* on 15 July, Colonel Blagojević ordered Mićo Gavrić, Chief of Artillery of the Bratunac Brigade, to deploy the artillery unit personnel to the Zvornik Brigade in order to secure the Zvornik-Šekovići-Tuzla road. Mićo Gavrić refused to obey this order, since the men would be sent to unfamiliar terrain as an infantry unit, which they were not properly equipped to do. He wanted a written order. Colonel Blagojević promised him that the unit would be

¹⁶³² Momir Nikolić, T. 1738, 1741-42.

¹⁶³³ Momir Nikolić, T. 1757-58.

¹⁶³⁴ Momir Nikolić, T. 1763-64.

¹⁶³⁵ Momir Nikolić, T. 1763-64.

¹⁶³⁶ Momir Nikolić, T. 1763-64

¹⁶³⁷ Ex. P472, Order to search the terrain signed by General Krstić on 13 July at 20:00.

¹⁶³⁸ Ex. P 483, Order if ground search signed by Colonel Blagojević, on 14 July. *See supra* section II. D. 2. (a).

¹⁶³⁹ Ex. P484, Request for the relief of a unit attached to the 4th Drina Light Infantry Brigade, 14 July 1995, signed by Colonel Blagojević.

¹⁶⁴⁰ Ex. P493, Bratunac Brigade Order, replacement of temporary personnel, signed by Colonel Blagojević.

¹⁶⁴¹ Ex. P485, daily combat report, signed for Colonel Blagojević, 14 July 1995.

replaced the next day, so Mićo Gavrić agreed to go to the sector.¹⁶⁴² Colonel Blagojević told Mićo Gavrić that this order came from “higher up”.¹⁶⁴³

462. In the daily combat report of 15 July, Colonel Blagojević informed the Command of the Drina Corps about the status of the current search operations conducted by the 1st Battalion.¹⁶⁴⁴ He added that part of their forces (80 soldiers) had been sent to the area of the Zvornik Brigade and that a platoon had been sent in the 2nd Romanija Motorised Brigade area of responsibility.¹⁶⁴⁵

463. On 16 July, Colonel Blagojević and Lieutenant Colonel Cjetinović went to Šušnjari-Jaglići sector to oversee the completion of the terrain search.¹⁶⁴⁶ According to the 16 July Bratunac Brigade daily combat report, “[d]uring the day, the brigade commander visited all units which are blocking the enemy retreat [the 1st Milići Brigade, units of the 65th Motorised Protection Regiment, parts of the MUP and the 5th Engineering Battalion], defined their tasks and organized their joint action and communications”.¹⁶⁴⁷ Two witnesses confirmed that Blagojević visited the 2nd Infantry Battalion together with Lieutenant Colonel Cvjetinović.¹⁶⁴⁸

464. While visiting the 2nd Battalion, and based on an order from his own superiors, Blagojević ordered that a company of the 2nd Battalion to be sent to Zvornik. The Daily Combat report states that preparations were made to send two companies to the Zvornik Brigade.¹⁶⁴⁹ The troops of the 2nd Battalion did not want to go to Zvornik and argued with Zoran Jovanović and Colonel Blagojević. The soldiers even pointed their guns at Colonel Blagojević. Zoran Jovanović managed to calm the soldiers and to get them to agree to performing this order by promising that he, Jovanović, would join them.¹⁶⁵⁰ Zoran Jovanović testified that eventually the 4th Company was

¹⁶⁴² Mićo Gavrić, T. 8404-06.

¹⁶⁴³ Mićo Gavrić, T. 8504-05.

¹⁶⁴⁴ Ex. P490, daily combat report, signed for Colonel Blagojević, 15 July, to the Command of the Drina Corps, dated 15 July 1995. Witness DP-105 testified that on that day his unit did not reach Lupoglav nor Šušnjari. Witness DP-105, T. 10140)

¹⁶⁴⁵ Ex. P490, Daily Combat Report, signed for Colonel Blagojević, 15 July 1995.

¹⁶⁴⁶ Witness DP-105 testified that Colonel Blagojević and Lieutenant Colonel Cvjetinović came to the 1st Battalion on 16 July. Witness DP-105, T. 10085-87.

¹⁶⁴⁷ Ex. P496, Bratunac Brigade daily combat report, 16 July 1995. Witness P-210 testified that maybe 4-5 days after the fall of Srebrenica, he went with Blagojević to visit the Milići Brigade in Milići. Witness P-210, T. 7386-87. However, when faced with Ex. P496, Witness P-210 testified that he does not remember the visit described in the combat report. Witness P-210 T. 7394. Witness P-210 testified that on their way back from Milići, they travelled on the Bratunac/Konjević Polje road and that Blagojević stopped to talk with some soldiers along that road, Witness P-210, T. 7387.

¹⁶⁴⁸ Zoran Jovanović, T. 9870-71, 9900-02; Witness DP-105, T. 10085. *See also* DP-106, T. 10375.

¹⁶⁴⁹ Ex. P496, Bratunac Brigade Daily Combat Report, 16 July, signed for Colonel Blagojević.

¹⁶⁵⁰ Zoran Jovanović, T. 9872-74. When the soldiers left for Zvornik, Lieutenant Colonel Cvjetinović would not allow Zoran Jovanović to join them, since the rest of the 2nd Battalion was to be sent to Žepa soon. The deputy commander of the 2nd battalion, Zoran Kovačević did accompany the troops that went to Zvornik.

sent to Zvornik.¹⁶⁵¹ At a working meeting with the command corps staff of the Bratunac Brigade, it was discussed that a battalion was to be formed to be sent to Žepa.¹⁶⁵² On that same day, Colonel Blagojević issued an order to the 1st Battalion to “pull out the whole battalion from its area of deployment and prepare it for combat activity.”¹⁶⁵³ The 1st Battalion had to be ready by 07:00 on 17 July for the march to Žepa.¹⁶⁵⁴

465. Some time before he went to Žepa,¹⁶⁵⁵ Colonel Blagojević was driven by his driver Nedeljković and a bodyguard to a bauxite mine in Gunja, where he inspected troops. The men returned to the Bratunac Brigade in the afternoon. On this journey, they travelled there via the road through Milići, and returned through Podravanje and Srebrenica.¹⁶⁵⁶

466. In the morning of 17 July, Colonel Blagojević was at the IKM in Pribićevac where he met Lieutenant Colonel Dragomir Keserović of the Main Staff’s Department for Security in order to discuss the terrain search operation.¹⁶⁵⁷ On 17 July, Colonel Blagojević assigned Dragomir Zekić, commander of the 3rd Battalion, to search the terrain in the Konjević Polje area.¹⁶⁵⁸ At 12:20, Blagojević is reported at the head of the convoy of the Bratunac Brigade going to Žepa.¹⁶⁵⁹

467. That day, a group of four underage Bosnian Muslim boys was taken to the Bratunac Brigade.¹⁶⁶⁰ In a dispatch to the Drina Corps, signed with the name Colonel Blagojević, it is suggested that the testimony of these children “be recorded by cameras of [the Drina Corps] press centre.”¹⁶⁶¹ In an urgent message to the Drina Corps, signed with the name Colonel Blagojević, a suitable vehicle is requested, in order to transport wounded Bosnian Muslim prisoners.¹⁶⁶² On 18 July, Momir Nikolić reported to Colonel Blagojević that the wounded prisoners had been evacuated with a police escort provided by the Drina Corps.¹⁶⁶³

¹⁶⁵¹ Zoran Jovanović, T. 9870-71, 9901-02. *See also* Ex. P129, intercept of a conversation between Rasić and Lieutenant Colonel Popović, in which Popović is recorded as saying, in response to the question whether anything from Blagojević had arrived, that “it arrived”.

¹⁶⁵² Ex. P403, Bratunac Brigade minutes of meetings, entry for 16 July.

¹⁶⁵³ Ex. P498, Bratunac Brigade order, Deployment of the battalion into combat activity area, 16 July 1995, signed by Colonel Blagojević, item 1

¹⁶⁵⁴ Ex. P498, Bratunac Brigade order, Deployment of the battalion into combat activity area, 16 July 1995, signed by Colonel Blagojević, item 5. *See also* Ex. P403, Bratunac Brigade minutes of meetings, entry for 16 July.

¹⁶⁵⁵ Milan Nedeljković could not say on which date he drove Colonel Blagojević to the mines. Milan Nedeljković, T. 7300-01.

¹⁶⁵⁶ Milan Nedeljković, T. 7300-03.

¹⁶⁵⁷ Dragomir Keserović, T. 10661.

¹⁶⁵⁸ Dragomir Zekić, T. 8934-35.

¹⁶⁵⁹ Richard Butler, T. 4534 and intercept in Ex. P268 from 1220 hours on 17 July 1995.

¹⁶⁶⁰ Mićo Gavrić, T. 8518; Afik Orić, Ex. P544, p. 3. *See supra* section II. D. 2. (a)(i).

¹⁶⁶¹ Ex. P501, Dispatch to the Drina Corps, 17 July, sent by Colonel Blagojević.

¹⁶⁶² Ex. P502, Bratunac Brigade Message to the Drina Corps, very urgent, 17 July, signed with name of Colonel Blagojević.

¹⁶⁶³ Ex. P504, Report on the situation in the Srebrenica Region, signed by Momir Nikolić, sent to the Command of the Bratunac Brigade, 18 July.

468. According to the daily combat report of Colonel Blagojević, dated 18 July, the 3rd and the 4th Battalions as well as people mobilised for compulsory labor were searching the terrain in the area of Pobudje and Konjević Polje.¹⁶⁶⁴ The Trial Chamber has also been provided with evidence that, as of 18 July, Colonel Blagojević is at Žepa conducting the terrain sweeping operation.¹⁶⁶⁵

469. Momir Nikolić testified that Colonel Blagojević returned to Bratunac after the fall of Žepa, which was around 24 July.¹⁶⁶⁶

470. Momir Nikolić testified that in September 1995, shortly after he received the task to rebury the bodies from Lieutenant Colonel Popović, he informed Colonel Blagojević of this task.¹⁶⁶⁷ He obtained authorisation from Colonel Blagojević to contact the civilian authorities.¹⁶⁶⁸ Finally, Momir Nikolić testified that he regularly informed Colonel Blagojević of the reburial progress in the month of September or October 1995.¹⁶⁶⁹

471. The Trial Chamber notes that it is unclear where Colonel Blagojević was during much of the period of September and October 1995.¹⁶⁷⁰ The Trial Chamber has been provided with evidence that at 08:00 on 16 October 1995, Colonel Blagojević was in Bratunac. He held a “working meeting” with “command staff and battalion commanders” at the Bratunac Brigade headquarters during which Momir Nikolić reported that “We are currently engaged in tasks issued by the VRS Main Staff (sanitation/BCS asanacija)”.¹⁶⁷¹

472. With regard to the above-mentioned meetings alleged to have occurred between Captain Nikolić and Colonel Blagojević, the Trial Chamber observes that it has not been furnished with any corroborating evidence as to what was said during those meetings. Furthermore, it does not find any direct action taken by either Captain Nikolić or Colonel Blagojević that could be used as circumstantial evidence to support Momir Nikolić’s testimony. The Trial Chamber confirms, in this context, its finding that Momir Nikolić cannot be considered a wholly credible or reliable witness and that on matters that bear directly on the knowledge of the Accused, such as what he

¹⁶⁶⁴ Ex. P503, daily combat report, sent by Colonel Blagojević, 18 July 1995. According to Dragomir Zekić, the actual areas searched that day were Glogava, Sandići, and Hrcnici. They did not search in the areas of Pobudje or Konjevic Polje. Dragomir Zekić, T. 8934-35.

¹⁶⁶⁵ P503, Bratunac Brigade daily combat report, 18 July 1995.

¹⁶⁶⁶ Momir Nikolić, T. 1765. See also Ex. P825, Secretary-General’s Report, para 420-425.

¹⁶⁶⁷ Momir Nikolić, T. 1767; 2355.

¹⁶⁶⁸ Momir Nikolić, T. 1767-68.

¹⁶⁶⁹ Momir Nikolić, T. 1769.

¹⁶⁷⁰ The Prosecution alleges that Colonel Blagojević traveled between the sector of the Sarajevo-Romanija Corps and the Bratunac Brigade area of responsibility. Indictment, para 2. The Defence for Colonel Blagojević alleges that Colonel Blagojević was involved in relocating the brigade to Trnovo, and as such was not in Bratunac on a continuing basis. Blagojević Final Brief, para. 87.

¹⁶⁷¹ P505, minutes of meeting held 0800 hours on 16 July 1995, collection of “Reports, Meetings, 1st Bratunac Light Infantry Brigade”. Ljubomir Beatović testified that he was present at this meeting but did not remember Nikolić’s statement that the brigade was “currently” involved in asanacija, T. 9715-17, 9730.

reported to Colonel Blagojević during those meetings or was told to do, it must require corroboration for such evidence, in order to enter a finding against the Accused.

C. Colonel Blagojević's Knowledge of Actions of the Bratunac Brigade

1. In relation to the Srebrenica Enclave before 11 July 1995

473. Recalling that “background issues” can be used to prove an issue relevant to the charges such as motive, opportunity, intent, preparation, plan, or knowledge of the Accused,¹⁶⁷² the Trial Chamber makes the following findings on Vidoje Blagojević's knowledge of actions of the Bratunac Brigade in relation to the Srebrenica enclave before 11 July 1995.

474. Having found that elements of the Bratunac Brigade were involved before the attack in blocking humanitarian supplies and convoys from entering the Srebrenica enclave at Žuti Most and in blocking the return of DutchBat soldier to the enclave,¹⁶⁷³ including after Colonel Blagojević became commander of the Bratunac Brigade on 25 May,¹⁶⁷⁴ the Trial Chamber considers that the evidence before it does not suggest that Colonel Blagojević either ordered or actively supported the blocking of humanitarian or supply convoys after his appointment as commander of the Bratunac Brigade. There is, however, sufficient evidence before the Trial Chamber to establish beyond reasonable doubt that Colonel Blagojević was aware that the Bosnian Muslims were in need of basic supplies such as food and fuel, and that DutchBat was operating far below capacity in terms of manpower, fuel and ammunition.¹⁶⁷⁵

475. Upon taking up his duties as commander of the Bratunac Brigade, Colonel Blagojević must have been informed that elements of his Brigade, namely his assistant commander for security and intelligence, Captain Momir Nikolić, and members of the Bratunac Brigade Military Police, were actively involved in checking the convoys that entered the Srebrenica enclave.¹⁶⁷⁶ Furthermore, Momir Nikolić testified that the purpose of blocking these supplies was to ensure that DutchBat would not be ready for combat and not be able to carry out its task in the enclave, and to make life within the enclave impossible for the civilian population.¹⁶⁷⁷ As Colonel Blagojević would have needed to know the state of preparedness of DutchBat before the attack began on 6 July, he would have been informed of this information by his superiors in meetings preparing for the operation as well as by Captain Nikolić, who also served as a liaison between the Bratunac Brigade and DutchBat. The Trial Chamber finds that this information would have put

¹⁶⁷² See *supra* para. 137.

¹⁶⁷³ See *supra* paras 138-140.

¹⁶⁷⁴ The evidence of DutchBat witnesses confirms that the blocking of convoys continued after 25 May 1995. See *supra* section II. C. 3, specifically paras 111-112, 117.

¹⁶⁷⁵ Ex. P851, Dutch Ministry of Defence, “Report based on the Debriefing on Srebrenica”, dated 4 October 1995, p. 17.

¹⁶⁷⁶ See *supra* section II. C. 3.

¹⁶⁷⁷ Momir Nikolić, T. 1634-35

him on notice about DutchBat's readiness – or rather, inability – to deal with the humanitarian situation created by the attack on the Srebrenica enclave.

476. The Trial Chamber furthermore finds that there is sufficient evidence to establish beyond reasonable doubt that Colonel Blagojević had knowledge that elements of the Bratunac Brigade, including the 2nd and 3rd Battalions, were involved in sniping and shelling of the Srebrenica enclave in the months before the enclave was attacked,¹⁶⁷⁸ as well as in the attack on the DutchBat OP Echo in early June 1995.¹⁶⁷⁹ Under the operating practices in place within the Bratunac Brigade, Colonel Blagojević would have met regularly with his subordinate commanders of the four battalions and would have received regular reports from them about their activities. Colonel Blagojević, as commander of the Bratunac Brigade, had an obligation to know what the units within the Brigade were doing. As the primary concern of the Bratunac Brigade was the Srebrenica enclave, Colonel Blagojević certainly would have requested regular updates in relation to attacks from or against the enclave. There is insufficient evidence before the Trial Chamber to lead it to conclude that the regular reporting procedures were not in place between 25 May and early July 1995. The Trial Chamber finds that these actions assisted Colonel Blagojević in preparing for and planning the attack on the enclave.

477. The Trial Chamber finds that Colonel Blagojević knew of the Bratunac Brigade's participation in the attack on the Srebrenica enclave included firing on civilians in the centre of Srebrenica town, which had the effect of causing those civilians and DutchBat to take the decision to leave Srebrenica town and go to Potočari, and again while the civilians were fleeing from Srebrenica to Potočari.¹⁶⁸⁰ Indeed, the Trial Chamber recalls that Mićo Gavrić testified that when he fired on 11 July in the area around which civilians were walking from Srebrenica to Potočari, his actions were pursuant to Colonel Blagojević's 5 July order.¹⁶⁸¹ Vidoje Blagojević was at the IKM at Pribićevac during the attack on the Srebrenica enclave. As the commander of a Brigade engaged in combat, Colonel Blagojević would have had to have been, and, Trial Chamber finds, was in contact with his units.¹⁶⁸²

478. Finally, the Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that Colonel Blagojević knew what the objective of "Krivaja 95" was, namely to reduce the Srebrenica enclave to its urban area, and that he tasked his subordinates in order to

¹⁶⁷⁸ See *supra* para. 117.

¹⁶⁷⁹ See *supra* para. 118.

¹⁶⁸⁰ For the Trial Chamber's findings on the participation of elements of the Bratunac Brigade in the attack, including firing at civilians, see *supra* section II. C.5.

¹⁶⁸¹ See *supra* para. 131.

¹⁶⁸² See *supra* section II. C, and para. 436.

make this operation a success.¹⁶⁸³ Furthermore, the Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that Colonel Blagojević knew that the objective of the operation changed from reducing the enclave to eliminating the enclave. Both General Krstić and Colonel Blagojević were present at the IKM in Pribićevec during the attack. Furthermore members of the Bratunac civilian authorities visited Pribićevec, including Miroslav Deronjić who went to Pribićevec and briefly spoke to Colonel Blagojević on 11 July about the Srebrenica operations having testified: “We exchanged our information as to the ending of the Srebrenica ... operation.”¹⁶⁸⁴ Based upon these factors, the Trial Chamber concludes that Colonel Blagojević was informed of the overall progress of the attack, developments throughout the attack and the ultimate objective of the attack: to take over the Srebrenica enclave.

2. Potočari

479. The Trial Chamber has found that there is insufficient evidence to support a finding that members of the Bratunac Brigade participated in the killings that took place in Potočari.¹⁶⁸⁵ The Trial Chamber further finds that there is insufficient evidence to establish that Colonel Blagojević gave either his troops or other units present orders or instructions to kill or cause serious bodily harm to Bosnian Muslims present in Potočari. Accordingly, the Trial Chamber cannot establish a link between Colonel Blagojević and the killings in Potočari.

480. The Trial Chamber has found that there is insufficient evidence to support a finding that elements of the Bratunac Brigade participated in the beatings of Bosnian Muslim civilians in Potočari.¹⁶⁸⁶ The Trial Chamber further finds that there is insufficient evidence to establish that Colonel Blagojević gave either his troops or other units present orders or instructions to beat or mistreat Bosnian Muslims present in Potočari. Accordingly, the Trial Chamber cannot establish a link between Colonel Blagojević and the beatings in Potočari.

481. The Trial Chamber found that there is insufficient evidence to establish that any member of the Bratunac Brigade participated in the abusive interrogations of Bosnian Muslim civilians in

¹⁶⁸³ See *supra* section II. C.4.(a); Ex. P406, Bratunac Brigade Order for Active Combat, signed by Colonel Blagojević, 5 July 1995; Ex. P403, Bratunac Brigade minutes of meetings, entry for 3 July.

While the Trial Chamber does not have evidence before it to find that Colonel Blagojević was at the 5 July meeting at the Bratunac Brigade headquarters chaired by General Krstić in which the various commanders received their assignments for the Srebrenica operation, based on the fact that on the same date Colonel Blagojević held two meetings with his staff at which he presented the Drina Corps Order, *Krivaja* 95, and tasked the units of the Bratunac Brigade, the Trial Chamber can only conclude that Colonel Blagojević received the assignments for the Bratunac Brigade from General Krstić on that date.

¹⁶⁸⁴ See *supra*, paras 78 and 130. The Trial Chamber recalls that by this point, Miroslav Deronjić had learned from President Karadžić that the objective of the operation had changed to the complete take-over of Srebrenica. See *supra* para 78.

¹⁶⁸⁵ See *supra* para. 209.

¹⁶⁸⁶ See *supra* para. 210.

Potočari. Furthermore, there is insufficient evidence to establish that Colonel Blagojević issued any orders or instructions in relation to conducting any interrogations in Potočari.

482. The Trial Chamber has found that there is sufficient evidence to support a finding that members of the Bratunac Brigade Military Police and the assistant commander for security and intelligence, Captain Nikolić, participated in the separations of Bosnian Muslim men from the rest of the Bosnian Muslim population in Potočari on 12 and 13 July.¹⁶⁸⁷ The Trial Chamber does not find that there is sufficient evidence to establish beyond reasonable doubt that Colonel Blagojević knew that the Bratunac Brigade Military Police participated in the separations on 12 July; at most, the evidence establishes that Colonel Blagojević would have known that members of this unit were present in Potočari providing security for senior VRS officers, including General Mladić and general security for the area.¹⁶⁸⁸ There is insufficient evidence before the Trial Chamber to support a finding beyond reasonable doubt that he knew that separations were taking place, let alone any members of the Bratunac Brigade Military Police were participating in this process. Furthermore, the Trial Chamber does not find that there is sufficient evidence to establish beyond any reasonable doubt that Colonel Blagojević knew that Momir Nikolić was participating in separations on 12 July.¹⁶⁸⁹

483. The Trial Chamber does find, however, that there is sufficient evidence to establish beyond reasonable doubt that Colonel Blagojević would have known that those members of the Bratunac Brigade Military Police who were present in Potočari on 13 July were assisting, either directly or indirectly, in the separation of men from the rest of the Bosnian Muslim population. Throughout the day of 12 July, buses filled primarily with women, children and elderly passed through Bratunac on their way to ABiH-held territory. By the evening of 12 July, there were buses filled with only men in Bratunac town.¹⁶⁹⁰ Colonel Blagojević was in Bratunac town in the evening of 12 July – he would have known, if not directly seen, the result of the separations that took place in Potočari. Thus, he would have been on notice that the activities that were on-going in Potočari in relation to providing “security” contributed to the separation of the men from the rest of the Bosnian Muslim population. As will be addressed below, the Trial Chamber does not find the

¹⁶⁸⁷ See *supra* para. 212.

¹⁶⁸⁸ The evidence shows that Colonel Blagojević was in Srebrenica on 11 July. He would have been aware that General Mladić spent the night at the Hotel Fontana on 11 July and that the Bratunac Brigade Military Police was providing security at that hotel. Colonel Blagojević was in Bratunac in the morning of 12 July, after which he spent the day inspecting his troops. Upon his return to the Brigade, he acquainted himself with the activities of his units. Colonel Blagojević spent the night in Bratunac on 12 July. See *supra* paras 437, 438, 440, 443, 440, 449; Ex. P449, page of Military Police Log Book, entry for 12 July 1995.

¹⁶⁸⁹ The only source of information about what Colonel Blagojević knew of the actions of Momir Nikolić on 12 July before the Trial Chamber is Momir Nikolić. Momir Nikolić testified that he did not meet with Colonel Blagojević after the meeting at the Hotel Fontana before leaving Bratunac for Potočari on 12 July and did not communicate with him throughout the day. Momir Nikolić, T. 1686-88, 1898-1903.

¹⁶⁹⁰ See *supra* paras 266-268.

testimony of Momir Nikolić that on the night of 12 July he briefed Colonel Blagojević that he was acting as “co-ordinator” for activities in Potočari, including separations on 12 July, to be sufficient to establish through direct evidence that Colonel Blagojević knew of the separations by 13 July.¹⁶⁹¹ Rather, the Trial Chamber finds that it can infer from the totality of evidence before it that Colonel Blagojević would have known that separations were occurring in Potočari on 13 July, and that those members of his brigade present in Potočari, namely the Bratunac Brigade Military Police, were contributing to the separation process.¹⁶⁹²

484. The Trial Chamber found that there is sufficient evidence to support a finding that those members of the Bratunac Brigade present in Potočari contributed to the inhumane conditions to which the Bosnian Muslim civilians in Potočari were subjected. These members included members of the Bratunac Brigade Battalions and Military Police, and at least two officers: Captain Nikolić and Major Trišić, the assistant commander for logistics. There is sufficient evidence before the Trial Chamber to establish that Colonel Blagojević was aware of the situation facing the Bosnian Muslim refugees in Potočari: as one of the brigade commanders participating in the Krivaja 95 operation, he knew that more than twenty thousand people, the majority of whom were civilians, had been displaced and were being held in the small space around the UN base in Potočari. The Trial Chamber has established that as the commander of the Bratunac Brigade for the six weeks before the attack, he was aware that DutchBat was facing severe food and water shortages, and was therefore not able to provide for the thousands upon thousands of refugees arriving at their base.¹⁶⁹³ Colonel Blagojević was present in the town of Bratunac, including in Bratunac Brigade Headquarters with its communication centre, during this time.¹⁶⁹⁴ While the Bratunac Brigade itself may not have been able to provide the supplies necessary, Colonel Blagojević could have summoned assistance from other organisations or agencies. Instead, there is no evidence that he did anything in this respect.

485. The Trial Chamber found that there is insufficient evidence to support a finding that elements of the Bratunac Brigade participated in the destruction of personal property and effects in Potočari. Furthermore, the Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt that Colonel Blagojević issued orders or instructions to seize documents or other personal effects from the Bosnian Muslims in Potočari.

¹⁶⁹¹ See *supra* para 172 and 447, in relation to the meeting which Momir Nikolić testified he had with Colonel Blagojević on the night of 12 July during which he testified that he informed Colonel Blagojević of his activities and the general situation in Potočari, and Colonel Blagojević’s allegedly responded that he was aware that the situation in Potočari was as Momir Nikolić described.

¹⁶⁹² See *supra* section II. D.(e) and (f), and in particular paras 451-453, 438.

¹⁶⁹³ See *supra* section II.2 and 3.

¹⁶⁹⁴ See *supra* paras 437,438, 440, 444, 448, 449.

486. The Trial Chamber found that there is sufficient evidence to establish that numerous elements of the Bratunac Brigade, among other units of the VRS and the MUP, participated in the transfer of women, children and elderly from Potočari in various ways.¹⁶⁹⁵ The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that Colonel Blagojević knew that the transfer of the Bosnian Muslim population was on-going.¹⁶⁹⁶ As the commander of the Bratunac Brigade, Colonel Blagojević would have known that Bratunac Brigade vehicles and fuel were used in the transfer operation; indeed, the Daily Combat Report he issued on 12 July indicated that he did.¹⁶⁹⁷ In it he reported: “Logistics support is functioning satisfactorily. We will submit details of consumption of ammunition and fuel later on.”¹⁶⁹⁸ Colonel Blagojević knew that elements of the Bratunac Brigade regulated traffic as the buses filled with women, children and elderly passed through Bratunac on their way to Konjević Polje, as the Bratunac Brigade command had been ordered to do so by General Živanović on 12 July.¹⁶⁹⁹ Furthermore, the Bratunac Brigade Military Police log-book records that the Military Police secured the Srebrenica-Bratunac road on 12 July.¹⁷⁰⁰ As commander of the Bratunac Brigade, it was Colonel Blagojević’s responsibility to check that log-book to apprise himself of the actions of his subordinates.

487. The Trial Chamber does not find, however, that there is sufficient evidence to establish that Colonel Blagojević would have known that Captain Nikolić and members of the Bratunac Brigade Military Police assisted in the transfer through the counting of people as the buses were loaded on 12 July.¹⁷⁰¹ As for their participation in these activities as of 13 July, the Trial Chamber finds that through his presence at the Bratunac Brigade headquarters on the night of 12 July when he received information about the activities of his troops and units in the field he would have learned that the Bratunac Brigade Military Police assisted in the transfer of the Bosnian Muslim population.¹⁷⁰²

488. Furthermore, the Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that Colonel Blagojević knew that members of the Bratunac Brigade participated in the transfer of Bosnian Muslim men out of Potočari. Colonel Blagojević saw the buses

¹⁶⁹⁵ See *supra* section II. D. 1. (e) and (f), and in particular paras 172, 176, 180-183, 186 and 191.

¹⁶⁹⁶ See e.g. Ex. P441, Bratunac Brigade daily combat report, 12 July 1995 and *see supra* sections II. D. 1. (e) and (f) and II.E. 1 and III.B, in particular paras 180, 186, 190, 265, 266, 444 and 449.

¹⁶⁹⁷ Ex. P441, Bratunac Brigade daily combat report and *see supra* section II.D.1.(e), in particular para. 180.

¹⁶⁹⁸ See *supra* para 180.

¹⁶⁹⁹ See *supra* para. 186.

¹⁷⁰⁰ Ex. P449, logbook of Bratunac Brigade Military Police, entry for 12 July 1995; *See supra* paras 186 and 438.

¹⁷⁰¹ See *supra* para. 188 and 195.

¹⁷⁰² See *supra* section III. B. and in particular paras 438, 444 and 449.

overcrowded with Bosnian Muslim men in the small town of Bratunac on the nights of 12 and 13 July, and knew that some of them had come from Potočari.¹⁷⁰³

3. The Column

489. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that Colonel Blagojević not only knew that his units were participating in the search of the terrain for the Bosnian Muslim men who had taken off from Srebrenica in a column for ABiH-held territory, but that he had in fact ordered them to do so, in accordance with an order from the Drina Corps.¹⁷⁰⁴ The evidence establishes from at least 15 July, Colonel Blagojević was directing the search operation, which included overseeing units outside of the Bratunac Brigade such as the MUP.¹⁷⁰⁵ Furthermore, the Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that Colonel Blagojević knew that the objective was to capture and detain Bosnian Muslim men.¹⁷⁰⁶

490. The Trial Chamber has found above that through the participation in the searching operation, units of the Bratunac Brigade assisted in the capture and detention of men from the column.¹⁷⁰⁷ The Trial Chamber further finds that there is sufficient evidence to establish beyond reasonable doubt that Colonel Blagojević was aware that men were captured as a result of the overall search operation: while the evidence is not sufficient to establish beyond reasonable doubt that Colonel Blagojević knew the fate of men from the column captured in Sandići meadow or in Nova Kasaba, the Trial Chamber finds that the evidence establishes that Colonel Blagojević knew that men captured by members of the Bratunac Brigade were subsequently detained in Bratunac.¹⁷⁰⁸

491. The Trial Chamber finds that there is sufficient evidence to establish criminal responsibility for Colonel Blagojević in relation to the killings that occurred along the Konjević Polje-Nova Kasaba road, at the Nova Kasaba football field, in the Sandići meadow or at the Kravica supermarket. These killings occurred on 13 July, before Colonel Blagojević was tasked with overseeing the search operation.

¹⁷⁰³ See *supra* section II.D.1.(f), section II.E.1. and 2, and in particular paras. 180, 183, 190, 264-266, 268, 440, 444 and 449.

¹⁷⁰⁴ See *supra* section II.D.(i), in particular paras. 223, 223, 228-232, 235- 237. Colonel Blagojević travelled on the Bratunac-Konjević Polje road on either 13 or 14 July during the search operation and passed Bratunac Brigade soldiers on the road. He asked them questions in relation to the search operation and instructed them to bring any prisoners that they captured to the Bratunac Brigade headquarters. See *supra* para. 445.

¹⁷⁰⁵ See *supra* section II.D.(i), in particular paras 235-237, as well as paras 462-467.

¹⁷⁰⁶ See *supra* section II.D.(i) and in particular paras 222-225, 230-232, 235-237 as well as paras 455, 459 and 463.

¹⁷⁰⁷ See *supra* section II.D(i), in particular 222-225, 230-232, 235-237.

¹⁷⁰⁸ See *supra* section II.E.1 and 2, section II.D.3.(ii).d, and paras 452-453 and 455.

4. Detention and Killings in Bratunac

492. The Trial Chamber has found that members of the Bratunac Brigade Military Police participated in the detention of Bosnian Muslim men in Bratunac, both on buses and at the Vuk Karadžić School, on the nights of 12 and 13 July.¹⁷⁰⁹ Additionally, the Trial Chamber has found that other members of the Bratunac Brigade were in and around the Vuk Karadžić School, including at least two men who were sent to the school by Colonel Blagojević himself.¹⁷¹⁰

493. There is sufficient evidence to establish beyond reasonable doubt that Colonel Blagojević knew that men were being detained in Bratunac on those two nights. Indeed, Colonel Blagojević was present in the small town of Bratunac on both nights and would have seen the buses parked throughout the town as he travelled the short distance from the Bratunac Brigade headquarters to his apartment, which was located nearby the Vuk Karadžić School. Furthermore, he was present at the Bratunac Brigade headquarters between 12 and 14 July and would have reviewed orders, logbooks and reports in relation to the situation of the detention of Bosnian Muslim men in his town. As commander of the Bratunac Brigade, the Trial Chamber finds that there is sufficient evidence to establish that Colonel Blagojević knew that members of the Bratunac Brigade Military Police were providing “security” throughout the town that night, which included guarding the detainees.

494. The Trial Chamber finds that it would have been common knowledge to anyone walking the streets of Bratunac on the nights of 12 and 13 July that the Bosnian Muslim men were being detained in overcrowded conditions in an environment of constant threat of abuse and serious mistreatment, including the threat of death. The evidence of Bosnian Muslim men, members of the Bratunac Brigade and members of the civilian authorities paints a picture of sheer horror for the detainees: the buses were overcrowded; the buses were guarded by various VRS units and civilians; at several times people were taken out of the buses and did not return. After these men were taken from the buses, those remaining in the buses heard horrific screams, followed by gunshots, after which silence ensued. Gunshots could be heard throughout the night. The Trial Chamber finds that based on the evidence of the numerous witnesses in Bratunac on the nights of 12 and 13 July, through his presence in Bratunac, Colonel Blagojević would have known of the inhumane conditions under which the Bosnian Muslim men were being detained and the severe mistreatment and abuse to which they were subjected. Furthermore, he would have known that through their assistance in detaining the men, elements of the Bratunac Brigade substantially contributed to both the inhumane conditions and the mistreatment of the Bosnian Muslim men.

495. Finally, the Trial Chamber has found that members of the Bratunac Brigade Military Police participated in the transfer of Bosnian Muslim prisoners to Zvornik on the morning of 14 July.¹⁷¹¹ Momir Nikolić gave the instructions to the Military Police to escort the buses to Zvornik. The Trial Chamber recalls that the members of the Bratunac Brigade Military Police who participated in the escort met in front of the Bratunac Brigade headquarters that morning. They took a UN APC which had been commandeered by the Bratunac Brigade and was registered to the Bratunac Brigade. Momir Nikolić testified that he informed Colonel Blagojević of the participation of the Bratunac Brigade Military Police in the transport of the Bosnian Muslim detainees. The Trial Chamber has already stated that it views the evidence of Momir Nikolić with great caution, particularly on any matter that may incriminate the Accused.

496. The Trial Chamber finds that even without Momir Nikolić's evidence, there is sufficient evidence to support the finding beyond reasonable doubt that Colonel Blagojević knew that members of the Bratunac Brigade Military Police participated in the escort. Colonel Blagojević was in Bratunac on the morning of 14 July. A large number of buses was parked in the centre of Bratunac from 12 until 14 July, waiting to begin the journey north. Furthermore, the entry for 14/15 July in the Bratunac Brigade Military Police logbook records that the Military Police was engaged in the escort of refugees.¹⁷¹² As the commander of the Bratunac Brigade, Colonel Blagojević had the responsibility to know what tasks the Military Police were participating in, and particularly where the commander of the Military Police was.

5. Organised Mass Executions and Burial Operations

497. The Trial Chamber has found that some members of the Bratunac Brigade were around the Kravica Warehouse around the time that the mass executions took place; it has not found that there is sufficient evidence that any member of the Bratunac Brigade took part in the execution at the Kravica Warehouse. The Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt that Colonel Blagojević knew that the execution at the Kravica Warehouse was planned or that any members of the Bratunac Brigade participated in it. The Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt that Colonel Blagojević issued any orders or instructions to any units of the Bratunac Brigade or other units to participate in the mass executions at the Kravica Warehouse.

¹⁷⁰⁹ See *supra* paras 286-287.

¹⁷¹⁰ See *supra* para 287.

¹⁷¹¹ See *supra* paras 283-285, 316-319 and 337.

¹⁷¹² Ex. P449, Bratunac Brigade Military Police daily log, entry for for 14/15 July 1995.

498. There is some evidence to establish that Colonel Blagojević learned about the mass executions at the Kravica Warehouse sometime after it occurred.¹⁷¹³

499. The Trial Chamber has found that members of the Bratunac Brigade Military Police escorted buses filled with Bosnian Muslim men marked for death to two schools (Orahovac and Pilica) where they were temporarily detained before being executed.

500. The Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt that Colonel Blagojević had knowledge, at that time, that those Bosnian Muslim men would subsequently be executed.

¹⁷¹³ See Momir Nikolić, T. 1741-42, *supra* para. 456.

IV. FACTUAL FINDINGS RELATED TO THE INDIVIDUAL CRIMINAL RESPONSIBILITY OF DRAGAN JOKIĆ

501. The Jokić Defence argues that while Dragan Jokić was duty officer on 14/15 July he temporarily relinquished his duties as Chief of Engineering.¹⁷¹⁴ The Trial Chamber notes in this respect that it will comprehensively assess the evidence when determining Dragan Jokić's participation in the events.

A. Findings Related to Dragan Jokić's Role as Duty Officer on 14-15 July 1995

1. Role and Functions of the Operations Duty Officer

502. Under the regulations in force in the VRS in 1995, the operations duty officer¹⁷¹⁵ was considered part of the 'organs of internal service' of a VRS unit.¹⁷¹⁶ These organs served to ensure continuity and safety of operation of VRS units at all times.¹⁷¹⁷ In this respect, the 1983 Manual for the Work of Commands and Staffs ("Manual") provides that:

A continuous and secure functioning of the command in all conditions is ensured through the setting up of operational duty, duty shifts in the operations room, duty shifts in the communications centre (CV), command post duty officers, duty couriers, drivers, and other organs of the internal service as necessary.¹⁷¹⁸

The English translation of Article 65(1) of the Manual as provided by the Prosecution further provides that:

The operations duty officer and his assistant are commanding officers in the command who are assigned to this duty according to a roster. If a duty shift is formed, the duty officer and his assistant are part of the shift.¹⁷¹⁹

¹⁷¹⁴ Jokić Defence Final Brief, paras 160-162, *referring* to Ex. D71/3, Rules of Service in the Armed Forces, Article 202. Article 202 reads as follows: "Organs of internal service may not carry out work that is unrelated to duty during the time they are on duty."

¹⁷¹⁵ The Trial Chamber notes that the regulations in this respect use "operations duty officer" and "duty officer" interchangeably. Also, in some translations the title is 'operations duty officer' and in others 'duty operations officer', without, as far as the Trial Chamber has been able to ascertain, any difference being intended. The Trial Chamber will use the term operations duty officer.

¹⁷¹⁶ Dragan Jokić's military expert Dragoslav Lacković testified: "as far as I know all the regulations that were used by the former JNA were also applied by the units of the Army of Republika Srpska". Dragoslav Lacković, T. 12130. This is supported by Richard Butler, T. 4276-77.

¹⁷¹⁷ Ex. D73/3, Report of Dragoslav Lacković, p. 22.

¹⁷¹⁸ Ex. P. 394. While this document contains the word "draft" in the title, the Trial Chamber observes that the Manual has been referenced by witnesses as being used by the VRS in 1995. Richard Butler, T. 4794-95; Report by Dragan Jokić's military expert Dragoslav Lacković, pp 22 ff: "This Manual is applicable to all levels of command, starting with tactical, to the joint-tactical, to the strategic operative Commands and Staffs", *Id.* p. 22. The Trial Chamber further observes that Art. 65(3) of the Manual, as cited in Lacković's report (p .29), corresponds *verbatim* to Art. 65(3) of the draft Manual in Ex. P394.

¹⁷¹⁹ Ex. P394, Art. 65(1).

The Defence of Dragan Jokić argues that this translation is partly incorrect and that the BCS version of the provision reads “[t]he operations duty officer and his assistant are officers of/within the command” thus implying that the duty officer did not exercise command authority except over the organs of the “internal service”.¹⁷²⁰ The Trial Chamber finds that this is a more logical conclusion than that contained in the Prosecution’s translation for the reasons outlined below.¹⁷²¹

503. It was the responsibility of the chief of staff of a military unit to organise the operational duty at the command post.¹⁷²² The duty was to be served in an operations room or at any other location “where all information is received”.¹⁷²³

504. The Trial Chamber has been furnished with two provisions that describe the duties of the operations duty officer: Article 66(1) of the 1983 Manual, and Article 218 of the 1985 Rules of Service in the Armed Forces (“Rules of Service”).¹⁷²⁴ These Rules of Service, according to Dragan Jokić’s military expert Dragoslav Lacković:

provide for the basis of relations, rights and duties of the members of the Armed Forces and are referent to all other rules and regulations dealing more specifically with functioning of the components of the armed forces.¹⁷²⁵

It is relevant to here cite the full list of duties as laid down in these regulations. Firstly, the Manual provides that it is the duty of the operations duty officer:¹⁷²⁶

- to monitor the course of combat operations and to enter changes in subordinate or adjacent units into charts and the staff operation map;
- to inform the commander or chief of staff about any major changes or orders issued by a superior which require a decision of the commander;
- to be familiar with the disposition of the elements of the command post, the location of the commander, chief of staff and assistants to the commander;
- to control and maintain communications with the operations duty officers of the superior and subordinate commands;
- to receive and dispatch orders and reports when other organs are resting or when ordered to do so;

¹⁷²⁰ Jokić Defence Final Brief, para. 138, fn. 106, *referring* to Witness DW1, T. 11802; Ex. D73/3, Report of Dragoslav Lacković, conclusions 5 and 6. *See* regarding the Prosecution translation, Richard Butler, T. 4332.

¹⁷²¹ *See infra* paras 504-508.

¹⁷²² Ex. P394, Art 65(2).

¹⁷²³ Ex. P394, Art 65(4). Mirko Trivić, commander of the 2nd Romanija Brigade, testified that an operations duty officer may not leave the premises while performing his functions. Mirko Trivić, T. 7550.

¹⁷²⁴ Ex. D71/3, Rules of Service in the Armed Forces.

¹⁷²⁵ Ex. D73/3, Report of Dragoslav Lacković, p. 16. According to the same report, the Rules of Service were in effect in 1995. *Ibid.*

¹⁷²⁶ Ex. P394, Art. 66(1). Art .66(2) and (3) are concerned with the various instructions and plans, which the duty officer must have accessible, and how the handover of duty is recorded.

- to advise the assistant commander for logistics or appropriate organs at the logistics command post about the orders of superior officers, reports and notices of the subordinates, adjacent elements, organs and organisations of socio-political communities, socio-political organisations and organisations of associated labour which have to do with logistics support;
- to monitor and verify measures for the immediate security and defence of the command post and to sound the alert in case of an attack.

According to Article 218 of the Rules of Service, the duties of the operations duty officer are as follows:

- a) He shall monitor the organisation, formation, disposition and use of every unit under the command whose organ he is [*sic*]
- b) He shall monitor the situation in the units and events in the territory significant to the Armed Forces
- c) He shall maintain continuous contact with the duty organs of subordinated units and adjacent commands, the superior operations duty officer [...]
- d) He shall keep a log of the combat readiness of units and update it based on the information received in the reports from subordinated units
- e) He shall keep a log of the disposition and activities of units and institutions in the barracks, camps, training grounds, works, and so on
- f) He shall keep a log of the strength levels of units, especially of the units on a raised level of combat readiness
- g) Within the framework of authority and order of the superior officer (operations duty officer of the superior command), he shall refer orders and signals to subordinated units
- h) He shall be in charge of a plan of readiness and alerting for all units that are under his responsibility according to the alerting schedule
- i) He shall report to the superior officer or the duty commanding officer (team) on the events and orders that require measures for which he is not authorised
- j) Under unusual circumstances and in an emergency situation, he shall command units or institutions until the arrival of the superior officer, or responsible officer
- k) He shall submit a report to the operations duty officer of the superior command on the situation in the unit and events in the territory
- l) He shall receive the mail that arrives after working hours and act according to instructions given to him.

Additionally, the Rules of Service provide that “[o]rgans of internal service may not carry out work that is unrelated to duty during the time they are on duty.”¹⁷²⁷

505. There has been some discussion among the parties as to whether the operations duty officer was entitled, or even duty-bound, to issue orders when the commander, his deputy or chief

¹⁷²⁷ Ex. D71/3, Rules of Service in the Armed Forces, Art. 202.

of staff were unavailable or outside communications.¹⁷²⁸ The Prosecution military expert Richard Butler testified that in his opinion this is the case and that this follows implicitly from Article 66 of the Manual, the relevant parts of which have been cited above. In his words:

The position as defined leaves open the possibility, at least with respect to my interpretation of it, that when critical orders have been passed down from the superior command, if the commander or chief of staff are not in the position to give the required orders, that the duty officer as, in effect, the commander's representative is in power to do so. That is why if one examines the duty officer rosters of the brigades, it makes it clear that the position is only held by those people who are considered to be superior commanding officers in deference to the fact that they may need to make these decisions and should be experienced people to do so.¹⁷²⁹

Dragan Jokić's military expert, Dragoslav Lacković, was of the opposite opinion. He testified that:

The regulations do not prescribe that the command role should ever be assumed by the duty operations officer. [...] I would corroborate my opinion if you could allow me by showing you my position, and that is that experienced and less experienced officers are appointed to be duty operations officers in the command. So it may occur that the duty operations officer for the day is an assistant commander, but also it can be a lower ranking officer in the command.¹⁷³⁰

506. Neither of the Parties has referred to Article 218(j) of the Rules of Service, which explicitly covers situations where an operations duty officer assumes command until a superior or responsible officer arrives. The Trial Chamber observes in this context Article 35(5) of the Rules of Service, which provides that:

If a unit or an institution should suddenly find itself without a superior officer, the command will be taken over by the person who is second in command, or the most senior officer in that unit or institution until a new superior officer is designed [*sic*].¹⁷³¹

Further, Article 33(1) of the Rules of Service provides the following:

According to relations in the service, members of the Armed Forces may be superior or subordinate to each other and according to ranks (classes) and positions they may be either senior or junior to each other.¹⁷³²

¹⁷²⁸ Richard Butler, T. 4330-31. In this vein, the Manual provides that "All *internal service organs* at the command post are subordinate to the operations duty officer". Ex. P394, Art. 65(3) (emphasis added). This is supported by the definition of duty officer found in a 1969 Encyclopaedic Lexicon, Basics of National Defence, which provides "Duty officer: *most senior organ* of internal service within a unit, command, institution, military compound/barracks, etc., directly subordinated to unit commander who positioned him, and on whose behalf he issues requisite orders, directs activities of internal service, maintains order in the unit; duty lasts for 24 hours" (emphasis added). Furthermore, the 1985 Rules of Service (Ex. D71/3) provide in Art. 201(1) that "Organs of internal service are subordinated to the officer who assigned them to duty, or *the superior duty officer*" (emphasis added).

¹⁷²⁹ Richard Butler, T. 5249-50.

¹⁷³⁰ Dragoslav Lacković, T. 12137. In his report, Lacković notes that under Art. 218(g) of the Rules of Service an operations duty officer is only to refer orders and signals to subordinate units "within the framework of authority and order of the superior officer (operations duty officer of the superior command)". From this, he concludes that the operations duty officer therefore does not have "authority to issue orders personally, as he deems appropriate", Ex. D73/3, Report of Dragoslav Lacković, p. 26. Indeed, sub-section (i) requires the operations duty officer to report to the superior officer or the duty commanding officer on events and orders that require measures for which he himself is not authorised. *See supra* para. 504, Rules of Service, Art 218(i).

¹⁷³¹ Ex. D71/3, Extract of the Rules of Service in the Armed Forces.

¹⁷³² Ex. D71/3, Extract of the Rules of Service in the Armed Forces.

In line with Article 33(1) of the Rules of Service, Dragoslav Lacković states that seniority within a unit, absent the commander, his deputy or the chief of staff, is decided not only by rank but also by class or position within the command of a unit. Lacković explained this during his testimony:

When the commander is absent from his unit, his duties are assumed by the highest-ranking officer in the command, which is the Chief of Staff. If the Chief of Staff is not there, then it is the next officer, again the highest-ranking officer, who is there at the time. And that is one of the commander's assistants. In practice – and this has been supported by certain solutions that I could explain – it is most often the assistant command for logistics, because in the command hierarchy this officer is the third ranking officer in every command.¹⁷³³

507. General Dragomir Keserović, in 1995 a Lieutenant-Colonel and the Chief of the Police Section in the Main Staff, testified that a duty officer in a military unit at any level:

can deal with certain matters only in the absence of the actual commander or the person who is by establishment replacing him in that position or through some other measure is standing in for him. The duty officer may address certain matters. But he cannot take upon himself the role of command of the unit fully. He cannot fully replace the commander, nor can he decide on the use of the unit. For this [*i.e.* to be able to decide on the use of the unit], he has to get the approval of the commander for each and every operation that he intends to carry out.¹⁷³⁴

An officer in the Bratunac Brigade confirms this view and testified that the operations duty officer may issue an order as a last resort when neither the commander nor his deputy or any other authorised person is available. The witness pointed out, however, that this can only happen after the operations duty officer has exhausted all possibilities for contacting the commander and stressed that this is “a very extreme situation”.¹⁷³⁵

508. The Trial Chamber finds that the system in place in the VRS provided clear rules for the assumption of command over a unit in the absence of the commander, his deputy, or the chief of staff. Thus, while in extreme circumstances or emergencies it cannot be excluded that an operations duty officer would have to take decisions or issue orders for brief periods of time until matters of command and seniority within the command had been solved, this does not mean that the position of operations duty officer was a command position or that the operations duty officer in such situations assumed command of the VRS unit. In terms of the alleged individual criminal responsibility of the Accused Dragan Jokić, therefore, the Trial Chamber finds that a case-by-case analysis must be made of any decisions taken by the Accused as the operations duty officer.

¹⁷³³ Dragoslav Lacković, T. 12137. *See also* D73/3, Report of Dragoslav Lacković, pp 16-17.

¹⁷³⁴ Dragomir Keserović, T. 10684.

¹⁷³⁵ Witness DP-105, T. 10211.

2. Dragan Jokić as a duty officer from the morning of 14 July until morning of 15 July

509. At about 9:00 on 14 July, Dragan Jokić took over as operations duty officer at the Zvornik Brigade command post from Streten Milosević. He relinquished it to Nenad Simić at approximately 11:00 on 15 July.¹⁷³⁶

510. On 14 July, at 09:10, Major Jokić transmitted to General Živanović information he had received from Duško Vukotić about a very large group of Bosnian Muslims in the Zvornik Brigade area of responsibility.¹⁷³⁷ In the conversation Dragan Jokić said that the intelligence officer sent “an info” concerning this group. Jokić subsequently was ordered by Živanović, who was not any longer commander of the Drina Corps, to transmit the information to Mane Đurić,¹⁷³⁸ deputy commander of the Zvornik CJB, which he did.¹⁷³⁹ The Trial Chamber notes that Duško Vukotić denied having had any communication with the duty officer at the Standard Barracks on 14 July.¹⁷⁴⁰

511. The evidence shows that Dragan Jokić knew of the arrival of a large group of prisoners in the morning of 14 July.¹⁷⁴¹

512. For 14 July, the operations duty officer workbook of the Zvornik Brigade contains a fragmentary reference at 15:00 to “Orovoc”, meaning Orahovac,¹⁷⁴² Petkovci, Roćević and Pilica.¹⁷⁴³ Major Jokić received information about the movement of the column during the day and the evening of 14 July,¹⁷⁴⁴ and reported about the possible arrival of Colonel Ljubiša Beara at the Zvornik Brigade headquarters.¹⁷⁴⁵ In the late afternoon of 14 July, Dragan Jokić received information that extra men were needed to secure the Bosnian Muslim prisoners at Orahovac. The requested extra men arrived in Orahovac on that same day.¹⁷⁴⁶ At 21:02, Major Jokić spoke with Colonel Beara, transmitting a request to Colonel Beara to contact General Radovan Miletić, the

¹⁷³⁶ Ex. D73/3: military expert report of Dragoslav Lacković, pp 21 and 32; Dragan Obrenović, T. 2807; Richard Butler, T. 4562-63.

¹⁷³⁷ Ex. P227, intercept dated 14 July at 09:10, conversation between General Živanović and Dragan Jokić.

¹⁷³⁸ Ex. P227; Richard Butler, T. 4562; Ex. P133, Zvornik Brigade Duty Officer Workbook, p. 8.

¹⁷³⁹ Ex. P133, Zvornik Brigade Duty Officer Workbook, p. 9.

¹⁷⁴⁰ Duško Vukotić, T. 11464-65.

¹⁷⁴¹ See *supra* section II. F. 1. (g) and (h), in particular paras 343-344 and 347.

¹⁷⁴² Based on the evidence before it, the Trial Chamber concludes that ‘Orovoc’ means Orahovac. See also Dragan Obrenović, T. 2614; Richard Butler T. 4586.

¹⁷⁴³ Ex. P133, Zvornik Brigade Duty Officer Workbook, p. 9; Richard Butler, T. 4586. Note in this regard that there are two documents that were filled out by the operations duty officer, the *logbook* (Ex. P137) and the *workbook* (Ex. P133).

¹⁷⁴⁴ Ex. P133, Zvornik Brigade Duty Officer Workbook, pp 9, 11, 13-15.

¹⁷⁴⁵ Ex. P133, Zvornik Brigade Duty Officer Workbook, pp 9, 15.

¹⁷⁴⁶ See *supra* section II. F. 1. (f) (i), in particular paras 325-326.

Main Staff Assistant Commander for Operations and Training. Dragan Jokić also informed Beara about problems with the prisoners in the Zvornik Brigade area.¹⁷⁴⁷

513. At 20:38, Major Jokić received a combat order from General Živanović according to which Major Obrenović should surround an unknown location with combat equipment. Major Jokić also gave General Živanović information about two more lines and about the possible moves of the group of Bosnian Muslims.¹⁷⁴⁸ At 22:27, Major Jokić contacted a “General Vilotić”, whom the Trial Chamber believes to be the above-mentioned General Miletić, and informed him about the movements of the Bosnian Muslims in the Zvornik Brigade area as well as their surrender to VRS forces.¹⁷⁴⁹

514. The duty officer’s workbook contains a reference, written in the early morning of 15 July, that “Aco and his group”¹⁷⁵⁰ were to be sent to Orahovac.¹⁷⁵¹

515. Major Dragan Obrenović testified that around 11:00 on 15 July, he returned to the Zvornik Brigade headquarters from Snagovo and that once inside the headquarters building Major Jokić told him that “he had a lot of problems with securing the prisoners of war and with burying them.”¹⁷⁵² The Jokić Defence submits that this meeting never occurred. The Jokić Defence refers to a Prosecution interview with Colonel Dragomir Vasić, chief of the Zvornik CJB, and the testimony of Miloš Stupar, commander of the 2nd Šekovići Detachment of the MUP Special Police Brigade, both of whom were present in the building. Neither of these witnesses saw Dragan Jokić meet with Dragan Obrenović.¹⁷⁵³ However, Vasić stated that it could have been possible that Obrenović spoke to someone while he, Vasić was walking upstairs to Obrenović’s office.¹⁷⁵⁴ As the Trial Chamber finds that Dragan Jokić already knew about the murder operation by the morning of 15 July, it considers it unnecessary to make a determination of whether the conversation between Dragan Obrenović and Dragan Jokić occurred as testified to by Dragan Obrenović.

¹⁷⁴⁷ Ex. P133, Zvornik Brigade Duty Officer Workbook, p.14; Ex. P232, conversation between Dragan Jokić and Beara, talking about “huge problems” with the “parcels”, *see supra* section II. F. 1. (f) (i), in particular para. 325; Richard Butler, T. 4573.

¹⁷⁴⁸ Ex. P229, intercept dated 14 July 1995, conversation between Major Jokić and General Živanović; Witness P128, T. 4199-4201.

¹⁷⁴⁹ Ex. P233, intercept dated 14 July; Richard Butler, T. 4576.

¹⁷⁵⁰ Dragan Obrenović, T. 2581. Aco Kostić was a platoon commander of the Zvornik Brigade.

¹⁷⁵¹ Ex. P133, Zvornik Brigade Duty Officer Workbook, p 18.

¹⁷⁵² Dragan Obrenović, T. 2519-21. *See also* Milan Marić, who testified that he saw Dragan Obrenović at Snagovo “at dawn” on 15 July 1995 but that he was no longer around at around 09:00 or 10:00. Milan Marić, T. 11605-06.

¹⁷⁵³ Ex. D75/3, Prosecution interview with Dragomir Vasić, 10 June 2004; Miloš Stupar, T. 8371.

¹⁷⁵⁴ Ex. D75/3, Prosecution interview with Dragomir Vasić, 10 June 2004.

B. Findings Related to Dragan Jokić's Role as Chief of Engineering

1. Competencies of the Chief of Engineering and the Engineering Company Commander

516. Several rules and regulations relating to the competencies of the Chief of Engineering and of the Engineering Company Commander have been admitted into evidence: the 1965 Rules Regulating the Authority of the Brigade/Corps Command;¹⁷⁵⁵ the 1974 Combat Rules for Engineering Company/Platoon;¹⁷⁵⁶ and the 1988 Rules on Utilisation of the Engineering Department.¹⁷⁵⁷ The Trial Chamber observes that while these rules were promulgated by the SFRY, evidence supports that they were in force and in use in 1995.¹⁷⁵⁸

517. The Chief of Engineering provided expert advice to the brigade command on engineering-related issues, such as the deployment of engineering equipment in combat or ways to secure the engineers and equipment.¹⁷⁵⁹ It was for the brigade commander to decide whether or not to accept a proposal made by the Chief of Engineering and issue orders in accordance therewith.¹⁷⁶⁰ It was also the Chief of Engineering's task to oversee that engineering equipment was used properly when deployed. In addition, he had the duty to ensure that the soldiers in the Engineering Company were properly trained.¹⁷⁶¹

518. The position of Chief of Engineering "was not a command position" but rather, the Chief of Engineering acted as "a professional and advisory body".¹⁷⁶² The Trial Chamber finds that this is reflected in the Rules on Utilisation of the Engineering Department, according to which the Chief of Engineering, among other things:

suggests to the Brigade Commander how the directly subordinated engineering units [...] should be used and positioned;

pursuant to the Brigade Commander's decision(s) [...] proposes tasks for the engineering units in terms of priority, makes a plan of engineering security, prepares orders for engineering security;

controls execution of tasks issued to subordinate engineering units;

provides subordinate units with necessary expert assistance and monitors effectiveness of deployment of engineering units and materiel and technical resources;

¹⁷⁵⁵ Ex. D72/3, Extract of the Rules on Authorities of the Brigade/Corps Command of the JNA.

¹⁷⁵⁶ Ex. D26/3, Combat Rules for Engineering Company/Platoon, 1974, Paragraph 25.

¹⁷⁵⁷ Ex. P393, also admitted as D23/3, Rules on Utilisation of the Engineering Department.

¹⁷⁵⁸ Report of Dragan Jokić's military expert Dragoslav Lacković, Ex. D73/3, pp 19-21, regarding Ex. D72/3, Rules Regulating the Authority of the Brigade/Corps Command; Minja Radović, T. 11928-30, regarding Ex. D26/3, Combat Rules for Engineering Company/Platoon; and Richard Butler, T. 4328-29, regarding Ex. P393, Rules on Utilisation of the Engineering Department.

¹⁷⁵⁹ Ex. D23/3, Rules on Utilisation of the Engineering Department, para. 40; Dragan Obrenović, T. 2432.

¹⁷⁶⁰ Rajko Đokić, T. 11877-79.

¹⁷⁶¹ Ex. D23/3, Rules on Utilisation of the Engineering Department, para. 40; Dragan Obrenović, T. 2432.

¹⁷⁶² Dragan Obrenović, T. 3033.

during combat activities, [...] monitors and directs actions of engineering actions [*sic*] in accordance with the Brigade Commander's decisions, suggests to the Brigade Commander changes and additions in the task(s) issued to the units.¹⁷⁶³

519. According to the "Combat Rules for Engineering Company/Platoon",¹⁷⁶⁴ the Engineering Company Commander would receive orders from the Brigade Commander.¹⁷⁶⁵ Following these orders, he would issue orders to his platoons.¹⁷⁶⁶ The Chief of Engineering would assist the Engineering Company Commander in carrying out the orders given by the Brigade Commander, which in turn were based on the Chief of Engineering's advise and proposals.¹⁷⁶⁷ In the Company Commander's absence, the Deputy Company Commander would assume command.¹⁷⁶⁸

520. As to Dragan Jokić's competencies in practical terms, however, Major Obrenović, Chief of Staff of the Zvornik Brigade, testified:

[...] Lieutenant Colonel Pandurević believed that Jevtić and Bogicević had not completed military education, so he believed that they had to have somebody with qualifications [...]¹⁷⁶⁹

....

The Chief of Engineering at that time, in July 1995, was Major Dragan Jokić. His position in the branch was not a command position. He was more of a professional and advisory body, so to speak. And looking from this perspective, he was not in a position to issue orders or to delegate tasks. He could only provide professional advice. However, on the order of Lieutenant Colonel Pandurević, preceding this time, because of the complexity of the tasks that had to be carried out by the engineering company, and since the commanders of that company were not experts in the field, the commander [Pandurević] ordered the chief of engineering to command the engineering company, which he did at particular moments.¹⁷⁷⁰

....

In the Zvornik Brigade at that time, the commander of the [Engineering Company...] wasn't a professional soldier, but a reservist. Then the commander's decision was that the chief of the engineers [...] would spend practically all his time with the unit, and [ensured] that his proposals [were] put into practice. He would assist the commander of the engineering company to carry out the orders given by the commander [for instance by issuing instructions] within the scope of what the commander or chief of staff ordered in the first place.¹⁷⁷¹

The Prosecution military expert agreed with this testimony and testified that:

because of the lack of military experience [on the part of the company commander] the expectation was that the engineer staff officer would have an additional burden with respect to making sure that orders from the brigade being transmitted down to the engineer company were

¹⁷⁶³ Ex. D23/3, Rules on Utilisation of the Engineering Department, para. 40.

¹⁷⁶⁴ The Trial Chamber notes that this is the translated title of the Rules.

¹⁷⁶⁵ Ex. D26/3, Combat Rules for Engineering Company/Platoon, para. 25; Rajko Đokić, T. 11879.

¹⁷⁶⁶ Brano Đurić, T. 119967-69; Miloš Mitrović, T. 5595, 5625, Ex. D72/3, Rules Regulating the Authority of the Brigade/Corps Command, Article 7.

¹⁷⁶⁷ Dragan Obrenović, T. 2433.

¹⁷⁶⁸ Dragan Obrenović, T. 2911; Miloš Mitrović, T. 5604.

¹⁷⁶⁹ Dragan Obrenović, T. 2922.

¹⁷⁷⁰ Dragan Obrenović, T. 3033. *See also* Milan Marić, T. 11553, who testified that the Chief of Engineering is an advisory body, suggesting appropriate use of engineers.

¹⁷⁷¹ Dragan Obrenović, T. 2432-33.

as precise and as simple and as appropriately detailed as possible, knowing that once those orders were received at the company level, they would do their best to carry them out without having a long or a military background, so to speak. *Those are an increased emphasis on the roles of the staff officer. Those are not abrogations of the company commander's own right to command.*¹⁷⁷²

521. Dragan Obrenović further testified that it was an oral order that Lieutenant Colonel Vinko Pandurević had issued and that it was in effect throughout the war.¹⁷⁷³ He stated that “Major Jokić, in practical terms, on the order of his [commander], was superior to Jevtić”.¹⁷⁷⁴ While Dragan Jevtić was the Engineering Company Commander, pursuant to this order it was Dragan Jokić, who

controlled the engineers company in practical terms when it came to the *professional part* of their duties.¹⁷⁷⁵

522. The Trial Chamber observes that the military experts of the Prosecution and the Defence for Dragan Jokić are in agreement that an actual transfer of command from the commander of the Engineering Company to the Chief of Engineering could only have been issued by the Brigade Commander in written form.¹⁷⁷⁶ The Prosecution’s military expert testified that he was not aware of any documents authorising such a transfer of command.¹⁷⁷⁷ Several witnesses testified that the Chief of Engineering could not issue orders of his own,¹⁷⁷⁸ but transmitted orders already given at the brigade’s command level, either orally or in writing.¹⁷⁷⁹ While the Chief of Engineering could not issue orders on his own initiative, the Trial Chamber has been presented with evidence that in practice Dragan Jokić issued orders to the Engineering Company and its members, so as to implement the orders of the brigade commander.¹⁷⁸⁰ The Prosecution has repeatedly stated that it has not charged Dragan Jokić “as a commander”,¹⁷⁸¹

523. The Trial Chamber also heard evidence from former officers and soldiers of the Engineering Company regarding the *de facto* position of Dragan Jokić and his influence over the

¹⁷⁷² Richard Butler, T. 5242 (emphasis added).

¹⁷⁷³ Dragan Obrenović, T. 2923, 3044

¹⁷⁷⁴ Dragan Obrenović, T. 3034.

¹⁷⁷⁵ Dragan Obrenović, T. 2923 (emphasis added).

¹⁷⁷⁶ Richard Butler, T. 5239-41, and Ex. D73/3, Report of Dragoslav Lacković, p. 19.

¹⁷⁷⁷ Richard Butler, T. 5239-42. Butler also testified that such a transfer of command would certainly have been known by the Engineering Company commander. *Id.*

¹⁷⁷⁸ The Trial Chamber notes that this applies also to the company commander who passes on the orders of his superiors. Minja Radović, T. 11929 *referring* to D26/3, Combat Rules for Engineering Company/Platoon. Minja Radović was commander of the Engineering company before Dragan Jevtić.

¹⁷⁷⁹ Miloš Mitrović, T. 5625-26; Brano Đurić, T. 11969, testifying that the pioneers platoon, which was mostly deployed in the field with the infantry battalions, would report to the battalion commander upon completed assignment, and, when back at the barracks, would report to the Engineering Company Commander, and not the Chief of Engineering; Minja Radović, T. 11931, also testifying that the brigade commander could give orders to him as company commander, T. 11932-33. *See* further in this respect Ex. P513, Engineering Company Commander’s Order of the Day book for 14 July 1995, which includes “Ostoja Đurić is to be appointed officer for technical service and supplies, by order of the Chief of Engineering”.

¹⁷⁸⁰ Minja Radović, T. 11931-33; Miloš Mitrović, T. 5618-19, 5595.

¹⁷⁸¹ *See, e.g.,* Prosecution Closing argument, T. 12602, and T. 12305: “Although the Prosecution doesn’t suggest [...] [he] was *de facto* in command and control [...]”.

company's commander and members. A driver in the Engineering Company testified that Dragan Jokić was his "immediate commander at the time" and that he would receive instructions from Dragan Jokić and the platoon commanders.¹⁷⁸² Another witness testified that when the Company Commander was absent, he would report to Dragan Jokić.¹⁷⁸³ Dragan Obrenović testified that the Engineering Company Commander was absent from 13 to 17 July. During that period, the deputy commander Slavko Bogičević was in charge of the Engineering Company:

But [...] Slavko Bogičević would certainly have consulted Mr. Jokić on all matters.¹⁷⁸⁴

524. The Trial Chamber has also heard evidence that Dragan Jokić himself carried out certain engineering tasks¹⁷⁸⁵ and went to the field.¹⁷⁸⁶ Based on the evidence before it, the Trial Chamber finds that the *de facto* role of Dragan Jokić went further than his official "advisory role" of a Chief of Engineering, as reflected in the rules. In July 1995, Dragan Jokić was the Engineering expert within the Zvornik Brigade and therefore functioned as not only the advisor to the command of the Zvornik Brigade, but also as the advisor to the members of the Engineering Company.

2. Deployment of the Zvornik Brigade engineering personnel and resources

(a) Kravica, 14 July 1995

525. The evidence shows that around 09:00 on 14 July Dragan Jokić told Ostoja Stanojević, a driver in the Zvornik Brigade Engineering Company, to get his truck ready because he was to go to Srebrenica to "clear up some garbage" and that he first had to report to the Civilian Protection in Zvornik, which he did.¹⁷⁸⁷ Stanojević together with three members of the Civilian Protection, including the commander of the *Rad* Utilities Company Dragan Mirković and Rajko Đokić, drove south to Bratunac town. However, Stanojević was not given any further instructions that day and spent the night at a hotel in central Bratunac town. Around noon on 15 July, Stanojević was told by Đokić that it was still not possible to go to Srebrenica. Later in the afternoon, an unknown worker from the Civilian Protection approached Stanojević and told him to go to Kravica.¹⁷⁸⁸ In Kravica, Stanojević saw workers dressed in blue civilian work gear and a loader removing bodies from the Warehouse and putting them on a truck. On the instruction of the same unknown worker

¹⁷⁸² Ostoja Stanojević, T. 5675, 5677.

¹⁷⁸³ Miloš Mitrović, T. 5604.

¹⁷⁸⁴ Dragan Obrenović, T. 3034.

¹⁷⁸⁵ Minja Radović, T. 11934.

¹⁷⁸⁶ Brano Đurić, T. 11971-72, 11975, testifying that Dragan Jokić was in Baljkovića on 18 July, with a group of pioneers, who were laying mines there. Đurić also testified that Dragan Jokić during the war in Bosnia and Herzegovina had taken part in laying mines.

¹⁷⁸⁷ Ostoja Stanojević, T. 5677.

¹⁷⁸⁸ Ostoja Stanojević, T. 5677-80; Rajko Đjokić, 11885-90.

from the Civilian Protection Stanojević parked his truck so that it could be loaded in the same manner. When his truck was full, Stanojević guided by the same unknown worker and one of the workers, drove to Glogova where he unloaded the bodies in a grave that had already been dug. After this, he did a second run with bodies from Kravica to Glogova and then returned to Bratunac town, where he spent the night.¹⁷⁸⁹ When Stanojević, on 17 July, complained to Dragan Jokić about the tasks he had been ordered to do in Kravica and Glogova, Jokić explained that this had not been what he had sent Stanojević to do. Stanojević was to go to Srebrenica to clear garbage and what he had eventually done had been ordered by the civilian protection.¹⁷⁹⁰

(b) Orahovac, 14-16 July 1995

526. On 14 July, Cvijetin Ristanović was ordered by Major Jokić to go from Karakaj to Orahovac with a G-700 backhoe excavator on a trailer.¹⁷⁹¹ Milan Maksimović, a truck driver of the Zvornik Brigade Engineering Company, was ordered to transport the piece of equipment there.¹⁷⁹² While they received this order, Slavko Bogičević, deputy commander of the Zvornik Brigade Engineering Company, was present.¹⁷⁹³ Dragan Jokić did not give Cvijetin Ristanović any instructions as to the work he was supposed to do at Orahovac.¹⁷⁹⁴ The Trial Chamber observes that there are two vehicle work logs in evidence which contain references to backhoe excavators being present in Orahovac on 14 July 1995.¹⁷⁹⁵ While the Trial Chamber cannot conclude which of the two was the G-700, it finds that these logs support the testimony of Ristanović in this respect.

527. Ristanović arrived in Orahovac around midday and was told by Slavko Bogičević to dig a hole in an area marked with four wooden poles.¹⁷⁹⁶ Ristanović did not see any other pieces of heavy engineering equipment in the area.¹⁷⁹⁷ In the middle of the digging, Ristanović was interrupted by an soldier he did not know, who told him to stop, exit the vehicle and turn around so he was facing away from the hole he was digging while Bosnian Muslim men were brought and executed.¹⁷⁹⁸ In the afternoon, Ristanović was replaced by another machine operator, Milovan Miladinović, member of the fortification platoon, who had arrived in a TAM truck together with

¹⁷⁸⁹ Ostoja Stanojević, T. 5682, 5688-91.

¹⁷⁹⁰ Ostoja Stanojević, T. 5692-94.

¹⁷⁹¹ Cvijetin Ristanović, T. 5406-07.

¹⁷⁹² Cvijetin Ristanović, T. 5364-5365, 5367.

¹⁷⁹³ Cvijetin Ristanović, T. 5365.

¹⁷⁹⁴ Cvijetin Ristanović, T. 5364.

¹⁷⁹⁵ Ex. P515 and Ex. P516. The Trial Chamber is aware of the terminological confusion that reigns in relation to witness testimony and the vehicle work logs in evidence (*see* Miloš Mitrović, T. 5614 and Cvijetin Ristanović, T. 5406-07), but finds no reason to doubt that one of the excavators referred to in Ex. P515 and Ex. P516 was the one Ristanović operated in Orahovac.

¹⁷⁹⁶ Cvijetin Ristanović, T. 5371-72.

¹⁷⁹⁷ Cvijetin Ristanović, T. 5381.

Slavko Bogičević.¹⁷⁹⁹ During the evening, Ristanović and Miladinović left the engineering equipment and returned to the headquarters in Karakaj.¹⁸⁰⁰

528. In the morning of 15 July, Ristanović together with a few other members of the Engineering Company were ordered by platoon commander Lazarević to go in a TAM truck to Orahovac to dig graves.¹⁸⁰¹ The character of the work Ristanović had done the day before and was once more ordered to do made it very difficult for him to return to Orahovac.¹⁸⁰² While working in Orahovac with the same G-700 as the previous day,¹⁸⁰³ Ristanović heard the sound of another machine working but could not see what the machine was doing or which kind it was although he supposes it was a “loader”.¹⁸⁰⁴ He continued digging the hole he worked on the previous day. However, the water hose subsequently broke on the G-700 and he was then told to dig at another location. This second hole was approximately ten metres long and two metres deep.¹⁸⁰⁵ At dusk, the machine was loaded onto a trailer and was transported back to Zvornik.¹⁸⁰⁶

529. In addition to the above evidence, the Trial Chamber has been furnished with evidence of other transports to Orahovac. A vehicle work log for a Mercedes 2626 dump truck¹⁸⁰⁷ indicates that on 16 July this vehicle was driven by the road platoon’s driver Milan Milovanović to Orahovac transporting a Plato loader.¹⁸⁰⁸ Moreover, the Engineering Company Commander’s daily order book for this day also indicates that both a BGH-700 and a ULT-220 were active at Orahovac.¹⁸⁰⁹ The Trial Chamber sees no reason to doubt the validity of this information in light of the fact that other information contained in the daily order book has been corroborated by other evidence.

¹⁷⁹⁸ Cvijetin Ristanović, T. 5373-75.

¹⁷⁹⁹ Cvijetin Ristanović, T. 5376-77; Miloš Mitrović, T. 5599-5602.

¹⁸⁰⁰ Cvijetin Ristanović, T. 5380.

¹⁸⁰¹ Cvijetin Ristanović, T. 5382-84. Ex. P517 is a vehicle work log for a TAM 75, which is recorded as having made three trips between Karakaj and Orahovac on 15 July 1995. The Trial Chamber believes this corresponds to the trip made by Ristanović in the morning of 15 July 1995.

¹⁸⁰² Cvijetin Ristanović, T. 5382.

¹⁸⁰³ Ex. P521, a page from the Engineering Company Commander’s Order of the Day book for 15 July 1995, which reads “Work with BGH-700 at Orahovci”. The Trial Chamber believes the term Orahovci to refer to Orahovac. As for the reference to BGH-700, in light of Ristanović’s testimony that the machine he used was a G-700, the Trial Chamber notes that there was in reality no difference between these two machines. Thus, the fact that the Engineering Company Commander Dragan Jevtić has written BGH-700 in Ex. P521 may be explained by his lacking in engineering-related training and experience. *See* Dragan Obrenović, T. 2433 and Richard Butler, T. 5242.

¹⁸⁰⁴ Cvijetin Ristanović, T. 5412. Ex. P522, a vehicle work log for a ULT-220, provides that this unit was in Orahovac on 15 July 1995 “digging trenches”.

¹⁸⁰⁵ Cvijetin Ristanović, T. 5385-86.

¹⁸⁰⁶ Cvijetin Ristanović, T. 5388-89.

¹⁸⁰⁷ *See* reference to this vehicle in Ex. D12/3, p. 4.

¹⁸⁰⁸ Ex. P538, Zvornik Brigade Vehicle Log for Mercedes 2626 (M-5195) for July 1995.

¹⁸⁰⁹ Ex. P535, Extract from the Zvornik Engineering Brigade Company Commander’s Logbook, dated 16 July 1995, signed by Jevtić.

(c) Kozluk, 16 July 1995

530. On 16 July, Dragan Jokić sent Miloš Mitrović, a machine operator of the fortification platoon of the Zvornik Brigade Engineering Company, with an excavator and another member of the Engineering Company, Nikola Ricanović, to Kozluk, to report to Damjan Lazarević, commander of the fortification platoon of the Zvornik Brigade Engineering Company.¹⁸¹⁰ Dragan Jokić did not tell them what their task was going to be, but told them that Damjan Lazarević would give them further instructions.¹⁸¹¹ At the site, Lazarević ordered them to cover the bodies of men, who were lying in holes that had already been dug.¹⁸¹² Miloš Mitrović testified, that he was replaced after about thirty minutes, because his excavator was not designed for such kind of works and was only working at reduced capacity. Rade Bosković, who had a work obligation with the Engineering Company, replaced Miloš Mitrović and continued with the work, operating a loader that did not belong to the Engineering Company, but when necessary could be commandeered by the Zvornik Brigade for the use of the Engineering Company.¹⁸¹³ The use of Engineering Company resources at Kozluk is corroborated by documentary evidence.¹⁸¹⁴

(d) Branjevo Military Farm (Pilica commune), 17 July 1995

531. The Zvornik Brigade duty officer's workbook shows that at 22:10 on 16 July a loader, an excavator and a dump truck were requested by the 1st Battalion of the Zvornik Brigade, which was stationed at the Branjevo Military Farm, to be in Pilica at 8:00 on 17 July.¹⁸¹⁵ The workbook reflects that this request was conveyed to "Jokić",¹⁸¹⁶ which according to Witness P-130, duty officer at the time, refers to Dragan Jokić, whom he notified by phone at the engineering command, that the machinery had to be sent to the requested area.¹⁸¹⁷

532. That the machinery was sent there on 17 July is corroborated by the testimony of Cvijetin Ristanović and documentary evidence. Cvijetin Ristanović testified that he was ordered on 17 July by Damjan Lazarević, commander of the fortification platoon of the Zvornik Brigade Engineering Company, to go to Branjevo Military Farm with his G-700 backhoe excavator.¹⁸¹⁸ The excavator was transported there on a truck.¹⁸¹⁹ When Ristanović arrived there he saw bodies laying on the

¹⁸¹⁰ Miloš Mitrović, T. 5603.

¹⁸¹¹ Miloš Mitrović, T. 5604.

¹⁸¹² Miloš Mitrović, T. 5604-06, 5621-22.

¹⁸¹³ Miloš Mitrović, T. 5607-09, 5622-23, 5630-31.

¹⁸¹⁴ Ex. P516, vehicle work log for the month of July 1995 for an excavator.

¹⁸¹⁵ Ex. P133, Zvornik Brigade – Duty Officer Workbook, Entries dated 13 to 20 July 1995, p. 34.

¹⁸¹⁶ Ex. P133, Zvornik Brigade – Duty Officer Workbook, Entries dated 13 to 20 July 1995, p. 34.

¹⁸¹⁷ Witness P-130, T. 6647.

¹⁸¹⁸ Cvijetin Ristanović, T. 5389.

¹⁸¹⁹ Cvijetin Ristanović, T. 5390.

meadow and was told by Lazarević to dig a hole.¹⁸²⁰ The Engineering Company commander's daily order for 17 July shows that an excavator was transported to Branjevo and that an excavator and a loader were working at the site.¹⁸²¹ There is also evidence that the Engineering Company's TAM 75 truck travelled to a part of Pilica, known as Kula, on 17 July 1995.¹⁸²²

(e) Other evidence regarding presence of Engineering Company resources

533. The Trial Chamber has been furnished with other evidence, not specifically corroborated by witness testimony, regarding the deployment of the Engineering Company on locations connected with the mass executions and burials.

534. The Engineering Company Commander's daily order book for 14 July 1995 provides that on this day members of the pioneer platoon were active laying mines and clearing the ground "in the area of Petkovci".¹⁸²³ On the following day, daily order book contains a similar entry regarding the pioneers' work in the area of Petkovci.¹⁸²⁴ In addition, it is provided that a loader and an excavator were present working at "Petkovci".

¹⁸²⁰ Cvijetin Ristanović, T. 5392.

¹⁸²¹ Ex. P537. *See also* Ex. P522, Vehicle log for ULT 220, backhoe excavator for 17 July.

¹⁸²² Ex. P517, Vehicle work log for TAM 75 truck, entry for 17 July 1995; Dragan Obrenović, T. 2540-41; Zoran Radosavljević, T. 12058. Zoran Radosavljević testified that Kula is a hamlet and that part of Pilica is named after the Kula building, which is right by the school in Pilica.

¹⁸²³ Ex. P513, Engineering Company Commander's Order of the Day book for 14 July 1995.

¹⁸²⁴ Ex. P521, Engineering Company Commander's Order of the Day book, for 15 July 1995.

V. LEGAL AND FACTUAL FINDINGS IN RELATION TO CRIMES CHARGED

A. General Requirements of Article 3 and Article 5 of the Statute

1. Article 3

535. Article 3 of the Statute refers to a broad category of offences, namely “violations of the laws or customs of war”. It has been interpreted by the jurisprudence of this Tribunal as a residual clause covering all violations of humanitarian law not falling under Articles 2, 4 or 5 of the Statute.¹⁸²⁵

536. The application of Article 3 of the Statute presupposes the existence of an armed conflict and a nexus between the alleged offence and the armed conflict.¹⁸²⁶ An armed conflict is defined to exist “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised groups or between such groups within a State.”¹⁸²⁷ It is immaterial whether this conflict is internal or international.¹⁸²⁸ As to the precise nature of the nexus, when the crime alleged has not occurred at a time and place in which fighting was actually taking place, the Appeals Chamber has held that “[i]t would be sufficient [...] that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict.”¹⁸²⁹ Such a relation exists as long as the crime is “shaped by or dependent upon the environment – the armed conflict – in which it is committed.”¹⁸³⁰

537. The jurisprudence of this Tribunal has established four additional conditions must be satisfied for an offence to be charged under Article 3 of the Statute:

- (i) the violation must constitute an infringement of a rule of international humanitarian law;

¹⁸²⁵ *Tadić* Jurisdiction Decision, paras 89-91. The Appeals Chamber specified that these violations include: “(i) violations of the Hague law on international conflicts; (ii) infringements of provisions of the Geneva Conventions other than those classified as “grave breaches” by those Conventions; (iii) violations of common Article 3 and other customary Rules on internal conflicts; (iv) violations of agreements binding upon the parties to the conflict, considered qua treaty law, i.e. agreements which have not turned into customary international law” *Ibid*, para. 89. *See also* *Čelebići* Appeal Judgement, para. 131.

¹⁸²⁶ *Tadić* Jurisdiction Decision, paras 67-70; *Kunarac* Appeal Judgement, para. 55.

¹⁸²⁷ *Tadić* Jurisdiction Decision, para. 70.

¹⁸²⁸ *Tadić* Jurisdiction Decision, para. 137.

¹⁸²⁹ *Kunarac* Appeal Judgement, para. 57; *Tadić* Jurisdiction Decision, para. 70.

¹⁸³⁰ *Kunarac* Appeal Judgement, paras 57 and 58. In determining whether or not the act in question is sufficiently related to the armed conflict, the Appeals Chamber has put forward the following factors: the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator’s official duties. *Ibid*, para. 59.

- (ii) the rule must be customary in nature, or, if it has conventional basis, certain conditions must be met, namely that the agreements “were unquestionably binding on the parties at the time of the alleged offence” and are “not in conflict with or derogate from peremptory norms of international law”;¹⁸³¹
- (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.¹⁸³²

538. Some of the requirements for the application of Article 3 of the Statute may differ depending on the specific basis of the relevant charge brought under this Article.¹⁸³³ In the present case, the Accused are charged in Count 4 with murder as a violation of the laws or customs of war, pursuant to Articles 3 of the Statute.¹⁸³⁴

539. The charge of murder as a violation of the laws or customs of war is based on Article 3 common to the four Geneva Conventions of 1949 (“Common Article 3”).¹⁸³⁵ It is settled in the jurisprudence of this Tribunal that violations of Common Article 3 fall within the ambit of Article 3 of the Statute.¹⁸³⁶ It is also well established that Common Article 3 is part of customary international law.¹⁸³⁷

540. A last requirement for the application of any Article 3 charge based on Common Article 3 is that the victim must have taken no active part in the hostilities at the time the crime was committed.¹⁸³⁸

¹⁸³¹ *Tadić* Jurisdiction Decision, para. 143.

¹⁸³² *Tadić* Jurisdiction Decision, para. 94. *See also Kunarac* Appeal Judgement, para. 66.

¹⁸³³ *Kunarac* Trial Judgement, para. 404. The Trial Chamber clarified in this respect: “[f]or example, a specific charge based on treaty law would not have the same requirements as customary law relevant to violations of common Article 3, Hague law or violations of the Geneva Conventions other than common Article 3 and the grave breaches provisions.” Such a charge would necessitate the fulfilment of the two additional requirements set in *Tadić* Jurisdiction Decision, para. 143, *see supra* para. 537.

¹⁸³⁴ Indictment, para. 57.

¹⁸³⁵ Common Article 3 provides, in the relevant part:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely [...].

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular *murder* of all kinds, mutilation, cruel treatment and torture;

[...]” (emphasis added)

¹⁸³⁶ *Tadić* Jurisdiction Decision, para. 89; *Čelebići* Appeal Judgement, paras 133-36; *Kunarac* Appeal Judgement, para. 68.

¹⁸³⁷ *Tadić* Jurisdiction Decision, para. 89; *Čelebići* Appeal Judgement, para. 143; *Kunarac* Appeal Judgement, para. 68. The Trial Chamber therefore finds that the above mentioned conditions of Article 3 of the Statute have been met. *See supra* para. 537.

¹⁸³⁸ *Čelebići* Appeal Judgement, para. 420.

2. Article 5

541. Article 5 of the Statute enumerates crimes which can constitute crimes against humanity. In order to amount to a crime against humanity, the acts of an accused must be part of a widespread or systematic attack directed against any civilian population.¹⁸³⁹ This phrase encompasses the following elements:

- (i) there must be an attack;
- (ii) the attack must be widespread or systematic;
- (iii) the attack must be directed against any civilian population;
- (iv) the acts of the perpetrator must be part of the attack; and
- (v) the perpetrator must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and know that his acts fit into such a pattern.¹⁸⁴⁰

542. Additionally, the Statute of the Tribunal requires that the crimes be “committed in armed conflict, whether international or internal in character”.¹⁸⁴¹ The Appeals Chamber has considered this requirement to be a jurisdictional requirement.¹⁸⁴²

543. “Attack” in the context of a crime against humanity can be defined as a course of conduct involving the commission of acts of violence.¹⁸⁴³ It “is not limited to the use of armed force; it encompasses any mistreatment of the civilian population.”¹⁸⁴⁴ It can precede, outlast or run parallel to the armed conflict.¹⁸⁴⁵

544. The term “civilian” refers to persons not taking part in 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.¹⁸⁴⁶ It is a principle of customary international law that these persons are protected in armed conflicts.¹⁸⁴⁷ The presence within a population of members of resistance groups or former combatants who have laid down their arms does not alter its civilian

¹⁸³⁹ See also *Tadić* Appeal Judgement, para. 248.

¹⁸⁴⁰ *Kunarac* Appeal Judgement, para. 85.

¹⁸⁴¹ For the definition of “armed conflict”, see *supra* para. 536.

¹⁸⁴² *Tadić* Appeal Judgement, para. 249.

¹⁸⁴³ *Kunarac* Appeal Judgement, para. 89, endorsing the *Kunarac* Trial Judgement, para. 415.

¹⁸⁴⁴ *Kunarac* Appeal Judgement, para. 86.

¹⁸⁴⁵ *Id.*

¹⁸⁴⁶ *Blaškić* Appeal Judgement, paras 113-114. The term ‘civilian’ has been further defined in Article 50 of Additional Protocol I to the Geneva Conventions. This article states that a civilian is “any person who does not belong to one of the categories of persons referred to in Article 4A(1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol.” Read together, Article 50 of Additional Protocol I and Article 4A of the Third Geneva Convention establish that members of armed forces and members of militias or volunteer corps forming part of such armed forces cannot claim civilian status.” *Blaškić* Appeal Judgement, para. 113. See also *Krnjelac* Trial Judgement, para. 56.

¹⁸⁴⁷ *Blaškić* Appeal Judgement, para. 113, fn. 220.

character.¹⁸⁴⁸ A population is considered a “civilian population” if it is predominantly civilian in nature.¹⁸⁴⁹ It is not necessary to demonstrate that the victims are linked to any particular side of the armed conflict.¹⁸⁵⁰ The Appeals Chamber has recently emphasised that “there is an absolute prohibition on the targeting of civilians in customary international law.”¹⁸⁵¹

545. The term “widespread” refers to the large-scale nature of the attack and the number of the victims.¹⁸⁵² A crime may be widespread by the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude”.¹⁸⁵³ The term “systematic” refers to an “organised nature of the acts of violence and the improbability of their random occurrence,”¹⁸⁵⁴ and is often expressed through patterns of crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis.¹⁸⁵⁵

546. The Appeals Chamber further provided a non-exhaustive list of factors that could be taken into account in determining whether an attack meets the requirements of “widespread” or “systematic”. These factors are: the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes.¹⁸⁵⁶ Neither the attack nor the acts of the accused need to be supported by a “policy” or “plan”.¹⁸⁵⁷

547. A nexus is required between the acts of the accused and the attack on the civilian population. This nexus consists of two elements:

- (i) the commission of an act which, by its nature or consequences, is objectively part of the attack; and
- (ii) knowledge on the part of the accused that there is an attack on the civilian population and that his act is part thereof.¹⁸⁵⁸

The act or acts must not be isolated or random; they may not be so far removed from the attack that, having considered the context and circumstances in which it occurred, the act or acts cannot reasonably be said to have been part of the attack.¹⁸⁵⁹

¹⁸⁴⁸ *Blaškić* Appeal Judgement, paras 112-113.

¹⁸⁴⁹ *Krnjelac* Trial Judgement, para. 56; *Tadić* Trial Judgement, para. 638.

¹⁸⁵⁰ *Kunarac* Appeal Judgement, para. 89, in which the Appeals Chamber approved the interpretation of the Trial Chamber in *Kunarac* Trial Judgement, para. 423.

¹⁸⁵¹ *Blaškić* Appeal Judgement, para. 109.

¹⁸⁵² *Kunarac* Appeal Judgement, para. 94.

¹⁸⁵³ Yearbook of the International Law Commission 1996, Volume II, part 2, Report of the Commission to the General Assembly on the work of its forty-eight session, p. 47.

¹⁸⁵⁴ *Kunarac* Appeal Judgement, para. 94.

¹⁸⁵⁵ *Blaškić* Appeal Judgement, para. 101; *Kunarac* Appeal Judgement, para. 94.

¹⁸⁵⁶ *Kunarac* Appeal Judgement, para. 95.

¹⁸⁵⁷ *Kunarac* Appeal Judgement, para. 98.

¹⁸⁵⁸ *Kunarac* Appeal Judgement, para. 99. See also *Tadić* Appeal Judgement, para. 248.

548. The accused must possess the necessary *mens rea*, which includes:

- (i) the intent to commit the underlying offence or offences with which he is charged;
- (ii) the knowledge that there is an attack against the civilian population; and
- (iii) the knowledge that his acts comprise part of that attack.¹⁸⁶⁰

The *mens rea* requirement, however, does not entail knowledge of the details of the attack.¹⁸⁶¹ Furthermore, the accused need not share the purpose or the goal behind the attack.¹⁸⁶²

3. Findings

549. It has not been disputed that an armed conflict existed between the Republic of Bosnia and Herzegovina and its forces, and the Republika Srpska and its forces during the period relevant for the Indictment.¹⁸⁶³ Nor has it been disputed that this armed conflict existed in eastern Bosnia.¹⁸⁶⁴ Based on the evidence set out above in the Factual Background relevant to this case, the Trial Chamber finds that there is sufficient evidence to establish that there was an armed conflict in eastern Bosnia between 11 July and 1 November 1995.¹⁸⁶⁵

550. Based on all the evidence in this case, the Trial Chamber also finds that the underlying crimes with which the Indictment is concerned were closely related to the armed conflict. The acts with which the Accused are charged were committed as a result of the hostilities.

551. The Trial Chamber further finds that the attack was widespread or systematic. The attack, carried out by the VRS and MUP was planned and defined in the “Krivaja 95” order. The attack continued after the fall of Srebrenica and affected the approximately 40,000 people who lived within the Srebrenica enclave at the time of the attack.¹⁸⁶⁶

552. The attack was clearly directed against the Bosnian Muslim civilian population in the Srebrenica enclave. The Trial Chamber has heard evidence that the 28th Division of the ABiH was located in the Srebrenica enclave and that members of that division were among the men that formed the column.¹⁸⁶⁷ However, The Trial Chamber finds that the estimated number of members of the ABiH present in the enclave and among the column, ranging from about 1,000 soldiers to

¹⁸⁵⁹ *Blaškić* Appeal Judgement, para. 101. *See also Kunarac* Appeal Judgement, paras 96 and 100.

¹⁸⁶⁰ *Blaškić* Appeal Judgement, para. 124. *See also Kunarac* Appeal Judgement, paras 99, 102.

¹⁸⁶¹ *Kunarac* Appeal Judgement, para. 102.

¹⁸⁶² *Kunarac* Appeal Judgement, para. 103.

¹⁸⁶³ Agreed Facts, paras 8, 9-14, 16-22, 32, 35-36, 46-47, 49, 51, 66-74, 77

¹⁸⁶⁴ Agreed Facts, 9-14 16-22, 32, 35-36, 46-47, 49, 51, 66-74, 77.

¹⁸⁶⁵ *See supra* section II. C.

¹⁸⁶⁶ *See supra* section II, C.

¹⁸⁶⁷ *See supra* section II, C and D.

4,000 soldiers do not amount to such numbers that the civilian character of the population would be affected, as the vast majority of the people present in the enclave itself and in the column were civilians.¹⁸⁶⁸

553. Both Accused were high-ranking officers in brigades which took part in the attack on the Srebrenica enclave and as such had knowledge of the wider context in which their own acts occurred. The Trial Chamber finds that it has been established beyond reasonable doubt that the acts of both Accused were part of the attack and that both Accused knew that their acts were part of the attack.¹⁸⁶⁹

554. Therefore, the Trial Chamber finds that the general requirements of Article 3 and 5 have been met. The Trial Chamber will examine the legal requirements for each underlying act and the individual criminal responsibility for each Accused below.

B. MURDER

1. Applicable Law

555. Murder has been charged under both Article 3 and Article 5 of the Statute. The general requirements for both provisions have been discussed above.¹⁸⁷⁰

556. The elements of the offence of murder as a crime against humanity and as a violation of the laws or customs of war are the same.¹⁸⁷¹ In the jurisprudence of both the Tribunal and the ICTR, murder has consistently been defined as the death of the victim which results from an act or omission by the accused, committed with the intent either to kill or to cause serious bodily harm with the reasonable knowledge that it would likely lead to death.¹⁸⁷²

¹⁸⁶⁸ Pieter Boering estimated that there were about 1,000 soldiers in the enclave. Pieter Boering, T. 884-85, 947, 997. UNMO estimated that there were about 4,000 soldiers in the enclave. Ex. D4/1, UNMO, Postscript to Srebrenica, 26 July 1995, which reads: Strength ABiH: not known, however the usual estimate of 10% of the population would give a force of approximately 4,000.

¹⁸⁶⁹ See sections II, III and IV.

¹⁸⁷⁰ See *supra* paras 535-554.

¹⁸⁷¹ See, e.g., *Krnjelac* Trial Judgement, para. 323; *Naletilić* Trial Judgement, para. 248

¹⁸⁷² See, e.g., *Čelibići* Appeals Chamber, para. 423; *Jelisić* Trial Judgement, para. 35; *Blaskić* Trial Judgement, para. 181; *Krnjelac* Trial Judgement, para. 324; *Stakić* Trial Judgement, para. 584; *Krstić* Trial Judgement, para. 485. The Trial Chamber finds that the intent required for the crime of murder does not include negligence or gross negligence. See also *Stakić* Trial Judgement, para. 587. For ICTR jurisprudence, see *Kayishema and Ruzindana*, para. 140; *Bagilishema* Trial Chamber, paras 84-85.

2. Findings

557. The Trial Chamber recalls that Vidoje Blagojević and Dragan Jokić are charged with murder both as a crime against humanity, pursuant to Article 5(a) of the Statute (Count 3),¹⁸⁷³ and as a violation of the laws or customs of war, pursuant to Articles 3 of the Statute (Count 4).¹⁸⁷⁴ The Trial Chamber has found that the general requirements for Article 3 and Article 5 have been met.¹⁸⁷⁵

558. The Prosecution alleges that, *inter alia*, thousands of Bosnian Muslim men were collected, transported and subsequently executed during the period of 12-19 July.¹⁸⁷⁶ “Opportunistic killings” are alleged to have occurred in Potočari and Bratunac, as Bosnian Muslims were taken prisoner and temporarily detained there.¹⁸⁷⁷ Furthermore, it is alleged that mass executions occurred in various locations in the Srebrenica, Bratunac and Zvornik municipalities, including at Kravica Warehouse, in Orahovac near the Grbavci School, at the Petkovci School, Branjevo Military Farm and the Pilica Cultural Centre.¹⁸⁷⁸ Neither of the Accused has contested the occurrence of these mass executions.¹⁸⁷⁹ Rather, Vidoje Blagojević submits that he did not personally participate, directly or indirectly, in any of the crimes charged by the Prosecution.¹⁸⁸⁰

559. Furthermore, in response to the allegation that members of the Bratunac Brigade Military Police¹⁸⁸¹ and elements of the Bratunac Brigade¹⁸⁸² participated in certain executions, in addition to members of the VRS and/or MUP personnel who are alleged to have participated in the execution of thousands of Bosnian Muslim men from the Srebrenica enclave, Vidoje Blagojević asserts that “he was, and remains, unaware of any unlawful activity carried out by any member of the Bratunac Brigade while under his command, control, authority, or responsibility.”¹⁸⁸³ Dragan Jokić submits that he had no knowledge of the events until after they had occurred.¹⁸⁸⁴

560. The Trial Chamber will now consider whether evidence has been presented which establishes as proven beyond reasonable doubt these allegations of murder.

¹⁸⁷³ Indictment, para. 56.

¹⁸⁷⁴ Indictment, para. 57.

¹⁸⁷⁵ See *supra* paras 549-554.

¹⁸⁷⁶ Indictment, para. 46l; Prosecution Pre-Trial Brief, paras 107-108.

¹⁸⁷⁷ Indictment, paras 43, 45.

¹⁸⁷⁸ Indictment, para. 46.

¹⁸⁷⁹ Blagojević Pre-Trial Brief, p. 2; Jokić Pre-Trial Brief, para. 12.

¹⁸⁸⁰ Blagojević Pre-Trial Brief, para. 6.

¹⁸⁸¹ Indictment, para. 46.6.

¹⁸⁸² Indictment, para. 46.10.

¹⁸⁸³ Blagojević Pre-Trial Brief, para. 5.

¹⁸⁸⁴ Jokić Pre-Trial Brief, para. 2.

(a) “Opportunistic Killings”

561. The Trial Chamber notes that a number of murders have been charged in the Indictment under the heading “Opportunistic Killings”, as opposed as under the heading “Organised Mass Executions”.¹⁸⁸⁵ Regardless of the heading under which the Prosecution decided to allege these murders and the legal distinction it seeks to make through these headings, the Trial Chamber will deal with each of the allegations under “Opportunistic Killings” as allegations of murders.

562. The Trial Chamber recalls that in its Judgement on Motions for Acquittal, it rejected all the factual allegations contained in paragraphs 43 and 45(b) and (c), and 47 of the Indictment, except for 47.5 for the victim named Rešid Sinanović, in relation to Vidoje Blagojević. The Trial Chamber also rejected the factual allegations contained in paragraphs 47.7 and 47.8 in relation to Dragan Jokić. The Trial Chamber further notes that the Prosecutor clarified in its Rebuttal Statement that it is not its position to hold Dragan Jokić responsible “for the incidents that occurred in the area of Bratunac”.¹⁸⁸⁶

563. In relation to the allegations in paragraph 45 of the Indictment, the Trial Chamber makes the following findings in relation to “opportunistic killings” in Bratunac.

564. The Trial Chamber finds that many witnesses testified that Bosnian Muslim men were detained at the Vuk Karadžić School in Bratunac. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that some of the men detained in the school between 12 and 15 July were killed there.¹⁸⁸⁷

- The Trial Chamber finds that there is sufficient evidence to conclude beyond reasonable doubt that between 12 and 14 July more than 50 Bosnian Muslim men were summarily executed in and around the Vuk Karadžić School.¹⁸⁸⁸
- The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that a 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.¹⁸⁸⁹
- It has been established beyond reasonable doubt that between 13 and 15 July a number of men were taken from the Vuk Karadžić School and murdered.¹⁸⁹⁰

¹⁸⁸⁵ Indictment, paras. 43-45, 47.

¹⁸⁸⁶ Prosecution Rebuttal Statement, T. 12601.

¹⁸⁸⁷ *See supra* section II. E. 3.

¹⁸⁸⁸ *See supra* section II. E. 3, in particular paras 276, 279 and 281.

¹⁸⁸⁹ *See supra* section II. E. 3, in particular para. 280.

565. In relation to the allegations in paragraph 47 of the Indictment, the Trial Chamber finds the following “opportunistic killings” in the Bratunac Brigade zone:

- The Trial Chamber finds that it has been provided with evidence about Rešid Sinanović’s capture by MUP forces, interrogation and transfer to the Vuk Karadžić School in Bratunac. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that Rešid Sinanović’s was murdered.¹⁸⁹¹

566. In relation to the allegations in paragraph 47 of the Indictment, the following “opportunistic killings” in the Zvornik Brigade zone:

- The Trial Chamber has been provided with evidence that on 19 July, approximately ten Bosnian Muslim men from the column were executed near Nezuk.¹⁸⁹² However, the Trial Chamber recalls that in its First Decision pursuant to Rule 92 *bis*, it reminded the parties that the testimony of a single witness, whose testimony has been admitted under Rule 92 *bis*, requires corroboration by other evidence in order to lead to a conviction.¹⁸⁹³ The Trial Chamber notes that the only evidence supporting this allegation is testimony admitted under Rule 92 *bis*, and that while it does not have any reasons to doubt the credibility of the witness, or the reliability of the evidence that he provided, it must therefore find that this evidence cannot lead to a conviction in relation to this allegation.

(b) Mass Executions

567. In relation to the allegations in paragraph 46 of the Indictment, the Trial Chamber makes the following findings in relation to these mass executions:

(a) Potočari:

The Trial Chamber has evidence before it that on 12 July, in between the Zinc Factory and Aljia’s House, 80-100 Bosnian Muslim men were summarily executed by decapitation.¹⁸⁹⁴ However, the Trial Chamber notes that the only evidence provided to support this allegation is testimony admitted under Rule 92 *bis*, and that for the reasons explained above,¹⁸⁹⁵ while it does not have any reasons to doubt the credibility of the witness, or the reliability of the evidence that he

¹⁸⁹⁰ See *supra* section II. E. 3, in particular, paras 274, 276-277.

¹⁸⁹¹ See *supra* section II. D. 2. (a) (ii) d, in particular paras 251-252.

¹⁸⁹² See *supra* section II. D. 2. (b) (i), in particular para. 257.

¹⁸⁹³ See *supra* section II. A., in particular para. 26.

¹⁸⁹⁴ See *supra* section II. F. 1. (a), in particular para. 292.

¹⁸⁹⁵ See *supra* para. 566 and section II. A., in particular para. 26.

provided, it must therefore find that this evidence cannot lead to a conviction in relation to this allegation.

(b) Jadar River:

The Trial Chamber has evidence before it that at approximately 11:00 on 13 July 1995, 16 Bosnian Muslim men from the column were captured and taken from Konjević Polje up to the Jadar River bank, where they were lined up and executed.¹⁸⁹⁶ However, the Trial Chamber notes that the only evidence provided to support this allegation is testimony admitted under Rule 92 *bis*, and that for the reasons explained above,¹⁸⁹⁷ while it does not have any reasons to doubt the credibility of the witness, or the reliability of the evidence that he provided, it must therefore find that this evidence cannot lead to a conviction in relation to this allegation.

(c) Cerska Valley:

The Trial Chamber finds that there is sufficient testimonial and forensic evidence to support a finding beyond reasonable doubt that on 13 July, 150 men transported to area along road in Cerska Valley about 3 km from Konjević Polje and summarily executed and then covered with dirt using heavy equipment.¹⁸⁹⁸

(d) Kravica Warehouse:

The Trial Chamber finds that there is sufficient testimonial, documentary and forensic evidence to support a finding beyond reasonable doubt that on 13 July, over 1,000 men were detained in large warehouse in Kravica and summarily executed with automatic weapons, hand grenades and other weapons.¹⁸⁹⁹ Furthermore, the Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that the victims of the Kravica Warehouse massacre were buried in mass graves in Glogova and Ravnice between 14 and 16 July.¹⁹⁰⁰

(e) Tišća:

The Trial Chamber has evidence before it that on the evening of 13 July and 14 July, 22 men taken from school on a truck and summarily executed in a pasture by VRS and/or MUP using automatic weapons.¹⁹⁰¹ However, the Trial Chamber notes that the only evidence provided to support this allegation is testimony admitted under Rule 92 *bis*, and that for the reasons explained above,¹⁹⁰²

¹⁸⁹⁶ See *supra* section II. F. 1. (b), in particular para. 293.

¹⁸⁹⁷ See *supra* para. 566 and section II. A., in particular para. 26.

¹⁸⁹⁸ See *supra* section II. F. 1. (c), in particular paras 294-295.

¹⁸⁹⁹ See *supra* section II. F. 1. (d) (i), in particular paras 296-299.

¹⁹⁰⁰ See *supra* section II. F. 1. (d) (ii), in particular paras 304-314.

¹⁹⁰¹ See *supra* section II. F. 1. (e), in particular para. 315.

¹⁹⁰² See *supra* para. 566 and section II. A., in particular para. 26.

while it does not have any reasons to doubt the credibility of the witness, or the reliability of the evidence that he provided, it must therefore find that this evidence cannot lead to a conviction in relation to this allegation.

(f) Orahovac:

The Trial Chamber finds that there is sufficient testimonial, documentary and forensic evidence to support a finding beyond reasonable doubt that on 14 July, more than 1000 Bosnian Muslim men were detained in the Grbavci school near Orahovac, and that early on the afternoon of 14 July, these men were blindfolded and transported to a nearby field where they were executed.¹⁹⁰³ The Trial Chamber further finds that the victims were buried in mass graves in Orahovac, near to the execution site throughout the evening and night of 14 to 15 July.¹⁹⁰⁴

(g) Petkovci School:

The Trial Chamber finds that there is sufficient testimonial, documentary and forensic evidence to support a finding beyond reasonable doubt that on 14 July, approximately 1000 males from detention sites in and around Bratunac were transported to the Petkovci School. The Trial Chamber further finds that there is sufficient evidence to establish that some men were shot with automatic weapons there.¹⁹⁰⁵

(h) Dam near Petkovci:

The Trial Chamber finds that there is sufficient testimonial, documentary and forensic evidence to support a finding beyond reasonable doubt that on the evening 14 July and early morning 15 July, approximately 1000 men were transported from the Petkovci School to the nearby Dam and executed by automatic gunfire. The victims were buried in mass graves at the Dam. Subsequently, their remains were moved to secondary mass graves nearby.¹⁹⁰⁶

(i) Pilica School:

The Trial Chamber finds that there is sufficient evidence to support a finding beyond reasonable doubt that there were Bosnian Muslim men detained in the Pilica school on 14 July. Due to the overcrowded conditions in which the men were detained, there is evidence to support a finding that at least two men died at the school. Furthermore, there is sufficient evidence to support a

¹⁹⁰³ See *supra* section II. F. 1. (f) (i) (ii), in particular paras 316, 327-329.

¹⁹⁰⁴ See *supra* section II. F. 1. (f) (iii), in particular paras 332-336.

¹⁹⁰⁵ See *supra* section II. F. 1. (g), in particular paras. 337-346.

¹⁹⁰⁶ See *supra* section II. F. 1. (g), in particular paras 341-346.

finding that during the night of 14 to 15 July, some were taken out of the school and killed;¹⁹⁰⁷ the Trial Chamber declines to make a finding that “many” men were killed at the Pilica school.

(j) Branjevo Military Farm:

The Trial Chamber finds that there is sufficient testimonial, documentary and forensic evidence to support a finding beyond reasonable doubt that nearly 1200 men from Pilica school were executed at the Branjevo Military Farm on the morning of 16 July.

(k) Pilica Cultural Centre:

The Trial Chamber finds that there is sufficient testimonial, documentary and forensic evidence to support a finding beyond reasonable doubt that on 16 July, 500 Bosnian Muslim men executed by automatic weapons.

(l) Kozluk:

The Trial Chamber finds that there is sufficient testimonial and forensic evidence to support a finding beyond reasonable doubt that on 15 or 16 July, 500 Bosnian Muslim men were transported to Kozluk, near the Drina River, and executed along the riverbank. On 16 July, the victims were buried in mass graves near the site of their execution. Their remains were subsequently moved to a secondary mass grave nearby.

(c) Conclusion

568. The vast majority of the victims was taken to their detention sites and execution sites in trucks and buses; many were blindfolded, their hands – and sometimes their feet – were bound with ligatures; and they were called out of the trucks and buses in small groups, after which all were shot. The bodies of the men were then immediately buried, either at the execution site itself or somewhere close to the execution site. Considering the limited time period in which all this happened, the Trial Chamber cannot but conclude that these killings were done in an organised way.

569. Based on the foregoing, the Trial Chamber finds that it has been established beyond reasonable doubt that more than 7,000 Bosnian men and boys were killed by the members of the VRS and/or MUP. It is further proven that the direct perpetrators had the intention to kill or inflict serious injury in the reasonable knowledge that their acts or omissions were likely to cause the death of the victim.

¹⁹⁰⁷ See *supra* section II. F. 1. (h), in particular paras 347-348.

C. Extermination

1. Applicable Law

570. The general requirements for crimes against humanity have been considered above.¹⁹⁰⁸

571. The jurisprudence of this Tribunal and the ICTR has on several occasions held that the core elements of extermination are essentially similar to those required for wilful killing under Article 2 and murder under Articles 3 and 5 of the Statute.¹⁹⁰⁹ The scale of the crimes is, however, distinct: extermination is “to be interpreted as murder on a larger scale - mass murder”.¹⁹¹⁰ The International Law Commission has found that “the act used to carry out the offence of extermination involves an element of mass destruction which is not required for murder.”¹⁹¹¹

572. The Trial Chamber finds that the elements for the crime extermination are as follows:

- a) act or omission that results in the death of persons on a massive scale (*actus reus*), and
- b) the intent to kill persons on a massive scale, or to inflict serious bodily injury or create conditions of life that lead to the death in the reasonable knowledge that such act or omission is likely to cause the death of a large number of persons (*mens rea*).¹⁹¹²

573. The *actus reus* of extermination consists of acts or omissions, which directly or indirectly lead to the death of a large number of persons. The Jokić Defence proposes that even though the number of victims “is not precisely defined [...] it should be in the thousands in order to meet the threshold of the severity and gravity of the crime of extermination.”¹⁹¹³ While some Trial Chamber’s have discussed whether the element of mass destruction includes a minimum number

¹⁹⁰⁸ See *supra* paras 541-554.

¹⁹⁰⁹ See *Krstić* Trial Judgement, paras 490-503; *Vasiljević* Trial Judgement, para. 229; *Stakić* Trial Judgement, para. 229. See also *Akayesu* Trial Judgement, paras 591-592; *Kayishema* Trial Judgement, para. 142-413; *Rutaganda* Trial Judgement, para. 82; *Bagilishema* Trial Judgement, para. 86; *Ntakirutimana* Appeal Judgement, para. 522. For the elements of murder, see *supra* para. 556.

¹⁹¹⁰ *History of the United Nations War Crimes Commission and the Development of the Laws of War*, compiled by the United Nations War Crimes Commission, 1948, p. 194, commenting on the interpretation of “extermination” in the Charter of the International Military Tribunal. See also *Commentary on Fourth Geneva Conventions*, in relation to Article 32, p. 223: “The idea of ‘murder’ may be compared with that of ‘extermination’, in the first sentence of this Article. While murder is the denial of the right of an individual to exist, extermination refuses the same right to whole groups of human beings; it is a collective crime consisting of a number of individual murders.”

¹⁹¹¹ Report of the International Law Commission on the work of its forty-eighth session 6 May-26 July 1996, Documents of the United Nations General Assembly’s 51st session, Supplement no. 10 (A/51/10), p. 97.

¹⁹¹² See, e.g., *Krnojelac* Trial Judgement, para. 324; *Krstić* Trial Judgement para. 485; *Stakić* Trial Judgement paras 641-642. The *Stakić* Trial Chamber clarified that the intent required for the crime of extermination should be the same as the *mens rea* of murder as a crime against humanity, namely *dolus directus* or *dolus eventualis*, and does not include a threshold of negligence or gross negligence. *Stakić* Trial Judgement para. 642.

¹⁹¹³ Jokić Defence Final Brief, para. 289.

of victims,¹⁹¹⁴ the Trial Chamber finds that there is no such requirement. In the Trial Chamber's opinion, any such attempt to set a minimum number of victims in the abstract will ultimately prove unhelpful; the element of massive scale must be assessed on a case-by-case basis in light of the proven criminal conduct and all relevant factors.¹⁹¹⁵

574. As mentioned above, the *mens rea* required for the crime of extermination consists of the intent to kill persons on a massive scale or to inflict serious bodily injury or create conditions of life that lead to the death of a large number of individuals.¹⁹¹⁶

575. Both the Blagojević and Jokić Defence refer to the definition of extermination adopted by the *Vasiljević* Trial Chamber, which considered that in addition to the intent to cause the death of a large number of individuals, the crime of extermination requires that the perpetrator "must also have known of the vast scheme of collective murder and have been willing to take part therein."¹⁹¹⁷ The Prosecution does not make reference to this purported element in its submissions.

576. The Appeals Chamber held in the *Krstić* case that extermination does not require the proof of a plan or policy to carry out the underlying act, adding that the presence of such a plan or policy may be important evidence of the widespread or systematic nature of the attack.¹⁹¹⁸ In view of this holding, the *Brdanin* Trial Chamber recently found that "the *Vasiljević* 'knowledge that [the offender's] action is part of a vast murderous enterprise in which a larger number of individuals are systematically marked for killing or killed', if proven, will be considered as evidence tending to prove the accused's knowledge that his act was part of a widespread or systematic attack against a civilian population, and not beyond that."¹⁹¹⁹ This Trial Chamber endorses this view and does not consider the existence of a "vast scheme of collective murder" or "vast murderous enterprise" as a separate element of the crime nor as an additional layer of the *mens rea* required for the commission of the crime.

2. Findings

577. The Trial Chamber finds that the killings established above were part of one murder operation, which led to the death of more than 7,000 thousands Bosnian Muslim men and boys.

¹⁹¹⁴ See, e.g., *Krstić* Trial Judgement, paras 498, 501-502; *Vasiljević* Trial Judgement, paras 227-228.

¹⁹¹⁵ The *Stakić* Trial Chamber listed factors such as evidence of preparation and organisation of the crime as indicia in this respect. *Stakić* Trial Judgement, para. 640.

¹⁹¹⁶ The Trial Chamber concurs with the *Brdanin* Trial Judgement that among the conditions created to cause death are the deprivation of food and medicine. *Brdanin* Trial Judgement, para. 389.

¹⁹¹⁷ Blagojević Final Brief, para. 132 and Jokić Final Brief, para. 290, referring to *Vasiljević* Trial Judgement, paras 228-229. It appears that the *Vasiljević* Trial Judgement uses the terms "vast scheme of collective murder" and "vast murderous enterprise" interchangeably.

¹⁹¹⁸ *Krstić* Appeal Judgement, para. 225, referring to *Kunarac* Appeal Judgement, para. 98.

¹⁹¹⁹ *Brdanin* Trial Judgement, para. 394 (emphasis added).

The crime of extermination in the present case is clearly indicated by the massive scale of the number of victims and by the intent of the perpetrators to kill on massive scale. The Trial Chamber inferred this intent from the nature of the murder operation, which, as it has been described above, was carried out in a short time period, with similar pattern of killings, in locations near to each other and by perpetrators who in some cases were active in more than one of these locations.¹⁹²⁰

D. Persecutions

1. Applicable Law

578. The general requirements for crimes against humanity have been considered above.¹⁹²¹

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

- (i) discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law (*actus reus*); and
- (ii) is carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (*mens rea*).¹⁹²²

580. It is settled in the jurisprudence of the Tribunal that the acts or omissions that can amount to persecutions not only include acts or omissions enumerated in other sub-clauses of Article 5,¹⁹²³ but also acts or omissions of equal gravity to the acts listed in Article 5 of the Statute.¹⁹²⁴ The requirement of “equal gravity” defines the limits on the types of acts which qualify as persecutions. The Trial Chamber concurs with the finding of the *Kupreškić* Trial Chamber that “although the realm of human rights is dynamic and expansive, not every denial of a human right may constitute a crime against humanity.”¹⁹²⁵

581. While the crime of persecutions is considered to be an “umbrella” crime,¹⁹²⁶ the Appeals Chamber has warned that “[p]ersecution cannot, because of its nebulous character, be used as a

¹⁹²⁰ See *supra* paras 568-569.

¹⁹²¹ See *supra* paras 541-554.

¹⁹²² *Blaškić* Appeal Judgement, para. 131. See also *Vasiljević* Appeal Judgement, para. 113; *Krnjelac* Appeal Judgement, para. 185.

¹⁹²³ *Kupreškić* Trial Judgement, para. 605.

¹⁹²⁴ *Kordić* Appeal Judgement, para. 671; *Blaškić* Appeal Judgement, para. 135; *Krnjelac* Appeal Judgement, para. 199; *Kupreškić* Trial Judgement, paras 617-19.

¹⁹²⁵ *Kupreškić* Trial Judgement, para. 618. To reach the level of gravity required by Article 5 the act or omission needs to be a gross or blatant denial of a fundamental human right. *Naletilić* Trial Judgement, para. 635; *Krnjelac* Trial Judgement, para. 434; *Kupreškić* Trial Judgement, paras 620, 621, 627.

¹⁹²⁶ *Kupreškić* Appeal Judgement, para. 98.

catch-all charge.”¹⁹²⁷ The Prosecution must plead particular acts or omissions which it alleges amount to persecutions in the Indictment.¹⁹²⁸

582. The acts or omissions may be evaluated separately or together in their context considering their cumulative effect.¹⁹²⁹ The Appeals Chamber has found that “although persecution often refers to a series of acts, a single act may be sufficient, as long as this act or omission discriminates in fact and is carried out deliberately with the intention to discriminate on one of the listed grounds.”¹⁹³⁰ While persecutory acts might often be part of a discriminatory policy, the existence of a discriminatory policy is not a necessary requirement for persecutions.¹⁹³¹

583. An act is discriminatory when a victim is targeted because of his or her membership in a group defined by the perpetrator on a political, racial or religious basis.¹⁹³² The act or omission needs to discriminate in fact, *i.e.*, a discriminatory intent is not sufficient, but the act or omission must have discriminatory consequences.¹⁹³³

584. The intent to discriminate must be related to the particular act(s) charged as persecutions. When those acts formed part of an attack of a discriminatory nature, this context can be a sufficient basis to infer the discriminatory intent in relation to each particular act.¹⁹³⁴ The Appeals Chamber has found that “such a context may not in and of itself evidence discriminatory intent,” but “that discriminatory intent may be inferred from such a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent.”¹⁹³⁵

¹⁹²⁷ *Kupreškić* Appeal Judgement, para. 98.

¹⁹²⁸ *Kupreškić* Appeal Judgement, para. 98. *See also Blaškić* Appeal Judgement, para. 139.

¹⁹²⁹ *Blaškić* Appeal Judgement, para. 135; *Krnojelac* Trial Judgement, para. 434; *Kupreškić* Trial Judgement, para. 615.

¹⁹³⁰ *Blaškić* Appeal Judgement, para. 135; *Vasiljević* Appeal Judgement, para. 113.

¹⁹³¹ *Vasiljević* Trial Judgement, para. 248. When a discriminatory policy existed, it is not required that the accused took part in the formulation of that discriminatory policy or practice by an authority; *Vasiljević* Trial Judgement, para. 248; *Kupreškić* Trial Judgement, para. 625.

¹⁹³² *Naletilić* Trial Judgement, para. 636, *referring* to the *Kvočka* Trial Judgement, para. 195. Despite the fact that Article 5(h) reads “persecutions on political, racial and religious grounds”, the three listed grounds are alternatives and the establishment of one of the grounds is a sufficient basis for a finding of persecutions. *Tadić* Trial Judgement, para. 712. *See also Kordić* Appeal Judgement, para. 674; *Krnojelac* Trial Judgement, para. 431.

¹⁹³³ *See Krnojelac* Appeal Judgement, paras 185 and 200-02, *citing* with approval *Krnojelac* Trial Judgement, para. 431; *Stakić* Trial Judgement, para. 733; *Vasiljević* Trial Judgement, para. 245.

¹⁹³⁴ *Tadić* Trial Judgement, para. 652. *See also Kvočka* Trial Judgement, paras 201, 202, 203 in relation to inferring a discriminatory intent from a “knowing participation” in a criminal enterprise.

¹⁹³⁵ *Krnojelac* Appeal Judgement, para. 184. *See also Kordić* Appeal Judgement, para. 674; *Blaškić* Appeal Judgement, para. 164.

2. Specific Offences Charged as Persecutions

(a) Murder

585. The elements of murder have been discussed above.¹⁹³⁶ Murder is set out as a crime against humanity pursuant to Article 5(a) of the Statute and, as such, can therefore amount to persecutions.¹⁹³⁷

(b) Cruel and Inhumane Treatment

586. Cruel and inhumane treatment is defined as an intentional act or omission, which causes serious mental harm, physical suffering or injury, or which constitutes a serious attack on human dignity.¹⁹³⁸ The seriousness of the harm or injury must be assessed on a case by case basis, taking into consideration various factors including the nature of the act or omission, the context in which it occurs, its duration and/or repetition, its physical and mental effects on the victim and, in some instances, the personal circumstances of the victim, including age, gender and health.¹⁹³⁹ The harm inflicted does not need to be permanent and irremediable; it must, however, have more than a short-term or temporary effect on the victim.¹⁹⁴⁰

587. The Appeals Chamber has found that, *inter alia*, the right to be free from cruel, inhuman or degrading treatment is recognised in customary international law and is enshrined in international human rights instruments.¹⁹⁴¹ The Appeals Chamber has further found that “[i]t is clear in the jurisprudence of the International Tribunal that acts of serious bodily and mental harm are of

¹⁹³⁶ See *supra* para. 556.

¹⁹³⁷ See *supra* para. 580.

¹⁹³⁸ For cruel treatment see *Čelebići* Appeal Judgement, para. 424, referring to *Jelisić* Trial Judgement, para. 41. For inhuman treatment see *Čelebići* Appeal Judgement, para. 426. See also *Krnjelac* Trial Judgement, para. 130. The material elements of cruel treatment and inhuman treatment are the same. The Appeals Chamber has found that the sole distinguishing element between cruel and inhuman treatment stems from the protected person requirement under Article 2; *Čelebići* Appeal Judgement, para. 426. Cruel treatment, enshrined in Article 3 of the Statute, is defined as a) an intentional act or omission, which causes serious mental harm or physical suffering or injury or constitutes a serious attack on human dignity, b) committed against a person taking no active part in the hostilities. Inhuman treatment, listed under Article 2 of the Statute, is defined as a) an intentional act or omission, which causes serious mental harm or physical suffering or injury or constitutes a serious attack on human dignity, b) committed against a protected person; *Čelebići* Appeal Judgement, paras 424 and 426.

¹⁹³⁹ *Naletilić* Trial Judgement, para. 343; *Krnjelac* Trial Judgement, para. 131; *Blaskić* Trial Judgement, para. 243. The degree of severity is lower than the one required for torture, but at the same level as the one required for “wilfully causing great suffering or serious injury to body or health”; *Kvočka* Trial Judgement, para. 161; *Naletilić* Trial Judgement, para. 246.

¹⁹⁴⁰ *Krstić* Trial Judgement, para. 513: “[The harm] must result in a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life.” See also *Akayesu* Trial Judgement, para. 502.

¹⁹⁴¹ *Blaskić* Appeal Judgement, para. 143. Specifically, the Appeals Chamber refers to Articles 6 and 7 of the ICCPR, and Articles 2 and 3 of the ECHR.

sufficient gravity as compared to the other crimes enumerated in Article 5 of the Statute and therefore may constitute persecutions.”¹⁹⁴²

(c) Terrorising the Civilian Population

588. The Prosecution has charged “the terrorising of Bosnian Muslim civilians in Srebrenica and at Potočari” as an act of persecutions.¹⁹⁴³ It submits that “terrorisation” “involves establishing, through unlawful acts, physical and psychological conditions designed to create an atmosphere of terror or panic among a civilian population.”¹⁹⁴⁴ The Prosecution further alleges that such conditions may include acts of “beating, torture, rape and murder, as well as verbal abuse, threats and intimidation; shelling and shooting in and around the population centre; separation of family members; deprivation of the population’s basic needs such as food, water and medical treatment; burning of homes and other property around the population centre.”¹⁹⁴⁵ The Prosecution maintains that “its use of terrorisation as a form of persecutions is distinct from the charged offence of terrorisation in the *Galić* case.”¹⁹⁴⁶

589. While the act of “terrorising the civilian population” is not found in the Statute, the Trial Chamber finds that it is similar to “[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population” prohibited under Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II to the Geneva Conventions. Based on the prohibitions enshrined in these two Articles¹⁹⁴⁷ and taking into consideration the *Galić* Trial Judgement,¹⁹⁴⁸ the Trial Chamber defines the elements of “terrorising the civilian population” as follows:

1. Acts or threats of violence;
2. The offender wilfully made the civilian population or individual civilians not taking part in hostilities the object of those acts or threats of violence; and

¹⁹⁴² *Blaskić* Appeal Judgement, para. 143, referring to *Kupreškić* Trial Judgement, para. 615.

¹⁹⁴³ Indictment, para. 59(c).

¹⁹⁴⁴ Prosecution Pre-Trial Brief, para. 227.

¹⁹⁴⁵ Prosecution Pre-Trial Brief, para. 227.

¹⁹⁴⁶ Prosecution Pre-Trial Brief, para. 227 fn. 593. In the *Galić* case terrorisation was plead as a independent count, namely as a Violation of the Laws or Customs of War pursuant to Article 3 of the Statute, and not as one act forming a charge *i.e.* persecutions at issue. See also *Galić* Trial Judgement, paras 63-66. In its Final Brief, the Prosecution asserts that terrorisation, as set out in this case, is the denial of fundamental rights, including the right to security of person. Prosecution Final Brief, para. 565.

¹⁹⁴⁷ Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II provides: “The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”

¹⁹⁴⁸ The *Galić* Trial Judgement dealt with a charge of “unlawfully inflicting terror upon civilians as set forth in Article 51 of Additional Protocol I and Article 13 of Additional Protocol II”, punishable under Article 3 of the Statute. As the *Galić* case did not involve “threats”, but “violence” in the form of causing death or serious injury, the *Galić* Trial Chamber set out the elements of the crime only in regard to those acts of violence. *Galić* Trial Judgement, para. 132.

3. The acts or threats of violence were carried out with the primary purpose of spreading terror among the civilian population.

590. The Trial Chamber concurs with the *Galić* Trial Chamber finding that “terror” means “extreme fear”.¹⁹⁴⁹ The plain wording of Article 51(2) of Additional Protocol I does not suggest that the “terrorising of the civilian population” requires an actual infliction of terror.¹⁹⁵⁰ The Trial Chamber therefore finds that the Prosecution only needs to prove that acts or threats of violence were carried out to create an atmosphere of extreme fear or uncertainty of being subjected to violence among the civilian population.¹⁹⁵¹

591. As one element of the offence is the primary purpose of spreading terror, the offender must have intended to terrorise the civilian population.¹⁹⁵² The Trial Chamber finds that “primary” does not mean that the infliction of terror needed to be the only objective of the acts or threats of violence, but that it was the principal aim.

592. In addition to the prohibition against acts or threats of violence enshrined in the Geneva Conventions, the Trial Chamber observes that the exposure to terror is a denial of the fundamental right to security of person which is recognised in all national systems and is contained in Article 9 of the ICCPR and Article 5 of the ECHR. Accordingly, the Trial Chamber finds that terrorisation violates a fundamental right laid down in international customary and treaty law.

(d) Destruction of Personal Property

593. The Prosecution has charged the destruction of personal property and effects belonging to the Bosnian Muslims as an underlying act of persecutions.¹⁹⁵³ The right to property is protected in various legal instruments.¹⁹⁵⁴ Different forms of destruction of property are criminalised under the

¹⁹⁴⁹ *Galić* Trial Judgement, para. 137.

¹⁹⁵⁰ This also applies to Article 13 (2) of Additional Protocol II. *See also Galić* Trial Judgement, para. 134, referring to the *travaux préparatoires* of the Diplomatic Conference of 1974-1977, which reflect that all proposals to substitute intent with actual infliction of terror in Article 51 (2) of Additional Protocol I and Article 13 (2) of Additional Protocol II failed.

¹⁹⁵¹ The Trial Chamber notes that this implies only acts or threats of violence that are suitable to create an extreme fear among the civilian population. *See also Celebići* Trial Judgement for the description of the “atmosphere of terror” in the Celebići prison-camp. The creation and maintenance of an atmosphere of terror in the prison-camp was found to constitute cruel treatment under Article 3 and wilfully causing great suffering under Article 2. *Celebići* Trial Judgement, paras 1086-1091.

¹⁹⁵² The *Galić* Trial Chamber found that the crime of terror is a specific intent crime. *Galić* Trial Judgement, para. 136. *See also* Commentary on the Additional Protocols, para. 1940, which reads as follows commenting on Article 51 (2): “the Conference wished to indicate that the prohibition covers acts intended to spread terror; there is no doubt that acts of violence related to a state of war almost always give rise to some degree of terror among the population and sometimes also among the armed forces. It also happens that attacks on armed forces are purposely conducted brutally in order to intimidate the enemy soldiers and persuade them to surrender. This is not the sort of terror envisaged here. This provision is intended to prohibit acts of violence the primary purpose of which is to spread terror among the civilian population without offering substantial military advantage.

¹⁹⁵³ Indictment, para. 59 d).

¹⁹⁵⁴ *See e.g.* Article 1 of Protocol 1 to the ECHR.

Statute¹⁹⁵⁵ and prohibited under both the Fourth Geneva Convention¹⁹⁵⁶ and Additional Protocol I.¹⁹⁵⁷ Article 53 of the Fourth Geneva Convention, for example, provides:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

The Trial Chamber therefore finds that the “destruction of personal property” requires that the destruction is not justified by military necessity.

594. The Appeals Chamber has found that depending on the nature and extent of the destruction, the destruction of property may amount to persecutions.¹⁹⁵⁸ One factor to take into consideration is the type of property involved.¹⁹⁵⁹ The *Kupreškić* Trial Chamber considered that the destruction of certain types of property “may not have a severe enough impact on the victim as to constitute a crime against humanity.” It noted as an example the burning of someone’s car unless the car would constitute “an indispensable and vital asset to the owner.”¹⁹⁶⁰ It found, however, that “the comprehensive destruction of homes and property” that constitutes “a destruction of the livelihood of a certain population” and may have the “same inhumane consequences as a forced transfer,” could constitute a blatant denial of fundamental rights, and if committed on discriminatory grounds, could amount to persecutions.¹⁹⁶¹

(e) Forcible Transfer

595. The crime of forcible transfer has been defined in the jurisprudence of this Tribunal as the forced displacement of individuals from the area in which they are lawfully present without grounds permitted under international law.¹⁹⁶² Traditionally, the distinction between forcible transfer and deportation is that the first one consists of forced displacements of individuals within state borders, while the second one consists of forced displacement beyond internationally

¹⁹⁵⁵ Article 2 (d) of the Statute prohibits the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.” Article 3 (b) of the Statute prohibits the “wanton destruction of cities, towns or villages, or devastation not justified by military necessity.”

¹⁹⁵⁶ See Articles 53 and 147 of Geneva Convention IV. Article 147 of Geneva Convention IV considers as grave breaches the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

¹⁹⁵⁷ Articles 51 and 52 of Additional Protocol I provide for the protection of civilian objects.

¹⁹⁵⁸ *Kordić* Appeal Judgement, para. 108; *Blaskić* Appeal Judgement, para. 149.

¹⁹⁵⁹ *Blaskić* Appeal Judgement, para. 146, citing *Kupreškić* Trial Judgement, para. 631 with approval.

¹⁹⁶⁰ *Kupreškić* Trial Judgement, para. 631.

¹⁹⁶¹ *Kupreškić* Trial Judgement, para. 631; *Blaskić* Appeal Judgement, para. 146 agreeing with this assessment.

¹⁹⁶² *Brdanin* Trial Judgement, para. 540, citing among others, *Blaskić* Trial Judgement, para. 234; *Krnjelac* Appeal Judgement, para. 222. The Indictment charges “forcible transfer”, however the Trial Chamber will also employ the more generic term forcible displacements throughout its discussion of forcible transfer.

recognised state borders.¹⁹⁶³ It is well established that displacements within a state or across national borders, for reasons not permitted under international law, are crimes punishable under customary international law.¹⁹⁶⁴

596. It is the “forced character of displacement and the forced uprooting of the inhabitants of a territory”¹⁹⁶⁵ that give rise to criminal responsibility. The requirement of “forcible” describes a situation where individuals do not have a free or ‘genuine’ choice to remain in the territory where they were present.¹⁹⁶⁶ The element of ‘forcible’ has been interpreted to include threats or the use

¹⁹⁶³ *Brdanin* Trial Judgement, para. 540, citing among others, *Krstić* Trial Judgement, paras 521, 531; *Krnjelac* Trial Judgement, para. 474.

¹⁹⁶⁴ This was developed and concluded by the *Krnjelac* Appeals Chamber, based on provisions of the Geneva Conventions and their Additional Protocols. *Krnjelac* Appeal Judgement, paras 220, 222. These instruments prohibit forced movement within the context of both internal and international armed conflicts. In particular, Article 49 of the Fourth Geneva Convention provides:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

Moreover, Article 85 of Additional Protocol I (*see* Commentary to the Additional Protocols, p.1000) prohibits “the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or part of the population of the occupied territory within or outside this territory in violation of Article 49 of the Fourth Convention.” A provision similar to the norm applicable in international armed conflicts is included in Article 17 of Additional Protocol II (*see* Commentary to Additional Protocol II, pp 1472-74.), which explicitly prohibits the forced displacement of the population within or outside a country in which an internal armed conflict has broken out. It reads as follow:

Article 17 - Prohibition of forced movement of civilians - 1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. 2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

While it is a matter for scholarly debate whether Additional Protocol II in its entirety reflects customary international law, the *Krnjelac* Appeals Chamber considered the prohibition against forcible population displacements as laid down in Article 17 as customary international law in this respect. Further, the Trial Chamber observes that Bosnia and Herzegovina became a party to Additional Protocol II by succession on 31 December 1992. There is no doubt, therefore, that Additional Protocol II was applicable to the armed conflict in the area with which this case is concerned. The Trial Chamber observes that Article 147 of the Fourth Geneva Convention specifically lists “unlawful deportation or transfer” as grave breaches of the Convention.

¹⁹⁶⁵ *Krnjelac* Appeal Judgement, para. 218. The *Krnjelac* Appeals Chamber held that: “[t]he prohibition against forcible population displacements therefore “aims at safeguarding the right and aspiration of individuals to live in their communities and homes without outside interference.” *Krnjelac* Appeal Judgement, para. 218.

¹⁹⁶⁶ *See also* *Brdanin* Trial Judgement, para. 543; *Krnjelac* Appeal Judgement, para. 229. When the Fourth Geneva Convention was drafted the prohibition was deliberately limited to “forcible” displacements in order to “make

of force, fear of violence, and illegal detention.¹⁹⁶⁷ It is essential therefore that the displacement takes place under coercion.¹⁹⁶⁸ Even in cases where those displaced may have wished – and in fact may have even requested – to be removed, this does not necessarily mean that they had or exercised a genuine choice.¹⁹⁶⁹ The trier of fact must consequently 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 and thus whether the resultant displacement was unlawful.

597. As mentioned above, forced displacement of individuals is a crime when it is not carried out for one of the grounds recognised under international law. Both Article 49(2) of the Fourth Geneva Convention and Article 17(1) of Additional Protocol II, which have been cited above, contain provisions providing for exceptions, namely, when “the security of the civilians involved or imperative military reasons so demand”.¹⁹⁷⁰ The term used to describe the displacement in such exceptional situations is “evacuation”.¹⁹⁷¹ Evacuation is by definition a temporary and provisional measure and the law requires that individuals who have been evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.¹⁹⁷² From this it may be concluded that it is unlawful to use evacuation measures as a pretext to remove the population and effectuate control over a desired territory.¹⁹⁷³ It should be recalled here that, while evacuation is undertaken in the interests of the civilian population, it is by definition an extreme measure for those displaced.

598. The exceptions when evacuations may be carried out are somewhat overlapping. Evacuation to ensure the security of the population is authorised when the area in which the population is located is in danger as a result of “military operations” or “intense bombing”.¹⁹⁷⁴ In such situations, in the interest of the protection of the civilian population a military commander may, and is in fact duty bound to, evacuate the population. This situation is similar to that when evacuations for “imperative military reasons” may be carried out, *i.e.* when the presence of the population hampers military operations. There is an important distinction, however, in that

due allowances for that legitimate desire” of, for instance, “protected persons belonging to ethnic or political minorities who might have suffered discrimination or persecution on that account” to leave a territory. The text of Article 49, therefore, authorised voluntary transfers “by implication”. Commentary to Fourth Geneva Convention, p. 279.

¹⁹⁶⁷ *Krnjelac* Appeal Judgement, para. 229.

¹⁹⁶⁸ See, among others, *Brdanin* Trial Judgement, para. 543.

¹⁹⁶⁹ *Krnjelac* Appeal Judgement, para. 229.

¹⁹⁷⁰ The language of Article 49(2) is slightly different without, however, any difference in substance.

¹⁹⁷¹ Commentary to Fourth Geneva Convention, p. 280. While Article 17 of Additional Protocol II does not use the term “evacuation”, it is clear that the same temporary measure as is described in Article 49(2) of the Fourth Geneva Convention is intended.

¹⁹⁷² Fourth Geneva Convention, Article 49(2).

¹⁹⁷³ Commentary to Additional Protocol II to the Geneva Conventions of 1949, p. 1473.

evacuations in this latter situation may only be carried out when necessitated by overriding, *i.e.* imperative, military reasons.¹⁹⁷⁵ In considering whether these exceptions justify proven acts of forcible population displacements, the trier of fact will consider whether there was in actual fact a military or other significant threat to the physical security of the population, and whether the military operation in question was ‘imperative’.

599. If an evacuation is carried out, it is incumbent upon the evacuating party to ensure that the civilian population, to the extent possible and practicable,¹⁹⁷⁶ is properly provided for in terms of accommodation, hygiene, health, safety and nutrition.¹⁹⁷⁷ With regard to international armed conflicts, the Fourth Geneva Convention provides that the evacuating party shall ensure that members of the same family are not separated to the greatest practicable extent. While Article 17 of Additional Protocol II does not contain the same provision, this Trial Chamber does not find any reason why this general principle should not be applicable also to non-international armed conflicts.

600. In light of the particular factual situation in the present case, the Trial Chamber has considered whether the law also provides for an exception to the general prohibition against forcible displacements that would permit evacuations for humanitarian reasons. It finds that it does. The Trial Chamber reiterates the general obligation of all parties to a conflict to protect and respect the civilian population as well as other protected persons. The Trial Chamber has already found that Article 17 of Additional Protocol II is applicable in this case. Article 17 provides in part that “[t]he displacement of the civilian population shall not be ordered for reasons related to the conflict.” The Commentary to this provision indicates that for other reasons – such as the outbreak or risk of outbreak of epidemics, natural disasters, or the existence of a generally untenable and life-threatening living situation – forcible displacement of the civilian population may be lawfully carried out by parties to the conflict.¹⁹⁷⁸ Such displacement must, however, comply with the requirements of evacuation, including among others, that they be of a temporary character.

601. As for the *mens rea*, the perpetrator must intent to remove the victims, which implies the intention that they should not return.¹⁹⁷⁹ By definition, therefore, lawful evacuations, under any of

¹⁹⁷⁴ Commentary to Fourth Geneva Convention, p. 280.

¹⁹⁷⁵ Commentary to Fourth Geneva Convention, p. 280.

¹⁹⁷⁶ Again, the language varies slightly between Article 49(3) of the Fourth Geneva Convention and Article 17(1) of Additional Protocol II, without, however, a difference in substance of the provisions. Moreover, this phrase is not intended to provide for an opportunity to reduce the obligation in any way; rather it is aimed at situations of urgency when the evacuation must be improvised on short notice, Commentary to Additional Protocol II, p. 1473.

¹⁹⁷⁷ Article 49(3) of the Fourth Geneva Convention and Article 17(1) of Additional Protocol II.

¹⁹⁷⁸ Commentary to Additional Protocol II, p. 1473.

¹⁹⁷⁹ *Naletilić* Trial Judgement, para. 520 and fn. 1362.

the three recognised exceptions, cannot form part of this crime. The fact that no step is taken by the perpetrator to secure the return of those displaced, when the circumstances that necessitated the evacuation have ceased, is among the factors that may prove an intent to permanently displace the victims rather than the intent to secure the population through a lawful – and therefore temporary – evacuation. The Trial Chamber finds that the fact that victims subsequently return to the area by their own volition does not have an impact on the criminal responsibility.

602. The Trial Chamber finds that forcible transfer, taken separately or cumulatively, and when committed on discriminatory grounds it is of equal gravity to other crimes listed in Article 5 of the Statute and therefore it may constitute persecutions.

3. Findings

(a) Murder

603. The Prosecution charges that “the murder of thousands of Bosnian Muslim civilians, including men, women, children, and elderly persons,” constitutes an act of persecution.¹⁹⁸⁰

604. As discussed above, the Trial Chamber finds that during the days following the fall of Srebrenica thousands of Bosnian Muslim men were murdered.¹⁹⁸¹ The Trial Chamber further finds that amongst the killed there were also elderly and children.¹⁹⁸² It also recalls the stabbing to death of a baby by VRS soldiers when they were told that it was a boy.¹⁹⁸³ The Trial Chamber also finds that babies were killed intentionally by not satisfying their essential needs.¹⁹⁸⁴ The Trial Chamber further finds that women were killed and recalls evidence as to dead female bodies that were found in a stream near the UN compound in Potočari.¹⁹⁸⁵

(b) Cruel and Inhumane Treatment

605. The Prosecution has charged “the cruel and inhumane treatment of Bosnian Muslim civilians, including severe beatings at Potočari and in detention facilities in Bratunac and Zvornik” as a persecutory act.¹⁹⁸⁶

¹⁹⁸⁰ Indictment, para. 59 (a).

¹⁹⁸¹ See *supra* section II. F. 1.

¹⁹⁸² See forensic evidence in *supra* para. 336. The Trial Chamber also recalls evidence as to the death of elderly and children who were killed by exposing them to the described horrific conditions. See Robert Franken, who testified that two elderly died by exhaustion and children of dehydration. Robert Franken, T. 1510. The Trial Chamber further recalls the death of an elderly man who was killed at Sandići meadow. Witness P-111, T. 1389.

¹⁹⁸³ Bego Ademović, KT. 1590-92.

¹⁹⁸⁴ See Witness P-103, KT. 1509.

¹⁹⁸⁵ See *supra* para. 201.

¹⁹⁸⁶ Indictment, para. 59 (b).

606. It has been established that the Bosnian Muslim refugees who were forced to flee to Potočari were exposed to horrific and inhumane conditions and found themselves, as described by a DutchBat member, in a “hopeless [...] and extremely uncertain and unsecure” situation.¹⁹⁸⁷ The 20,000 to 30,000 people, who were very exhausted,¹⁹⁸⁸ had very limited access to water despite the heat, almost no food¹⁹⁸⁹ and were exposed to a lack of basic medical treatment and toilet facilities.¹⁹⁹⁰ In addition, the refugees were exposed to insults and physical abuse aimed at creating an atmosphere of intimidation and panic that increased during the night of 12 July – “the night of horror”¹⁹⁹¹ – when the refugees suffered from extreme fear as the soldiers moved among the refugees, shouting and firing their weapons, and taking people away.¹⁹⁹² The Trial Chamber finds that the continued exposure to such intimidating and life threatening conditions caused serious mental and physical suffering among the refugees.

607. The Trial Chamber also finds that there is sufficient evidence to establish beyond reasonable doubt that the brutal separation of the men from the women and children throughout the Potočari area on 12 and 13 July amounts to cruel and inhumane treatment. The Trial Chamber finds that the refugees who experienced the pulling apart of their families – who were aggressively separated and taken away from their beloved ones without knowing if they would ever see them again – suffered serious mental harm. As one example of an extremely aggressive separation that also caused serious bodily harm, the Trial Chamber recalls the evidence that a young boy was grabbed by the throat and “more or less strangled” when a VRS soldier tried to pull him away from his family.¹⁹⁹³

608. The Trial Chamber also finds that there is sufficient evidence to establish beyond reasonable doubt that the Bosnian Muslim men who were taken by VRS soldiers from the UN compound to the “White House” suffered serious mental and bodily harm. While the men were detained and interrogated there, yelling and crying was heard.¹⁹⁹⁴ The Trial Chamber finds that the interrogations that were carried out in the terrifying and abusive atmosphere as described amounted to cruel and inhumane treatment. The Trial Chamber recalls the testimony of a DutchBat member that some elite troops stood outside the building like “a possible execution

¹⁹⁸⁷ Pieter Boering, T. 896.

¹⁹⁸⁸ Leendert Van Duijn, T. 1056-57; Paul Groenewegen, T. 1019.

¹⁹⁸⁹ Ljubisav Simić, T. 7618; Pieter Boering, T. 895-96; Agreed Facts, para. 84. The aid operation organised by the Bratunac Municipal Assembly, as a result of which in the evening of 12 July five UNHCR trucks arrived with supplies, did not significantly improve the situation of the refugees, as it was only “a drop in the sea” and most of the people had already been transported out of Potočari. Ljubisav Simić, T. 7612, 7615.

¹⁹⁹⁰ Robert Franken, KT. 2044.

¹⁹⁹¹ Paul Groenewegen, T. 1028; Čamila Omanović, KT. 1111.

¹⁹⁹² *See supra* para. 167.

¹⁹⁹³ Leendert Van Duijn, T. 1076-77.

¹⁹⁹⁴ Robert Franken, T. 1503.

squad that were ready to march people off behind the building”, from where some shooting was heard.¹⁹⁹⁵ The serious mental harm that the men suffered is reflected in the testimony of Colonel Kingori, a member of UNMO, who described the extreme fear of the men:

when they were lined up beside the road, they could cry and shout to us, requesting for assistance, asking us what we can do to help them. They could shout and say, "You know these people are going to kill us, and then you are not doing anything about it." [...] You could see the fear. There was a lot of fear.¹⁹⁹⁶

609. The Trial Chamber further finds that there is sufficient evidence to establish beyond reasonable doubt that the Bosnian Muslim men who were detained on buses in Bratunac or in other detention facilities in Bratunac and Zvornik were subjected to horrific conditions and mistreatment. The Trial Chamber recalls that the buses and detention centres were packed with men who were suffering from the heat and were not provided with sufficient, if any, water or food.¹⁹⁹⁷ The prisoners were prevented from relieving themselves;¹⁹⁹⁸ they were badly beaten; and repeatedly men were singled out for further abuse and often were finally killed while the remaining men had to witness their moaning in pain and the shots.¹⁹⁹⁹ The Trial Chamber finds that the Bosnian Muslim men who experienced these atrocities and the uncertainty of their fate, were suffering serious mental and bodily harm.

610. The Trial Chamber conclusively finds that there is sufficient evidence to establish beyond reasonable doubt that the terrible mistreatment as summarily described above caused serious mental harm and physical suffering and was a continuous attack on the human dignity of the Bosnian Muslims subjected to the mistreatment.

(c) Terrorising the Civilian Population

611. It has been established that the UN compound in Srebrenica town was shelled while thousands of Bosnian Muslim refugees were seeking protection there.²⁰⁰⁰ It has further been established that while the refugees were fleeing from Srebrenica to Potočari, elements of the Bratunac Brigade, among others, fired at them.²⁰⁰¹ The Trial Chamber finds that the aim of the shellings was to cause fear and panic among the civilian population and force the people to flee the Srebrenica enclave.

¹⁹⁹⁵ Pieter Boering, T. 912. *See also supra* para. 171.

¹⁹⁹⁶ Joseph Kingori, KT. 1855-56.

¹⁹⁹⁷ *See supra* paras 264, 283.

¹⁹⁹⁸ *See supra* paras 277, 338, 348.

¹⁹⁹⁹ *See supra* paras 269-270, 274, 276.

²⁰⁰⁰ *See supra* para. 141.

²⁰⁰¹ *See supra* para. 144.

612. The Trial Chamber further finds that the Bosnian Muslims who sought shelter in Potočari were continuously subjected to terrifying threats and physical attacks. It has been established that during the meetings in the Hotel Fontana, the Bosnian Muslim representatives were threatened repeatedly and told that they “could either survive or disappear.”²⁰⁰² Many VRS soldiers cursed at the Bosnian Muslims, calling them names and saying that they would be “slaughtered.”²⁰⁰³ Especially during the night of 12 July, “the night of horror,”²⁰⁰⁴ the refugees suffered from extreme fear.²⁰⁰⁵

613. It has also been proven that the Bosnian Muslim men who were taken to the “White House” were forced to leave their personal belongings and identity cards outside the building.²⁰⁰⁶ The Trial Chamber finds the message sent to the men when their identity cards were taken – that they would no longer need this most basic document – was intended to terrify the men as it suggested that their fate – death – had been sealed. It has been further established that Bosnian Muslim men were told to take off their clothes and shoes before they were transported from the detention to the execution sites.²⁰⁰⁷ The Trial Chamber finds this to be another tool used to instill fear and suggest to the men that they were marked for death.

614. The Trial Chamber finds that there is sufficient evidence to establish that the described unlawful acts and threats of violence against the Bosnian Muslim civilians, including individual civilians not taking part in hostilities, were carried out with the primary purpose to create an atmosphere of extreme fear among the population.

(d) Destruction of Personal Property

615. It has been established that the Bosnian Muslim men who were taken to the “White House” had to leave their personal belongings including their wallets and identification papers outside the building and that all those belongings were subsequently burned.²⁰⁰⁸ The Trial Chamber further recalls evidence as to a pile of burning personal belongings on the football field near Nova Kasaba where hundreds of Bosnian Muslim men had been detained.²⁰⁰⁹ The Trial

²⁰⁰² See *supra* para. 160.

²⁰⁰³ Bego Ademović, KT. 1589. See also Witness P-104, KT. 1684.

²⁰⁰⁴ See *supra* para. 167.

²⁰⁰⁵ Agreed Facts, para. 105.

²⁰⁰⁶ See *supra* para. 170.

²⁰⁰⁷ See *supra* paras 247, 340.

²⁰⁰⁸ See *supra* para. 170.

²⁰⁰⁹ See *supra* para. 185. The Trial Chamber notes that there is further evidence before it that detained Bosnian Muslim men had to leave their personal belongings behind. See *supra* paras 242, 253, 319. However, there is no evidence as to the destruction of these personal belongings.

Chamber finds that the destruction of those personal belongings was not justified by military necessity.²⁰¹⁰

(e) Forcible Transfer

616. It is established that the Bosnian Muslim population was forcibly displaced from the Srebrenica enclave through Potočari, including the women, children and elderly who were transported to Kladanj, and the Bosnian Muslim men who were bussed out of Potočari to temporary detention facilities in Bratunac.²⁰¹¹

617. The evidence establishes that the Bosnian Muslim refugees in Potočari did not have a genuine choice of whether to remain in or leave the Srebrenica enclave. This lack of a genuine choice was a result of the actions and behaviour of the officers and soldiers of the VRS towards the refugees.²⁰¹² In particular the Trial Chamber observes the following evidence testimony:

- the widespread knowledge among the Bosnian Muslim refugees of serious crimes committed by members of the Bosnian Serb forces in Potočari,²⁰¹³
- the organised, inhumane and frequently aggressive process of separating out and removing the male members of the population,²⁰¹⁴
- the evidence regarding the conditions in Potočari during the nights of 11 and, in particular, 12 July,²⁰¹⁵
- that many VRS soldiers were cursing at the Bosnian Muslim refugees, saying that they would be slaughtered,²⁰¹⁶ and
- the demonstrative attack by the VRS on Potočari in the morning of 12 July.²⁰¹⁷

618. All these actions by members of the Bosnian Serb forces served to show the Bosnian Muslim refugees that they did not have a genuine choice to remain in the enclave. The transport of the Bosnian Muslim refugees out of the enclave was consequently forcible in character. Although

²⁰¹⁰ The Trial Chamber notes that the destruction of dwellings is not charged.

²⁰¹¹ See *supra* paras 183, 185, 188, 190-192.

²⁰¹² See generally section II. D. 1.

²⁰¹³ See *supra* para. 166, and section II. D. 1. (g).

²⁰¹⁴ See *supra* section II. D. 1. (e).

²⁰¹⁵ Čamila Omanović, KT. 1090-91 (re 11 July), and para. 167, detailing how VRS forces were moving around the mass of Bosnian Muslim refugees separating out and removing the male members of the population, firing their weapons and shouting, the constant screams for help, *id.* “All this had the effect of making the remaining refugees want to leave the area as soon as possible.” Čamila Omanović, KT. 1716.

²⁰¹⁶ Bego Ademović, KT. 1589-90.

²⁰¹⁷ See *supra* para. 165.

documentary evidence²⁰¹⁸ indicates that the VRS used the term “evacuation” to describe the forcible transfer, the Trial Chamber is unable to find that any of the exceptions to the general prohibition of forcible population displacements apply to the actions of the VRS. Moreover, the evidence is clear that the perpetrators did not intend that those displaced would be able to return once the situation had normalised in the area.²⁰¹⁹ The Trial Chamber therefore concludes that the elements of the crime of forcible transfer, as a component crime of persecution, have been met and that this crime was committed.

4. Overall Finding on whether Elements for Persecution have been Satisfied

619. The Trial Chamber has found that the widespread and systematic attack against the Bosnian Muslim population in Srebrenica was carried out on the basis of the ethnic, national and religious affiliation of the population. The Trial Chamber recalls in this respect the announcement of General Mladić that “the time has come for us to take revenge upon the Turks in this region.”²⁰²⁰ It further notes that many VRS soldiers were cursing at the Bosnian Muslims and calling them names.²⁰²¹ VRS soldiers told refugees to leave the area calling it “Serb country” and part of “Greater Serbia”.²⁰²² When Bosnian Muslim prisoners arrived at detention centres they were forced to repeat pro-Serb texts including that “this [area] is Serbia”.²⁰²³ The Trial Chamber therefore finds that the circumstances accompanying the terrorising and the cruel and inhumane treatment of the Bosnian Muslim civilians, the subsequent forcible transfer of the women and children and the organised executions of the men substantiate the existence of a discriminatory intent on racial, religious or political grounds of the perpetrators.

620. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that the murder, the cruel and inhumane treatment and the terrorising of the civilian population as described above constitute blatant denials of fundamental rights that had a severe impact on the victims and therefore amount to persecutions. However, in relation to the destruction of the personal belongings such as clothes and wallets, the Trial Chamber does not find that those personal belongings constituted indispensable assets to their owners.²⁰²⁴ The Trial Chamber therefore does not find that the burning of those personal belongings had a severe

²⁰¹⁸ Ex. P36 and Ex. P36.1 and 2, *see supra* paras 204-206.

²⁰¹⁹ Indeed, there is evidenced that the homes of Bosnian Muslims were burned after the refugees fled the Srebrenica enclave. *See supra* para. 131 detailing how the VRS, during its attack on Srebrenica town entered houses shooting and subsequently burnt the houses.

²⁰²⁰ Ex. P21A, p. 11, transcript of Ex. P 21, video compilation.

²⁰²¹ *See supra* para. 164.

²⁰²² Bego Ademović, KT. 1589-90.

²⁰²³ Witness P-111, T. 1405.

²⁰²⁴ In relation to the destruction of identity cards, *see supra* para. 613.

enough impact on the victims to reach the threshold of equal gravity as the acts listed in Article 5 of the Statute.

621. In summary the Trial Chamber finds that the murder, cruel and inhumane treatment, terrorising and forcible transfer of the Bosnian Muslim civilians constituted a persecutorial campaign against the Bosnian Muslim population.

622. The Trial Chamber will examine the individual criminal responsibility of Vidoje Blagojević for this crime below.

E. Other Inhumane Acts (forcible transfer)

1. Applicable Law

623. The general requirements for crimes against humanity have been considered above.²⁰²⁵

624. Mindful of the principle *nullum crimen sine lege*, the Trial Chamber finds that the category of Other Inhumane Acts, as a residual category of crimes against humanity, forms part of customary international law.²⁰²⁶ It should be stressed that other inhumane acts is in itself a crime under international criminal law. The Trial Chamber observes that convictions have been entered on this ground by the International Military Tribunal at Nuremberg, this Tribunal and the Rwanda Tribunal.²⁰²⁷

²⁰²⁵ See *supra* section V. A. 2.

²⁰²⁶ In his Report pursuant to Security Council Resolution 808 (1993) concerning the establishment of the International Tribunal, the United Nations Secretary-General stated that:
“the application of the principle *nullum crime sine lege* requires that the international tribunal should apply Rules of international humanitarian law which are beyond any doubt part of customary law so that the problem of adherence of some but not all States to specific conventions does not arise. This would appear to be particularly important in the context of an international tribunal prosecuting persons responsible for serious violations of international humanitarian law.”

Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), UNSC, UN Doc. S/25704 (1993), para. 34, reprinted in 32 ILM (1993) 1163. The Secretary-General continued that “[t]he part of conventional international law which has beyond doubt become part of international customary law is the law applicable in armed conflicts as embodied in: the Geneva Conventions of 12 August 1949 for the Protection of War Victims [...]”. *Ibid.*, para. 35, reprinted in 32 ILM (1993) 1163. See also the Čelebići Appeal Judgement, para. 113.

Other Inhumane Acts has been included in the following international legal instruments: the Article 6(c) of the Nuremberg Charter; Article 5(c) of the Tokyo Charter; Article II(c) of Control Council Law No. 10; and Article 3 of the Statute of the Rwanda Tribunal, which in substance mirrors Article 5 of this Tribunal’s Statute. The crime of other inhumane acts is also found in the ILC Draft Code of Crimes against the Peace and Security of Mankind, Article 18, see Report of the International Law Commission on the work of its 48th session, 6 May-26 July 1996, Official Documents of the United Nations General Assembly’s 51st session, Supplement no. 10 (A/51/10).

²⁰²⁷ Regarding the International Military Tribunal at Nuremberg, see e.g. the Medical Case, the Justice Case, the Ministries Case, and the High Command Case, Trials of War Criminals, Volume I p. 16, Volume II p. 175-180, Volume III p. 23; Volume XIV p. 467, Volume X p. 29, 36, 462; regarding this Tribunal, see e.g. Kupreškić Trial Judgement, Kvočka Trial Judgement, Naletilić Trial Judgement, Galić Trial Judgement; regarding the Rwanda Tribunal, see e.g. Akayesu Trial Judgement.

625. The crime of Other Inhumane Acts exists in order not to unduly restrict the Statute's application with regard to crimes against humanity.²⁰²⁸ It must be stressed, however, that the principle of legality requires that a trier of fact exercise great caution in finding that an alleged act, not regulated elsewhere in Article 5 of the Statute, forms part of this crime: norms of criminal law must always provide individuals with sufficient notice of what is criminal behaviour and what is not.²⁰²⁹

626. In order to fall within the category of Other Inhumane Acts, an act or omission must fulfil the following requirements:

- a) there was an act or omission of similar seriousness to the other acts enumerated in Article 5;
- b) the act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity; and
- c) the act or omission was performed intentionally by the accused, or by a person or person for whose acts and omissions the accused bears criminal responsibility.²⁰³⁰

627. The element of "similar seriousness" is to be evaluated in light of all factual circumstances, such as the nature of the act or omission, the context within which it occurred, the individual circumstances of the victim(s) as well as the physical, mental and moral effects on the victim(s).²⁰³¹ There is no requirement that the effects on the victim(s) be long-lasting, however the fact that such were the effects will impact the determination of the seriousness of the act or omission.²⁰³²

628. It is required that the perpetrator, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim(s), or that the perpetrator knew that his act or omission was likely to cause such suffering to, or amount to a serious attack on, the human dignity of the victim(s) and, with that knowledge, acted or failed to act.²⁰³³

²⁰²⁸ See e.g. the jurisprudence of the Rwanda Tribunal in relation to sexual offences charged as other inhumane acts. *Niyitegeka* Trial Judgement, para. 460 and *Kajelijeli* Trial Judgement, para. 931.

²⁰²⁹ See regarding the principle of legality, the Appeals Chamber's Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003, para. 21, in *Prosecutor v Milan Milutinović, Nikola Šainović, and Dragoljub Ojdanić*, Case No. IT-99-37-AR72.

²⁰³⁰ *Galić* Trial Judgement, para. 152.

²⁰³¹ *Galić* Trial Judgement, para. 153.

²⁰³² *Vasiljević* Trial Judgement, para. 235.

²⁰³³ *Krnojelac* Trial Judgement, para. 132.

629. As established above, the Trial Chamber is of the opinion that the prohibition against forcible population displacements, whether in international or non-international armed conflicts, forms part of customary international law. The Trial Chamber finds that the crime of forcible transfer as defined²⁰³⁴ satisfies the three requirements above.²⁰³⁵ This crime, therefore, clearly forms part of the category of Other Inhumane Acts under Article 5(i) of the Statute.

630. Consequently, it is a crime against humanity to forcibly displace members of the civilian population unless any of the law's exceptions applies justifying the displacement.

2. Findings

631. As has already been established, the Trial Chamber has found that the crime of forcible transfer, as a component crime of persecution, was committed.²⁰³⁶

632. The Trial Chamber will examine the individual criminal responsibility of Vidoje Blagojević for this crime below.

F. Complicity in Genocide

1. Introduction

633. Vidoje Blagojević was originally charged with, *inter alia*, genocide and, alternatively, complicity to commit genocide.²⁰³⁷ In January 2002, the Prosecutor withdrew the charge of genocide.²⁰³⁸ Therefore, in the Indictment, Vidoje Blagojević is charged in Count 1B²⁰³⁹ with “complicity in genocide, punishable under Article 4(3)(e), and Articles 7(1) and 7(3) of the Statute”.

634. Article 4 (“Genocide”) of the Statute provides:

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this Article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) killing members of the group;

²⁰³⁴ See *supra* section V. D. 2. (e) for the elements of forcible transfer.

²⁰³⁵ The Trial Chamber finds no distinction in the gravity of deportation under Article 5(d) of the Statute and forcible transfer as either an underlying act for persecutions or as an inhumane act.

²⁰³⁶ See *supra* section V. D. 3. (e).

²⁰³⁷ See Annex 2 “Procedural History”, para. 1.

²⁰³⁸ Joinder Indictment, Case No IT-02-53-PT, 22 January 2002.

²⁰³⁹ Following the guilty plea of Momir Nikolić and the filing of a new indictment, the Indictment does not contain a Count 1A, as this count (genocide) was limited to Momir Nikolić.

- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

- (a) genocide;
- (b) conspiracy to commit genocide;
- (c) direct and public incitement to commit genocide;
- (d) attempt to commit genocide;
- (e) complicity in genocide.

635. The Prosecution submits that the elements for complicity in genocide under Article 4(3)(e) are the following:

- (a) the accused was an accomplice in the commission of one or more acts in Article 4(2);
- (b) the crime was committed; and
- (c) the accused knew that the crime was being committed in furtherance of the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such.²⁰⁴⁰

The Prosecution further submits that “[a]n accomplice to genocide need not consciously desire to destroy, in whole or in part, a national, ethnical, racial or religious group, as such; it is sufficient that an accomplice to genocide knew that the principal was acting with genocidal intent.”²⁰⁴¹ The Prosecution further specifies in its final brief that it is charging Blagojević for complicity in genocide “based on aiding and abetting under Articles 4(3)(e), 7(1) and 7(3).”²⁰⁴²

636. The Blagojević Defence concurs that a conviction for complicity in genocide requires that the crime of genocide was committed.²⁰⁴³ Regarding the *mens rea* requirement, the Blagojević Defence’s initial position was in agreement with that of the Prosecution: that “an accused may be convicted for complicity in genocide if [he] knew that his own acts assisted in the commission of genocide by the principal offender and was aware of the principal offender’s state of mind; it need not show that an accused shared the specific intent of the principal offender.”²⁰⁴⁴

637. Following the *Krstić* Appeal Judgement and the finding therein in relation to aiding and abetting genocide, the Prosecution sought leave to amend the Indictment in order to replace Count

²⁰⁴⁰ Indictment, para. 54; Prosecution Pre-Trial Brief, para. 206. Regarding the knowledge requirement for aiding and abetting genocide as a form of complicity, *see* Prosecution Final Brief, para. 583.

²⁰⁴¹ Prosecution Pre-Trial Brief, para. 207.

²⁰⁴² Prosecution Final Brief, para. 584.

²⁰⁴³ Blagojević Motion for Acquittal, para. 27.

²⁰⁴⁴ Blagojević Motion for Acquittal, para. 29.

1B, complicity in genocide, with a charge of aiding and abetting genocide, pursuant to Article 4(3)(a) of the Statute.²⁰⁴⁵ The Blagojević Defence objected to the amendment.²⁰⁴⁶ It also objected to the Prosecution's submission that aiding and abetting genocide is already included in the charge of complicity in genocide,²⁰⁴⁷ and argued that complicity in genocide always requires specific intent, as opposed to aiding and abetting genocide for which "mere knowledge" is to be proved.²⁰⁴⁸ The Blagojević Defence concluded that the amendment sought would amount to a charge of a lesser gravity that was never pled and for which the Trial Chamber could not enter a conviction on the basis of the Indictment.²⁰⁴⁹ Without addressing the submissions of the Parties as to the elements of complicity in genocide, the Trial Chamber denied the Prosecution's motion to amend the Indictment, considering that the proposed amendment at that stage of the proceedings was not in the interests of justice.²⁰⁵⁰ The Blagojević Defence reiterates in its Final Brief that there must be a specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group for an accused to be liable for complicity to commit genocide.²⁰⁵¹

2. Discussion

638. Complicity in genocide refers to the liability incurred by those who associate themselves in the *commission* of the crime, and does not encompass association in an attempt or any other preparatory act which does not result in the commission of the crime: complicity in genocide requires that genocide was committed.²⁰⁵² For this reason, the Trial Chamber will first determine whether genocide was committed in July 1995 following the fall of the Srebrenica enclave, and if it determines that it was committed, it will consider the legal requirements for complicity in genocide.

²⁰⁴⁵ Prosecution's Motion for Leave to File Fourth Amended Joinder Indictment, 14 May 2004.

²⁰⁴⁶ Vidoje Blagojević's Response to Prosecution's Motion for Leave to File Fourth Amended Joinder Indictment, 26 May 2004, para. 9.

²⁰⁴⁷ Vidoje Blagojević's Response to Prosecution's Motion for Leave to File Fourth Amended Joinder Indictment, 26 May 2004, para. 9.

²⁰⁴⁸ Motion Hearing of 8 June 2004, T. 10457. The Defence pointed out that the definition of "aiding and abetting genocide" as laid down in the *Krstić* Appeal Chamber should be taken with caution as this definition may be altered or at least qualified in future judgements by the Appeals Chamber that specifically address complicity in genocide. *Ibid.*, T. 10459-60.

²⁰⁴⁹ Motion Hearing, 8 June 2004, T. 10461-63.

²⁰⁵⁰ Decision on Prosecution's Motion for Leave to File Fourth Amended Joinder Indictment, 10 June 2004.

²⁰⁵¹ Blagojević Final Brief, para. 121.

²⁰⁵² *Stakić* Trial Judgement, para. 561; *Akayesu* Trial Judgement, paras 527, 530; *Musema* Trial Judgement, paras 171, 172. Both the *Akayesu* and *Musema* Trial Judgements noted that the *travaux préparatoires* of the Genocide Convention confirm this interpretation as they show that "only complicity in the completed offence of genocide was intended for punishment and not complicity in an attempt to commit genocide, complicity in incitement to commit genocide nor complicity in conspiracy to commit genocide, all of which were, in the eyes of some states, too vague to be punishable under the Convention". *Akayesu* Trial Judgement, fn. 105; *Musema* Trial Judgement, para. 172.

(a) Genocide

639. Article 4(2) and (3) of the Statute reproduce *verbatim* Article II and III of the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 (“Genocide Convention”). It is widely recognised that the law set out in the Convention reflect customary international law and that the norm prohibiting genocide constitutes *jus cogens*.²⁰⁵³

640. Article 4 of the Statute characterises genocide by the following constitutive elements:

- (1) one or several of the underlying acts of the offence, which consist of two parts: (i) the *actus reus* enumerated in subparagraphs (a) to (e) of Article 4(2); and (ii) the *mens rea* required for the commission of each; and
- (2) the specific intent of the crime of genocide, which is described as the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.²⁰⁵⁴

(i) The underlying acts

641. The Indictment alleges that genocide was committed through killings and the infliction of serious bodily or mental harm.²⁰⁵⁵ The *actus reus* of the crime of genocide as charged in the Indictment is hence limited to Articles 4(2)(a) and 4(2)(b) of the Statute.²⁰⁵⁶

a. Killings members of the group

642. In the jurisprudence of the Tribunal, the term “killings” referred to under Article 4(2)(a) has been equated with murder.²⁰⁵⁷ The elements of “murder” have already been discussed above.²⁰⁵⁸

²⁰⁵³ See *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, (1951) ICJ Reports 23. See e.g., *Brdanin* Trial Judgement, para. 680; *Stakić* Trial Judgement, para. 500.

²⁰⁵⁴ See e.g. *Krstić* Trial Judgement, para. 542; *Brdanin* Trial Judgement, para. 681.

²⁰⁵⁵ Indictment, para. 35.

²⁰⁵⁶ The Trial Chamber observes that in its Final Brief, the Prosecution submits that the Bosnian Serb forces engaged in “several of these acts” listed under Article 4(2), and in addition to Articles 4(2)(a) and 4(2)(b), argue that the evidence establishes that the “Bosnian Serb forces deliberately inflicted on the group of Bosnian Muslims conditions of life calculated to bring about its physical destruction in part” through, *inter alia* the blocking of humanitarian convoys and other acts which carried out the objectives of Directive 7 and 7.1, and the Krivaja 95 plan. Prosecution Final Brief, para. 586. As the Prosecution has not pled Article 4(2)(c) in the Indictment, the Trial Chamber has not considered this act as an *actus reus* for genocide as charged in this case.

²⁰⁵⁷ See *Kayishema* Appeal Judgement, para. 151. The French version of the Statute refers to “meurtre”, whereas the English version uses the term “killings”, which includes both intentional and non-intentional homicides. In accordance with the general principle of interpretation *in dubio pro reo*, the Tribunals’ case law has opted for the interpretation most favourable to the accused and found that the term “killings”, in the context of a genocide charge, must be interpreted as referring to the definition of murder, i.e. intentional homicide. See also *Jelisić* Trial Judgement, para. 63; *Krstić* Trial Judgement, para. 543.

643. The Prosecution alleges that over 7,000 Bosnian Muslim men were killed during the indictment period.²⁰⁵⁹ The Trial Chamber has previously established this allegation as being proved beyond reasonable doubt.²⁰⁶⁰

b. Causing serious bodily or mental harm to members of the group

644. No specific bodily or mental harm is alleged in the Indictment under Count 1B. However, the Prosecution Final Brief explains that the killing of the over 7,000 Bosnian Muslim men “caused the men serious bodily harm”, and that “the killing and abuse of the men, combined with the forced transfer of the women out of Srebrenica”, “caused the survivors to suffer serious mental harm.”²⁰⁶¹ The Prosecution referred to the lasting effects of the psychological trauma suffered by the survivors of the killings. The Prosecution further submitted that the women from Srebrenica still suffer terrible nightmares, feeling of fear, depression and their psychological condition is “still extremely grave”.²⁰⁶²

645. The term “serious bodily or mental harm” is not defined in the Statute. The Trial Chamber in the *Kayishema and Ruzindana* case found that bodily harm refers to harm that seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses.²⁰⁶³ The Tribunals’ case-law has specified that the harm need not be permanent or irremediable,²⁰⁶⁴ but “[i]t must be harm that results in a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life.”²⁰⁶⁵ The *Semanza* Trial Judgement has specified that mental harm refers to more than minor or temporary impairment of mental faculties.²⁰⁶⁶ Furthermore, the harm must be inflicted intentionally.²⁰⁶⁷

²⁰⁵⁸ See *supra* section V. B. 1.

²⁰⁵⁹ Indictment, para. 30; Prosecution Final Brief, para. 586.

²⁰⁶⁰ See *supra* section V. B. 2.

²⁰⁶¹ Prosecution Final Brief, para. 586. In the Prosecution Pre-Trial Brief, the Prosecution quoted the *Akayesu* Trial Judgement where it reads: “[...] the Chamber holds that inhuman treatment, torture, rape, sexual abuse and deportation are among the acts which may cause serious bodily or mental injury”. It also referred to the *Krstić* Trial Chamber, which stated that: “the wounds and trauma suffered by the few individuals who managed to survive the mass executions [...] constituted serious bodily and mental harm within the meaning of Article 4(2)(b)”. Prosecution Pre-Trial Brief, paras 192-93.

²⁰⁶² Prosecution Final Brief, para. 586, citing Teufika Ibrahimfendić, KT. 5816; Jasna Zečević, KT. 5786-92.

²⁰⁶³ *Kayishema and Ruzindana* Trial Judgement, para. 109.

²⁰⁶⁴ *Kayishema and Ruzindana* Trial Judgement, para. 108; *Akayesu* Trial Judgement, para. 502; *Krstić* Trial Judgement, para. 513.

²⁰⁶⁵ *Krstić* Trial Judgement, para. 513. The International Law Commission has observed that “the bodily or mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part.” See Report of the International Law Commission on the Work of its Forty-Eighth Session 6 May – 26 July 1996, UN GAOR International Law Commission, 51st Sess., Supp. No. 10, UN Doc. A/51/10 (1996) (“ILC Report 1996”), p. 91.

²⁰⁶⁶ *Semanza* Trial Judgement, paras 321, 322; *Ntagerura, Bagambiki and Imanishimwe* Trial Judgement, para. 664.

²⁰⁶⁷ *Brđanin* Trial Judgement, para. 690. See also *Čelebići* Trial Judgement, para. 543 (referring to cruel treatment under common Article 3); *Kordić* Trial Judgement, paras 245, 256 (referring respectively to willfully causing

646. Whether an act constitutes “serious bodily or mental harm” within the meaning of Article 4 of the Statute must be assessed on a case-by-case basis, with due regard for the particular circumstances of the case.²⁰⁶⁸ Like the ICTR,²⁰⁶⁹ this Tribunal has construed the term to include acts of torture, inhuman or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and deportation.²⁰⁷⁰ In particular, the *Krstić* Trial Chamber held that “inhuman treatment [...] and deportation are among the acts which may cause serious bodily or mental injury.”²⁰⁷¹ It found support for this in the case law of this Tribunal²⁰⁷² as well as in other sources. The Eichmann Judgement rendered by the Jerusalem District Court on 12 December 1961 had already included “deportation” among the acts that could constitute serious bodily or mental harm.²⁰⁷³

647. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that the trauma and wounds suffered by those individuals who managed to survive the mass executions does constitute serious bodily and mental harm. The fear of being captured, and, at the moment of the separation, the sense of utter helplessness and extreme fear for their family and friends’ safety as well as for their own safety, is a traumatic experience from which one will not quickly – if ever – recover. Furthermore, the Trial Chamber finds that the men suffered mental harm having their identification documents taken away from them, seeing that they would not be exchanged as previously told, and when they understood what their ultimate fate was. Upon

great suffering or serious injury to body or health under Article 2 and inhumane treatment under Article 2); *Blaškić* Trial Judgement, para. 243 and *Kordić* Trial Judgement, para. 271 (*referring* to inhumane treatment under Article 2), *Vasiljević* Trial Judgement, para. 234 (*referring* to inhumane acts under Article 5, inhumane treatment under Article 3 and cruel treatment under Article 2).

²⁰⁶⁸ *Krstić* Trial Judgement, para. 513.

²⁰⁶⁹ See *Rutaganda* Trial Judgement, para. 51; *Musema* Trial Judgement, para. 156; *Bagilishema* Trial Judgement, para. 59; *Gacumbiisi* Trial Judgement, para. 291; *Kajelijeli* Trial Judgement, para. 815.

²⁰⁷⁰ *Krstić* Trial Judgement, para. 513. See also *Stakić* Trial Judgement, para. 516.

²⁰⁷¹ *Krstić* Trial Judgement, para. 513. In addition to this, the same judgement includes “forcible transfer” under “inhuman treatment”, which according to the above cited sentence is included in subparagraph (b) (para. 518).

²⁰⁷² In the decision on the review of the indictment against *Karadžić and Mladić* pursuant to Rule 61, it is stated that cruel treatment, torture, rape and deportation could constitute serious bodily or mental harm done to members of a group under a count of genocide. See *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, Cases Nos. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, para. 93.

Subparagraph (c) of Article 4 (2) of the Statute was intended to cover so-called “slow death”, or concentration camps, cases. See Draft Convention on the Crime of Genocide, prepared by the Secretary-General of the United Nations in pursuance of the resolution of the Economic and Social Council dated 28 March 1947, UN Doc. E/447 (26 June 1947), p. 25. The Trial Chamber finds that there is support for forcible transfer to be included in subparagraph (c). The International Law Commission included “deportation” and “forcible transfer of members of the group, particularly when it involves the separation of family members” in this subparagraph. See ILC Report 1996, p. 93. The same view was expressed by some Trial Chambers at ICTR. See, among others, *Akayesu* Trial Judgement, para. 506; *Rutaganda* Trial Judgement, para. 52; *Musema* Trial Judgement, para. 157 - where “systematic expulsion from homes” was considered to be included under subparagraph (c). This interpretation is consistent with the “Elements of the Crimes” adopted by the Assembly of the States Parties to the International Criminal Court (“ICC”). Elements of the Crimes, Report of the Assembly of States Parties, First Session, 3-10 September 2002, ICC-ASP/1/3, Article 6 (c), note 4.

²⁰⁷³ The Israeli Government Prosecutor General v. Adolph Eichmann, Jerusalem District Court, 12 December 1961, in International Law Reports (ILR), vol. 36 (1968) p. 340.

arrival at an execution site, they saw the killing fields covered of bodies of the Bosnian Muslim men brought to the execution site before them and murdered. After having witnessed the executions of relatives and friends, and in some cases suffering from injuries themselves, they suffered the further mental anguish of lying still, in fear, under the bodies - sometimes of relative or friends - for long hours, listening to the sounds of the executions, of the moans of those suffering in pain, and then of the machines as mass graves were dug.²⁰⁷⁴

648. The Trial Chamber recalls the testimony of Witness P-111, a survivor of the Petkovci Dam mass execution, who was badly injured and who managed to survive remaining in the same position among the bodies of the other dead men:²⁰⁷⁵

as others were being killed, I was praying that I be killed, too, because I was in terrible pain. [...] So I just thought that my mother would never know where I was, as I was thinking that I'd like to die.²⁰⁷⁶

649. The Trial Chamber is also aware that the men who were separated, detained, abused and subsequently killed suffered serious mental harm in that they knew what their fate was: the last sight that many of the victims saw was killing fields full of bodies of the Bosnian Muslim men brought to the execution site before them.

650. Furthermore, the Trial Chamber is convinced that the forced displacement of women, children, and elderly people was itself a traumatic experience, which, in the circumstances of this case, reaches the requisite level of causing serious mental harm under Article 4(2)(b) of the Statute. The forced displacement began with the Bosnian Muslim population fleeing from the enclave after a five-day military offensive, while being shot at as they moved from Srebrenica town to Potočari in search of refuge from the fighting. Leaving their homes and possessions, the Bosnian Muslims did so after determining that it was simply impossible to remain safe in Srebrenica town. Upon arrival in Potočari, the Bosnian Muslim population did not find the refuge they were seeking: rather they found UNPROFOR unable to provide the assistance they needed: DutchBat was woefully unprepared for the mass influx of people to its base. After months of having its supply convoys searched or blocked, it did not have adequate supplies of food, medicine or even water for the thousands of Bosnian Muslims who arrived. Furthermore, it did

²⁰⁷⁴ Mevludin Orić was transported to the execution site at Orahovac with his cousin, Hariz. The two men held hands as the bursts of fire started. Mevludin Orić fell to the ground, with his cousin falling on top of him. Mevludin Orić lay there, under his cousin's body, listening to the screams and groans of the injured men, while group after group of men was brought to the location and executed. Miraculously, Mevludin Orić was not hurt. Mevludin Orić, T. 1357. Mevludin Orić witnessed the meadow full of bodies. *Ibid*, T. 1360. He described his escape from the meadow as follows: "I couldn't crawl away. When I got up, I found Hurem who was alive. And I stepped across dead bodies, and there was too much blood that was beginning to congeal. So it was very hard. It was very slippery to walk there." *Id*.

²⁰⁷⁵ Witness P-111, T. 1417-23.

²⁰⁷⁶ Witness P-111, T. 1421.

not have adequate space in which to keep 25,000-30,000 people protected from the heat, let alone a place to rest or to sleep. Next, the Bosnian Muslims watched helplessly as Potočari was overrun – and essentially over taken – by Bosnian Serb forces, including General Mladić. As the brutal separations began under the watchful eye of the Bosnian Serb forces and the abuse of the population became more widespread, particularly during the “night of terror”, the Bosnian Muslims were terrified – and helpless. After their husbands, fathers and sons were taken from them, the Bosnian Muslim women felt even more vulnerable and afraid – afraid not only for their own safety, but especially that of their loved ones. Having left Srebrenica to escape from the Bosnian Serbs, the Bosnian Muslim population saw that they must move farther than Potočari to be safe. As they boarded the buses, without being asked even for their name, the Bosnian Muslims saw the smoke from their homes being burned and knew that this was not a temporary displacement for their immediate safety. Rather, this displacement was a critical step in achieving the ultimate objective of the attack on the Srebrenica enclave to eliminate the Bosnian Muslim population from the enclave.

651. The Trial Chamber has been provided with ample evidence on the severe consequences that the separation, the loss of relatives and friends and the forcible transfer had on the survivors of all this. In this respect, the Trial Chamber recalls the testimony of a woman who was in Potočari, walking through a ‘corridor’ of soldiers on the way to the buses, when her older son was separated from her.

When we were halfway through, I heard a voice say, "Popovic, look out for this one," and I immediately realised that he was referring to my child. But then there were other children there as well. There was my sister-in-law's child and some other people. Then the soldiers insisted and I felt paralysed at one point. But I mustered some courage to whisper in my son's ear and to tell him, "Don't worry, sonny. Just go. Keep going." We walked for about 50 metres, and then from the left column one of their soldiers jumped out, and he spoke to my child. He told us to move to the right side, and he told my son, "Young man, you should go to the left side." And then he said, "Why me? I was born in 1981." But he repeated what he had said, "You people should go to the right-hand side." He had some kind of bags in his hand, and the soldier told him to throw the bag to the right side and to go to the left, but I grabbed him by his hand and I -- he kept repeating, "I was born in 1981. What will you do with me? What do you want me do?" And then I begged them, I pleaded with them. Why are you taking him? He was born in 1981. But he repeated his order. And I held him so hard, but he grabbed him. And then my son threw out that bag, and the soldier picked up the bag and threw it on a pile on the right-hand side, and he took my son's hand, and he dragged him to the left side. And he turned around, and then he told me, "Mommy, please, can you get that bag for me? Could you please get it for me?" That was the last time I heard his voice.²⁰⁷⁷

The witness was transported to Tišća with her young son.²⁰⁷⁸ She lost many relatives and friends after the fall of Srebrenica.²⁰⁷⁹ She lives now, in dire economic conditions, in a single room of a

²⁰⁷⁷ Witness 76, KT. 5754-55.

²⁰⁷⁸ Witness 76, KT. 5756.

²⁰⁷⁹ Among the relatives whom she lost, there were her three brothers, two nephews, her sister-in-law. Witness 76, T. 5758-59.

collective centre with her younger son, her daughter and two grandchildren.²⁰⁸⁰ Concerning the current living situation, she said:

You can only imagine what it's like. Every minute of the day I wish I was no longer alive. [...] sometimes I also think it would be better if none of us had survived. I would prefer it.²⁰⁸¹

652. The Trial Chamber has no doubt that the suffering of the women, children and elderly people who were cruelly separated from their loved and forcibly transferred, and the terrible consequences that this had on their life, reaches the threshold of serious mental harm under Article 4(2)(b) of the Statute. The Trial Chamber also finds that the level of mental anguish suffered by the women, children and elderly people who were forcibly displaced from their homes - in such a manner as to traumatise them and prevent them from ever returning - obliged to abandon their property and their belongings as well as their traditions and more in general their relationship with the territory they were living on, does constitute serious mental harm.

653. Finally, the Trial Chamber is aware that many of the survivors, who lost their relatives under the horrific circumstances described above, are still searching for the bodies of their loved ones and looking for any information which would establish with certainty whether they are dead, and, if so, the exact circumstances of their death. The Trial Chamber is convinced that the mental harm suffered by these survivors reaches the required threshold to constitute serious mental harm.

654. The Trial Chamber therefore finds that there is sufficient evidence to establish beyond reasonable doubt that in the circumstances of this case forcible transfer constituted 'serious mental harm' within the meaning of Article 4(2)(b). The Trial Chamber also finds that the perpetrators intended that the forcible transfer, and the way it was carried out, would cause serious mental harm to the victims.

(ii) The specific intent for genocide

655. Article 4 of the Statute describes the specific intent of the crime of genocide as the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".²⁰⁸² The discussion below will deal with each aspect of this definition.

a. "Intent"

²⁰⁸⁰ The witness is unemployed and she only lives with her husband's social insurance, which is very low. She said that "there is no comparison" between her life before the war and her current life. Witness 76, KT. 5759-61.

²⁰⁸¹ Witness 76, KT. 5759 and 5761.

²⁰⁸² The Trial Chamber observes that particular intent required for genocide has commonly been referred to as 'specific intent', 'special intent', '*dolus specialis*' or 'genocidal intent'.

656. The Appeals Chamber has held that “the specific intent requires that the perpetrator seeks to achieve the destruction, in whole or in part, of a national, ethnical, racial or religious group, as such,”²⁰⁸³ although it found that the existence of a plan or policy is not a legal requirement of the crime.²⁰⁸⁴ It is not sufficient that the perpetrator simply knew that the underlying crime would inevitably or likely result in the destruction of the group. The destruction, in whole or in part, must be the aim of the underlying crime(s).

b. “Destroy”

657. The Appeals Chamber has recently confirmed that, by using the term “destroy”, “[t]he Genocide Convention, and customary international law in general, prohibit only the physical or biological destruction of a human group.”²⁰⁸⁵ In the *travaux préparatoires* of the Convention, a distinction was made between physical or biological genocide on the one hand and cultural genocide on the other.²⁰⁸⁶ The International Law Commission described the difference between these concepts in the following terms:

[T]he destruction in question is the material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group. The national or religious element and the racial or ethnic element are not taken into consideration in the definition of the word 'destruction', which must be taken only in its material sense, its physical or biological sense.²⁰⁸⁷

658. The Trial Chamber notes that what was originally intended to be excluded from the definition of the crime was cultural genocide, and that this does not in itself prevent that physical or biological genocide could extend beyond killings of the members of the group. The Trial Chamber acknowledges that there have been attempts, both in the Tribunal’s case-law and in other sources, to interpret the concept of physical or biological destruction in this way.²⁰⁸⁸

659. In this respect, the Trial Chamber recalls the opinion of Judge Shahabuddeen, in the *Krstić* Appeal Judgement, according to which a “distinction should be made between the nature of the

²⁰⁸³ *Jelisić* Appeal Judgement, para. 46

²⁰⁸⁴ *Jelisić* Appeal Judgement, para. 48.

²⁰⁸⁵ *Krstić* Appeal Judgement, para. 25. The destruction of a group’s sociological or cultural identity in itself does not meet the definition of genocide under customary international law. *Ibid*, referring to *Krstić* Trial Judgement, para. 580.

²⁰⁸⁶ Cultural genocide was included in the genocide definition both in the Draft Convention on the Crime of Genocide, prepared by the Secretary-General in pursuance of the resolution of the Economic and Social Council dated 28 March 1947 (UN Doc. E/447, 26 June 1947) and in the Draft Conventions drawn up by the Ad Hoc Committee on Genocide (UN Doc. E/794, 24 May 1948).

²⁰⁸⁷ 1996 ILC Draft Code.

²⁰⁸⁸ The *Krstić* Trial Chamber, for example, admitted that recent developments had indicated a broadening of the definition of genocide in this respect to include other forms of genocide. *Krstić* Trial Judgement, paras 577-79.

listed ‘acts’ [of genocide] and the ‘intent’ with which they are done.”²⁰⁸⁹ While the listed acts indeed must take a physical or biological form, the same is not required for the intent.²⁰⁹⁰ With the exceptions of the acts listed in Article 4(2)(c) and (d), “the Statute itself does not require an intent to cause physical or biological destruction of the group in whole or in part”.²⁰⁹¹ Judge Shahabuddeen found that:

It is the group which is protected. A group is constituted by characteristics – often intangible - binding together a collection of people as a social unit. If those characteristics have been destroyed in pursuance of the intent with which a listed act of a physical or biological nature was done, it is not convincing to say that the destruction, though effectively obliterating the group, is not genocide because the obliteration was not physical or biological.²⁰⁹²

Judge Shahabuddeen concluded that “[t]he intent certainly has to be to destroy, but, except for the listed act, there is no reason why the destruction must always be physical or biological.”²⁰⁹³

660. In relation to forcible transfer, Judge Shahabuddeen found that “mere displacement” does not amount to genocide. However, he further found that displacement can constitute genocide when the consequence is dissolution of the group.²⁰⁹⁴ Furthermore, he found that in the *Krstić* case,

[...] there was more than mere displacement. The killings, together with a determined effort to capture others for killing, the forced transportation or exile of the remaining population, and the destruction of homes and places of worship, constituted a single operation which was executed with intent to destroy a group in whole or in part within the meaning of the chapeau to paragraph 2 of article 4 of the Statute.²⁰⁹⁵

661. The Trial Chamber observes, moreover, that the majority of the *Krstić* Appeals Chamber, held that:

[...] forcible transfer could be an additional means by which to ensure the physical destruction of the Bosnian Muslim community in Srebrenica. The transfer completed the removal of all Bosnian Muslims from Srebrenica, thereby *eliminating even the residual possibility that the Muslim community in the area could reconstitute itself*.²⁰⁹⁶

662. A broader notion of the term ‘destroy’, encompassing also “acts which may fall short of causing death”,²⁰⁹⁷ had already been considered by the ICTR. In the *Akayesu* case the Trial Chamber found that acts of rape and sexual violence formed an integral part of the process of

²⁰⁸⁹ *Krstić* Appeal Judgement, Partial dissenting opinion of Judge Shahabuddeen (“Partial dissenting opinion of Judge Shahabuddeen”) para. 48.

²⁰⁹⁰ Partial dissenting opinion of Judge Shahabuddeen, para. 48.

²⁰⁹¹ Partial dissenting opinion of Judge Shahabuddeen, para. 48.

²⁰⁹² Partial dissenting opinion of Judge Shahabuddeen, para. 50.

²⁰⁹³ Partial dissenting opinion of Judge Shahabuddeen, para. 51.

²⁰⁹⁴ This view was also expressed by K. Kreß, *Münchener Kommentar zum StGB*, Rn 57, §6 VStGB, (Munich 2003), W. A. Schabas, *Genocide in International Law* (Cambridge University Press, 2000), p. 200, and adopted by the *Stakić* Trial Chamber. See *Stakić* Trial Judgement, para. 519.

²⁰⁹⁵ Judge Shahabuddeen partial dissenting opinion, para. 57.

²⁰⁹⁶ *Krstić* Appeal Judgement, para. 31, referring to *Krstić* Trial Judgement, para. 595.

destruction of the Tutsi as a group and could therefore constitute genocide. In particular, the Trial Chamber stated that

[t]hese rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole [...] Sexual violence was a step in the process of destruction of the Tutsi group – destruction of the spirit, of the will to live, and of life itself.²⁰⁹⁸

The Trial Chambers in the *Kayishema and Ruzindana* case and in the *Musema* case concurred with this view.²⁰⁹⁹

663. Regarding displacement of people, further support for a broader notion of destruction can also be found elsewhere. Judge Elihu Lauterpacht, in the case before the International Court of Justice concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide,²¹⁰⁰ concluded, in his separate opinion, that:

[...] the *forced migration of civilians* [...] is, in truth, part of a deliberate campaign by the Serbs to eliminate Muslim control of, and presence in, substantial parts of Bosnia-Herzegovina. Such being the case, it is difficult to regard the Serbian acts as other than acts of genocide [...].²¹⁰¹

Furthermore, the Commission of Experts found that:

The character of the attack on the leadership must be viewed in the context of the fate or what happened to the rest of the group. If a group has its leadership exterminated, and at the same time or in the wake of that, has a relatively large number of the members of the group killed or subjected to other heinous acts, for example *deported on a large scale or forced to flee*, the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the Convention in a spirit consistent with its purpose.²¹⁰²

The Trial Chamber observes that a number of UN General Assembly resolutions have equated ‘ethnic cleansing,’ which includes as a central component the forcible transfer and deportation of civilians, with genocide.²¹⁰³

²⁰⁹⁷ *Kayishema and Ruzindana* Trial Judgement, para. 95.

²⁰⁹⁸ *Akayesu* Trial Judgement, paras 731-732.

²⁰⁹⁹ The *Kayishema and Ruzindana* Trial Chamber also referred to the International Law Commission, which stated that “it is not necessary to intend to achieve the complete annihilation of a group from every corner of the globe”. *Kayishema and Ruzindana* Trial Judgement, para. 95, referring to 1996 ILC Draft Code, p. 42. The same reasoning of the *Akayesu* Trial Judgement has been adopted by the *Musema* Trial Chamber. See *Musema* Trial Judgement, para. 933.

²¹⁰⁰ Application of the Convention of the Prevention and Punishment of the Crime of Genocide, *Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)*, Order on further Requests for the Indication of Provisional Measures, ICJ Reports, 1993, pp. 325-795.

²¹⁰¹ *Ibid.*, Separate opinion of Judge Lauterpacht, para. 69 (emphasis added).

²¹⁰² Final Report of the Commission of Experts, Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674, 27 May 1994, para. 94 (emphasis added).

²¹⁰³ See, for example, Resolution 47/121, UN Doc. AG/Res/47/121 (18 December 1992) stating in the preamble: “Gravely concerned about the deterioration of the situation in the Republic of Bosnia and Herzegovina owing to intensified aggressive acts by the Serbian and Montenegrin forces to acquire more territories by force, characterized by a consistent pattern of gross and systematic violations of human rights, a burgeoning refugee population resulting from mass expulsions of defenceless civilians from their homes and the existence in Serbian

664. The Trial Chamber finally notes the judgement of the Federal Constitutional Court of Germany, explaining that

the statutory definition of genocide defends a supra-individual object of legal protection, *i.e.* the *social* existence of the group [and that] the intent to destroy the group [...] extends beyond physical and biological extermination [...]. The text of the law does not therefore compel the interpretation that the culprit's intent must be to exterminate physically at least a substantial number of members of the group.²¹⁰⁴

Furthermore, it found that such an interpretation would not be in violation of international law and that "it has generally been accepted that the limit of the meaning of the text has been exceeded only when the intention to destroy relates solely to a group's cultural identity [that is, cultural genocide]".²¹⁰⁵ The Constitutional Court upheld thereby, as constitutional, an interpretation by the *Oberlandesgericht Düsseldorf* (Higher Regional Court of Düsseldorf) and the *Bundesgerichtshof* (Federal Supreme Court) of the term "destroy" as meaning the destruction of "the group as a social unit in its specificity, uniqueness and feeling of belonging [and that] the biological-physical destruction of the group is not required".²¹⁰⁶

665. The Trial Chamber finds that the term "destroy" in the genocide definition can encompass the forcible transfer of a population. The Trial Chamber recalls that the specific intent for the crime of genocide must be to destroy the group as a separate and distinct entity.²¹⁰⁷ In this regard, the Trial Chamber concurs with the observation made by the *Sikirica* Trial Chamber that:

[t]he ultimate victim of genocide is the group, although its destruction necessarily requires the commission of crimes against its members, that is, against individuals belonging to that group.²¹⁰⁸

666. The Trial Chamber finds in this respect that the physical or biological destruction of a group is not necessarily the death of the group members. While killing large numbers of a group may be the most direct means of destroying a group, other acts or series of acts, can also lead to the destruction of the group. A group is comprised of its individuals, but also of its history,

and Montenegrin controlled areas of concentration camps and detention centres, in pursuit of the abhorrent policy of "ethnic cleansing", which is a form of genocide."

²¹⁰⁴ Prosecutor v. Nikola Jorgić, Judgement, Federal Constitutional Court, 2 BvR 1290/99 (12 December 2000) p. 13 (unofficial translation).

²¹⁰⁵ *Ibid.* pp 17-22 (unofficial translation).

²¹⁰⁶ Prosecutor v. Nikola Jorgić, Judgement, Higher Regional Court of Düsseldorf, 2 StE 8/96 (26 September 1997) pp. 94-95 (unofficial translation). See also Prosecutor v. Nikola Jorgić, Judgement, Federal Supreme Court, 3 StR 215/98 (30 April 1999) p. 25 (unofficial translation).

²¹⁰⁷ *Brđanin* Trial Judgement, para. 698, citing *Stakić* Trial Judgement, para. 521; *Krstić* Trial Judgement, para. 552; *Jelisić* Trial Judgement, para. 79. Further, the ILC has stated that: "[t]he group itself is the ultimate target or intended victim of this type of massive criminal conduct (...) the intention must be to destroy the group 'as such', meaning as a separate and distinct entity", ILC Draft Code, p. 88. See also Resolution 96(I) of the UN General Assembly: "Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings" (General Assembly Resolution 96(I), 1 GAOR, 1st Session, 55th meeting pp 188-189, UN Doc. A/64/Add.1, 1947).

traditions, the relationship between its members, the relationship with other groups, the relationship with the land. The Trial Chamber finds that the physical or biological destruction of the group is the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself – particularly when it involves the separation of its members. In such cases the Trial Chamber finds that the forcible transfer of individuals could lead to the material destruction of the group, since the group ceases to exist as a group, or at least as the group it was. The Trial Chamber emphasises that its reasoning and conclusion are not an argument for the recognition of cultural genocide, but rather an attempt to clarify the meaning of physical or biological destruction.

c. “National, ethnical, racial or religious groups”

667. Article 4 of the Statute protects national, ethnical, racial or religious groups.²¹⁰⁹ In accordance with the case-law of the Tribunal, a national, ethnical, racial or religious group is identified “by using as a criterion the stigmatisation of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnical, racial or religious characteristics.”²¹¹⁰ The Trial Chamber finds that the correct determination of the relevant protected group has to be made on a case-by-case basis, consulting both objective and subjective criteria.²¹¹¹ The Prosecution alleges that the targeted group was the Bosnian Muslim people.²¹¹² The Trial Chamber finds that the Bosnian Muslim people is a protected group under Article 4 of the Statute.²¹¹³

d. “In whole or in part”

668. The Appeals Chamber has held that the term “in whole or in part” must be interpreted as requiring that “the alleged perpetrator intended to destroy at least a substantial part of the protected group.”²¹¹⁴ The Appeals Chamber has specified that “the numeric size of the targeted part of the group,” which should be evaluated not only in absolute terms but also in relation to the overall size of the entire group, as well as “the prominence” within the group of the targeted portion, are among the factors to consider when determining whether the targeted part is

²¹⁰⁸ *Brđanin* Trial Judgement, para. 698, (“*Sikirica* Rule 98 bis Decision”), para. 89.

²¹⁰⁹ *See Brđanin* Trial Judgement, para. 682.

²¹¹⁰ *Krstić* Trial Judgement, para. 557, *Nikolić* Review of the indictment pursuant to Rule 61, Decision of Trial Chamber I, 20 October 1995, Case No. IT-94-2-R61, para. 27; *Jelisić* Judgement, para. 70.

²¹¹¹ *Brđanin* Trial Judgement, para. 684, *citing Semanza* Trial Judgement, para. 317 and *Kajelijeli* Trial Judgement, para. 811.

²¹¹² Indictment, para. 35.

²¹¹³ This was also the finding in the *Krstić* Trial Judgement, paras 559-560.

²¹¹⁴ *Krstić* Appeal Judgement, para. 12. *See also Jelisić*, Trial Judgement, para. 82; *Sikirica* Rule 98 bis Decision paras 66-86; *Krstić* Trial Judgement, paras 590-591; *Akayesu* Trial Judgement, para. 521; *Semanza* Trial Judgement, para. 312; *Nahimana et al.* Trial Judgement, para. 948; *Ndindabahizi* Trial Judgement, para. 454.

substantial enough to meet this requirement.²¹¹⁵ The Appeals Chamber further found that “[t]he intent to destroy formed by a perpetrator of genocide will always be limited by the opportunity presented to him. While this factor alone will not indicate whether the targeted group is substantial, it can – in combination with other factors – inform the analysis.”²¹¹⁶

e. “As such”

669. The victims of the crime must be targeted because of their membership in the protected group, although not necessarily solely because of such membership.²¹¹⁷

670. As mentioned above, the Trial Chamber recalls that the specific intent must be to destroy the group as a separate and distinct entity.²¹¹⁸

(iii) Findings: was genocide committed?

671. As outlined above, the underlying acts of genocide have been established.²¹¹⁹ Over 7,000 Bosnian Muslim men from Srebrenica were massacred. The forcible transfer out of the enclave of the women, children and elderly, in combination with those killings, or on its own, caused the survivors to suffer serious mental harm.

672. Many individuals were involved in these criminal acts, some of whom are named in the Indictment and others are referred to more generally as officers of the MUP or VRS. Under these circumstances, the Trial Chamber, in accordance with the case-law mentioned above, analysed all the evidence presented at trial in order to determine whether the evidence demonstrates an intent to destroy a substantial part of the Bosnian Muslim group.

673. The Trial Chamber finds that in the present case the targeted group was the Bosnian Muslims of Srebrenica – a substantial part of the Bosnian Muslim group.

674. The Trial Chamber is convinced that the criminal acts committed by the Bosnian Serb forces were all parts of one single scheme to commit genocide of the Bosnian Muslims of Srebrenica, as reflected in the “Krivaja 95” operation, the ultimate objective of which was to eliminate the enclave and, therefore, the Bosnian Muslim community living there. The forcible transfer was an integral part of this operation, which also included killings and destruction of

²¹¹⁵ *Krstić* Appeal Judgement, para. 12. The *Krstić* Trial Chamber added that perpetrators of genocide “must view the part of the group they wish to destroy as a distinct entity which must be eliminated as such”; *Krstić* Trial Judgement, para. 590.

²¹¹⁶ *Krstić* Appeal Judgement, para. 13.

²¹¹⁷ *Niyitegeka* Appeal Judgement, para. 53.

²¹¹⁸ See *supra* para. 665, and in particular *Sikirica* Rule 98 *bis* Decision, para. 89.

²¹¹⁹ See *supra* section V. F. 2. a (i).

properties. The Bosnian Serb forces separated the able-bodied men in Potočari, and captured those in the column heading to Tuzla, regardless of their military or civilian status. The separation of the men from the rest of the Bosnian Muslim population shows the intent to segregate the community and ultimately to bring about the destruction of the Bosnian Muslims of Srebrenica. The Bosnian Muslim men were stripped of their personal belongings and identification, detained, and finally taken to execution sites, where the Bosnian Serb forces deliberately and systematically killed them, solely on the basis of their ethnicity.

675. Immediately before and during these massacres, the remainder of the Bosnian Muslim population of Srebrenica was forcibly transferred to Bosnian Muslim-held territory. The forcible transfer of the women, children and elderly is a manifestation of the specific intent to rid the Srebrenica enclave of its Bosnian Muslim population. The manner in which the transfer was carried out – through force and coercion, by not registering those who were transferred, by burning the houses of some of the people, sending the clear message that they had nothing to return to, and significantly, through its targeting of literally the entire Bosnian Muslim population of Srebrenica, including the elderly and children – clearly indicates that it was a means to eradicate the Bosnian Muslim population from the territory where they had lived.

676. In such a context, the killings in Bratunac town were also a manifestation of this intent to destroy the group. It had an impact on the Bosnian Muslim group beyond the death of the men killed; it sent a message to the remaining members of the group of their fate – that they were at the mercy of the Bosnian Serbs and that their lives, too, could be taken at any moment.

677. The Trial Chamber has no doubt that all these acts constituted a single operation executed with the intent to destroy the Bosnian Muslim population of Srebrenica. The Trial Chamber finds that the Bosnian Serb forces not only knew that the combination of the killings of the men with the forcible transfer of the women, children and elderly, would inevitably result in the physical disappearance of the Bosnian Muslim population of Srebrenica, but clearly intended through these acts to physically destroy this group.

(b) Complicity in genocide

678. Complicity in genocide is listed under Article 4(3)(e) as a form of liability for the crime of genocide.

679. As observed by the Appeals Chamber, “there is an overlap between Article 4(3) as the general provision enumerating punishable forms of participation in genocide and Article 7(1) as the general provision for criminal liability which applies to all the offences punishable under the

Statute, including the offence of genocide.”²¹²⁰ As a result, some heads of responsibility listed under Article 7(1) are necessarily included in those forms of liability listed in Article 4(3), or vice versa. As the heads of liability listed under Article 7(1) are often more specific and strictly delimited than those listed under Article 4(3), Article 7(1) may prove useful in characterising the accused’s form of participation with the required degree of specificity. The Appeals Chamber has found “that modes of participation in Article 7(1) should be read, as the Tribunal’s Statute directs, into Article 4(3).”²¹²¹ It based this finding on the text of Article 7(1), which includes the liability for an aider and abettor, and expressly applies that mode of liability to any “crime referred to in articles 2 to 5 of the present Statute”, including the offence of genocide prohibited by Article 4.²¹²²

680. Accordingly, the Trial Chamber will address the liability of Vidoje Blagojević for complicity in genocide under Section VI below.

(c) Superior or command responsibility

681. The Prosecution charges the Accused Vidoje Blagojević with “complicity to commit genocide, punishable under Articles 4(3)(e), 7(1), and 7(3) of the Statute”.²¹²³

682. No reference is made, under Article 4(3) of the Statute, to a command or superior criminal responsibility as a form of liability for genocide. However, Article 7(3), which provides for superior criminal responsibility as a form of liability, applies to all crimes within the jurisdiction of the Tribunal, including genocide.²¹²⁴ In addition, the jurisprudence of both Tribunals has been consistent in accepting convictions for genocide on the basis of Article 7(3).²¹²⁵ However, such

²¹²⁰ *Krstić* Appeal Judgement, para. 138.

²¹²¹ *Krstić* Appeal Judgement, para. 138. This view has been recently confirmed by the Appeals Chamber in the *Ntakirutimana* case. See *Ntakirutimana* Appeal Judgement, para. 500.

²¹²² *Krstić* Appeal Judgement, para. 139.

²¹²³ Indictment, Count 1B.

²¹²⁴ Command responsibility as form of criminal liability envisaged by Article 7(3) of the Statute will be discussed below. See *infra* section VI. C. 1.

²¹²⁵ *Krstić* Trial Judgement, para. 652 (the Trial Chamber did not make an explicit statement on the crime of genocide, but the killings referred to therein constituted a basis for the finding of genocide. The Trial Chamber declined to enter a conviction for genocide pursuant to Article 7(3) as it found that General Krstić’s responsibility for the participation of his troops in the killings was “sufficiently expressed” in the finding of guilt under Article 7(1)); *Ruzindana and Kayishema* Trial Judgement, paras 555, 559, 563 and 569 (convictions upheld on appeal, *Ruzindana and Kayishema* Appeal Judgement, para. 304); *Musema* Trial Judgement, paras 895, 900, 906, 909, 915, 920, 925-26 and 936 (convictions upheld on appeal). See also *Kambanda* Sentencing Judgement and *Serushago* Sentencing Judgement (both being sentencing judgements on guilty pleas to charges including genocide and complicity in genocide pursuant to both Article 6(1) and 6(3) of the ICTR Statute [Article 7(1) and 7(3) in the Statute of the ICTY]); *Kajelijeli* Trial Judgement, paras 840-843; *Nahimana, Barayagwiza & Ngeze* Trial Judgement, paras 973 and 977 (in respect of Jean-Bosno Barayagwiza); *Ntagerura, Bagambiki, Imanishimwe* Trial Judgement, paras 694, 695; *Brđanin* Decision on Interlocutory Appeal, 19 March 2004, para. 7. The only exception to the application of superior criminal responsibility to the crime of genocide is to be found in the *Stakić* 98 *bis* Decision, para. 92.

convictions have so far been entered under Article 4(3)(a),²¹²⁶ while in the present case the Prosecution charges this form of liability under Article 4(3)(e).²¹²⁷

683. The formulation of the Indictment therefore raises several questions. First, there is the question of whether command responsibility can be considered to be a form complicity such that it could be charged in relation to genocide under Article 4(3)(e). Command responsibility is a form of liability which supposes that the superior, by failing to take the necessary and reasonable measures to prevent or punish the crimes of his subordinates, assisted to the commission of the crimes. To this extent, it could arguably fall within the definition of complicity as set forth in the case-law of the *ad hoc* Tribunals. However, the Trial Chamber finds that command responsibility is envisaged in the Statute as a specific form of liability, different and separate from those listed in Article 7(1) and from the acts punishable under Article 4(3). Liability turns on the failure of a person in a superior position to carry out his or her duty as a superior to exercise control over his or her subordinates.²¹²⁸ While certain omissions can be punished under Article 7(1), the Trial Chamber finds that the omission under Article 7(3) is particular: it is a failure to meet ones duty. As is discussed below, it is a form of liability that has specifically and purposefully evolved over time to serve a particular and defined purpose.²¹²⁹ It should therefore be distinguished from complicity in genocide.

684. Secondly, Article 7(3) is a mode of liability that according to the Statute explicitly refers to the crimes within the jurisdiction of the Tribunal. Since complicity in genocide, as recently reiterated by the *Krstić* Appeal Chamber, is a form of liability of the crime of genocide and not a crime itself, Article 7(3) cannot but refer to the crime of genocide. In this regard, the Trial Chamber notes that the Prosecution, when submitting the elements of complicity in genocide, explicitly referred to it as a form of liability and not as a crime.²¹³⁰

685. The Trial Chamber therefore finds that command responsibility would be more appropriately pleaded under Article 4(3)(a). However, to charge command responsibility under the count of complicity in genocide in the Indictment did not prevent the Accused from being

²¹²⁶ The only exception is the *Kambanda* Sentencing Judgement. This sentencing judgement may not be of great relevance for this specific aspect. Kambanda pleaded guilty to all charges of his indictment, including genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity, under both Articles 6(1) and 6(3) (Sentencing Judgement, paras 3 and 40). Convictions were entered by the Trial Chamber, confirmed on appeal, on all these charges, on the basis of Kambanda's guilty plea, in contradiction with the consistent Tribunals' case law, whereby an accused cannot be convicted of both genocide and complicity in genocide.

²¹²⁷ No further elaboration is to be found in the Pre-Trial Brief or in the Final Brief.

²¹²⁸ *Brđanin* Trial Judgement, para. 711, referring to *Krnjelac* Appeal Judgement, para. 171; *Aleksovski* Trial Judgement, para. 72; *Čelibići* Trial Judgement, paras 333-34.

²¹²⁹ See *infra* section VI. C. 1.

²¹³⁰ See *supra* para. 635, citing Indictment, para. 54; Prosecution Pre-Trial Brief, para. 206.

informed, since the beginning of the case, of the Prosecution's intention to plead this form of liability in the context of the crime of genocide. The Trial Chamber therefore deems it acceptable to consider the charge.

686. The Trial Chamber finds that the *mens rea* required for superiors to be held responsible for genocide pursuant to Article 7(3) is that superiors knew or had reason to know that their subordinates (1) were about to commit or had committed genocide and (2) that the subordinates possessed the requisite specific intent.²¹³¹

²¹³¹ *Brđanin* Trial Judgement, para. 721.

VI. LEGAL AND FACTUAL FINDINGS OF INDIVIDUAL CRIMINAL RESPONSIBILITY OF THE ACCUSED

A. Introduction

687. Colonel Vidoje Blagojević and Major Dragan Jokić are charged with individual criminal responsibility pursuant to Article 7(1) of the Statute of the Tribunal. In addition, Colonel Blagojević is charged under the doctrine of command responsibility pursuant to Article 7(3) of the Statute.

688. The Prosecution charged Article 7(1) in its entirety, which 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.

689. In the Indictment, the Prosecution indicated that the use of the word “committing” “does not intend to suggest that any of the accused necessarily physically and personally perpetrated any of the crimes charged.”²¹³² The Prosecution submits that “committing” can be accomplished through participation in a joint criminal enterprise. The Prosecution alleges that the common purpose of the joint criminal enterprise was:

to forcibly transfer the women and children from the Srebrenica enclave to Kladanj, on 12 July and 13 July 1995; and to capture, detain, summarily execute by firing squad, bury, and rebury thousands of Bosnian Muslim men and boys aged 16 to 60 from Srebrenica enclave from 12 July 1995 until and about 19 July 1995. [...] The initial plan was to summarily execute more than 1000 Bosnian men and boys, aged 16 to 60, who were separated from the group of Bosnian Muslims in Potočari on 12 and 13 July. On 12 July, this plan was broadened to include the summary execution of over 6000 men and boys, aged 16 to 60, who were captured from the column of Bosnian Muslim men escaping the Srebrenica enclave on 12 July through about 19 July 1995. [...] ²¹³³

690. The Prosecution alleges that Colonel Blagojević and Major Jokić were “members and key participants” in the joint criminal enterprise which “was conceived and designed by General Ratko Mladić and others on 11 and 12 July 1995, and administered and carried out by members of the VRS and MUP forces”.²¹³⁴

691. The Prosecution alleges that Vidoje Blagojević and Dragan Jokić “possessed the criminal intent and state of mind required to commit the individual crimes charged” and that “their acts significantly assisted and facilitated the commission of the crimes.”²¹³⁵ The “crimes charged” to

²¹³² Indictment, para. 27.

²¹³³ Indictment, para. 30.

²¹³⁴ Indictment, para. 32.

²¹³⁵ Indictment, para. 31.

which category one joint criminal enterprise applies, according to the Prosecution, are forcible transfer and persecutions for Colonel Blagojević,²¹³⁶ and murder, extermination and persecutions for Major Jokić.²¹³⁷ Additionally, the Prosecution alleges that certain underlying crimes, namely “opportunistic killings” were “a natural and foreseeable consequence of the unfolding Joint Criminal Enterprise.”²¹³⁸

692. Following the conclusion of the presentation of evidence by the Prosecution, the Blagojević Defence filed a motion for judgement of acquittal pursuant to Rule 98 *bis* of the Rules, in which it moved for a dismissal of each count in the Indictment in full. The Trial Chamber granted the motion in part, and dismissed several modes of liability under Article 7(1) for Counts 2 to 6 of the Indictment.²¹³⁹ Accordingly, the Trial Chamber will consider Colonel Blagojević’s criminal liability for Count 1B, complicity in genocide, under Article 7(1)²¹⁴⁰ and Article 7(3) of the Statute; for Counts 2 to 4 of the Indictment, extermination and murder, for aiding and abetting under Article 7(1) and Article 7(3) of the Statute; and for Counts 5 and 6, persecutions and inhumane acts (forcible transfer), for committing or aiding and abetting under Article 7(1) and Article 7(3) of the Statute. For Counts 5 and 6, the categories of joint criminal enterprise to be considered are the first category and third category of joint criminal enterprise.²¹⁴¹

693. Major Dragan Jokić is charged with individual criminal responsibility pursuant to Article 7(1) for Counts 2 to 5 of the Indictment, in which extermination, murder and persecutions as crimes against humanity, and murder as a violation of the laws or customs of war are charged. The Prosecution charged him with all modes of liability under Article 7(1) for each Count, including joint criminal enterprise. Following the judgement issued by the Trial Chamber in which the Jokić Defence motion for acquittal pursuant to Rule 98 *bis* was granted in part,²¹⁴² Major Jokić remains charged with committing or otherwise aiding and abetting in the planning, preparation or execution of extermination, murder and persecutions. The categories of joint criminal enterprise to be considered are category one joint criminal enterprise and category three joint criminal enterprise.

²¹³⁶ Prosecution Final Brief, paras 528-530.

²¹³⁷ Prosecution Final Brief, paras 533-35.

²¹³⁸ See e.g. Indictment, paras 43, 45 and 47. The Prosecution identifies “multiple beatings and killings” as the natural and foreseeable consequences of the murder operation. Prosecution Final Brief, para. 527.

²¹³⁹ Judgement on Motions for Acquittal, paras 47-52, 55-57 and 59.

²¹⁴⁰ In relation to the charge of complicity in genocide, as will be discussed below, the Trial Chamber observes that the Prosecution alleged that Colonel Blagojević “, see *infra* section VI. B. 2.

²¹⁴¹ See *supra* section I. A. 2.

²¹⁴² Judgement on Motions for Acquittal, paras 72-77.

B. Article 7(1) of the Statute

1. Committing

(a) Applicable Law

694. It is commonly understood that individual criminal responsibility will attach for “committing” a crime where it is established that the accused himself physically perpetrated the criminal act or personally omitted to act when required to do so under law.²¹⁴³

695. Additionally, under the jurisprudence of the Tribunal, Article 7(1) has been found to contain the basis for charging individuals with the commission of crimes contained in the Statute “where several persons having a common purpose embark on criminal activity that is then carried out either jointly or by some members of this plurality of persons.”²¹⁴⁴ This form of liability pursuant to Article 7(1) has become known by several terms, including “joint criminal enterprise”. In finding that joint criminal enterprise was implicitly contained in Article 7(1), the Appeals Chamber in *Tadić* observed that many international crimes committed during wartime are:

[...] often carried out by groups of individuals acting in pursuance of a common criminal design. Although only some members of the group may physically perpetrate the criminal act (murder, extermination, wanton destruction of cities, towns or villages, etc.), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question.²¹⁴⁵

It maintained that:

To hold criminally liable as a perpetrator *only* the person who materially performs the criminal act would *disregard* the role as co-perpetrators of all those who in some way made it possible for the perpetrator physically to carry out that criminal act. At the same time, depending upon the circumstances, to hold the latter liable *only* as aiders and abettors might *understate* the degree of their criminality.²¹⁴⁶

696. As joint criminal enterprise is a form of “commission” rather than a form of accomplice liability,²¹⁴⁷ with the term “accomplice” being understood in this instance to refer to one who aids

²¹⁴³ *Tadić* Appeal Judgement, para. 188.

²¹⁴⁴ *Tadić* Appeal Judgement, para. 190. *See also Ojdanić* Appeal Decision, para. 19.

²¹⁴⁵ *Tadić* Appeal Judgement, para. 191. *See also Ojdanić* Appeal Decision, para. 21:

In order to come within the Tribunal’s jurisdiction *ratione personae*, any form of liability must satisfy three [*sic*] pre-conditions: (i) it must be provided for in the Statute, explicitly or implicitly; (ii) it must have existed under customary international law at the relevant time; (iii) the law providing for that form of liability must have been sufficiently accessible at the relevant time to anyone who acted in such a way; and (iv) such person must have been able to foresee that he could be held criminally liable for his actions if apprehended.

²¹⁴⁶ *Tadić* Appeal Judgement, para. 192 (emphasis added).

²¹⁴⁷ *Ojdanić* Decision, paras 20 and 31. *See also Vasiljević* Appeal Judgement, paras 95 and 102 (examining the distinction between participating in a joint criminal enterprise as a co-perpetrator and aiding and abetting as an accessory to the co-perpetrators).

and abets the perpetrator,²¹⁴⁸ the accused is understood to be a perpetrator (or, more accurately in many cases, a co-perpetrator) rather than an accomplice.²¹⁴⁹

697. There are three categories of joint criminal enterprise recognised within the jurisprudence of the Tribunal.²¹⁵⁰ As set-forth above, the Trial Chamber notes that the Prosecution has elected to charge both the first category and the third category of joint criminal enterprise in the Indictment.

698. To find individual criminal responsibility pursuant to a joint criminal enterprise in any of the three categories, the elements which must be established are: (i) a plurality of persons; (ii) the existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute; and (iii) the participation of the accused in the common plan involving the perpetration of one of the crimes provided for in the Statute.²¹⁵¹

699. The existence of an agreement or understanding for the common plan, design or purpose need not be express, but may be inferred from all the circumstances.²¹⁵² The participation of two or more persons in the commission of a particular crime may itself establish an unspoken understanding or arrangement amounting to an agreement formed between them then and there to commit that particular criminal act.²¹⁵³ Furthermore, the common plan or purpose may materialise

²¹⁴⁸ The term “accomplice” means one who is associated with the commission of a crime, and thus may refer to a principal or an accessory in the commission of a crime. See *Ojdanić* Decision, para. 20; *Prosecutor v Milan Milutinović, Nikola Šainović & Dragoljub Ojdanić*, Case No. IT-99-37-AR72, Separate Opinion of Judge David Hunt on Challenge by Ojdanić to Jurisdiction: *Joint Criminal Enterprise*, 21 May 2003 (“*Ojdanić*: Separate Opinion of Judge Hunt”), para. 29; *Prosecutor v Milan Milutinović, Nikola Šainović & Dragoljub Ojdanić*, Case No. IT-99-37-AR72, Separate Opinion of Judge Shahabuddeen, 21 May 2003, paras 8-10.

²¹⁴⁹ See *supra* para. 9 (citing *Tadić* Appeal Judgement, para. 192); *Ojdanić* Appeal Decision, para. 20; *Vasiljević* Appeal Judgement, para. 102.

²¹⁵⁰ *Tadić* Appeal Judgement, paras 195-220.

The first category of joint criminal enterprise is “represented by cases where all co-defendants, acting pursuant to a common design, possess the same criminal intention; for instance, the formulation of a plan among the co-perpetrators to kill, where, in effecting this common design (and even if each co-perpetrator carries out a different role within it), they nevertheless all possess the intent to kill. The objective and subjective prerequisites for imputing criminal responsibility to a participant who did not, or cannot be proven to have, effected the killing are as follows: (i) the accused must voluntarily participate in one aspect of the common design (for instance, by inflicting non-fatal violence upon the victim, or by providing material assistance to or facilitating the activities of his co-perpetrators); and (ii) the accused, even if not personally effecting the killing, must nevertheless intend this result.” *Tadić* Appeal Judgement, para. 196.

The second category of joint criminal enterprise is similar to the first category, with the common purpose being applied “to instances where the offences charged were alleged to have been committed by members of military or administrative units such as those running concentration camps.” *Tadić* Appeal Judgement, para. 202. The third category of joint criminal enterprise involves “a common design to pursue one course of conduct where one of the perpetrators commits an act which, while outside the common design, was nevertheless a natural and foreseeable consequence of the effecting of that common purpose.” *Tadić* Appeal Judgement, para. 204.

²¹⁵¹ *Tadić* Appeal Judgement, para. 227.

²¹⁵² *Tadić* Appeal Judgement, para. 227; *Krnjelac* Trial Judgement, para. 80.

²¹⁵³ *Vasiljević* Trial Judgement, para. 66; *Krnjelac* Trial Judgement, para. 80.

extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise.²¹⁵⁴

700. If the objective of the joint criminal enterprise changes, such that the objective is fundamentally different in nature and scope from the common plan or design to which the participants originally agreed, then a new and distinct joint criminal enterprise has been established.²¹⁵⁵ For this joint criminal enterprise, like the original joint criminal enterprise, the three elements must be established for criminal responsibility to attach.²¹⁵⁶ It may be that members of second joint criminal enterprise are the same as those in the original enterprise.

701. Alternatively, it may be that only some of the original members of the first joint criminal enterprise joined the second joint criminal enterprise, and thus entail criminal liability for this enterprise.²¹⁵⁷ A person will only be held liable for that joint criminal enterprise to which he agreed to participate in under the first category of joint criminal enterprise, and the natural and foreseeable consequences thereof for the third category of joint criminal enterprise.

702. There are various ways in which a person may participate in a joint criminal enterprise: (i) by personally committing the agreed crime as a principal offender; (ii) by assisting the principal offender in the commission of the agreed crime as a co-perpetrator, *i.e.* facilitating the commission of the crime with the intent to carry out the enterprise; or (iii) by acting in furtherance of a particular system in which the crime is committed by reason of the accused's position of authority or function and with knowledge of the nature of that system and intent to further that system.²¹⁵⁸ The Trial Chamber concurs with the Trial Chamber in the *Brdanin* case that while the participation of the accused need not be a *conditio sine qua non* for the commission of the offence, the accused's involvement in the criminal act must form a link in the chain of causation.²¹⁵⁹

²¹⁵⁴ *Tadić* Appeal Judgement, para. 227; *Vasiljević* Appeal Judgement, para. 109.

²¹⁵⁵ The Trial Chamber disagrees that the objective of a joint criminal enterprise can change over time with the effect that a person entails liability for criminal acts far beyond the scope of the enterprise that he agreed to, except those acts which are "natural and foreseeable consequences" and thus fall within the third category of joint criminal enterprise. See Prosecution Final Brief, 524.

²¹⁵⁶ Thus, any "escalation" of the original objective must either be agreed to if a person is to entail criminal responsibility for the first category of joint criminal enterprise, or that "escalation" must be a natural and foreseeable consequence of the original enterprise.

²¹⁵⁷ It could be that a member of the original joint criminal enterprise disagreed with the new or expanded objective for the second joint criminal enterprise; such a rejection of the new joint criminal enterprise would not, however, negate his participation in the original joint criminal enterprise. It also could be that some members of the original enterprise – possibly an "inner circle" – agreed amongst themselves to embark on a new enterprise with an objective that could be either more specific or expansion of the original enterprise, *i.e.* the original objective is the detention of a large group of persons based on particular criteria and the new objective is the murder of a particular person or group of persons within the group of detained persons.

²¹⁵⁸ *Vasiljević* Trial Judgement, para. 67; *Krnjelac* Trial Judgement, para. 81. See also *Krnjelac* Appeal Judgement, para. 72.

²¹⁵⁹ *Brdanin* Trial Judgement, para. 263.

Regardless of the role each played in its commission, all of the participants in the enterprise are guilty of the same crime.²¹⁶⁰

703. The *mens rea* required for the first and third categories of joint criminal enterprise differs. The first category of joint criminal enterprise requires proof that all participants shared the same criminal intent.²¹⁶¹ It is necessary to establish that the accused voluntarily participated in the enterprise and intended the criminal result.²¹⁶² Under the third category of joint criminal enterprise, a member of that enterprise may be held liable for a crime or crimes which he did not physically perpetrate if, having the intent to participate in and further a common criminal design or enterprise, the commission of other criminal acts was a natural and foreseeable consequence of the execution of that enterprise, and, with the awareness that such crimes were a possible consequence of the execution of that enterprise, he participated in that enterprise.²¹⁶³

(b) Findings in relation to Vidoje Blagojević

704. It is recalled that the Prosecution alleged that Vidoje Blagojević participated in a joint criminal enterprise. In the Indictment, the Prosecution set out two objectives of this enterprise, namely:

- (1) to forcibly transfer the women and children from the Srebrenica enclave to Kladanj, on 12 July and 13 July 1995; and
- (2) to capture, detain, summarily execute by firing squad, bury, and rebury thousands of Bosnian Muslim men and boys aged 16 to 60 from Srebrenica enclave from 12 July 1995 until and about 19 July 1995. [...] ²¹⁶⁴

705. As the Trial Chamber entered a judgement of acquittal for Counts 2 to 4, namely murder and extermination, of the Indictment for Vidoje Blagojević, in so far as “committing”, the Trial Chamber must only consider Vidoje Blagojević’s liability for participating in a joint criminal

²¹⁶⁰ *Vasiljević* Trial Judgement, para. 67, affirmed on appeal, *Vasiljević* Appeal Judgement, para. 111. The Trial Chamber recalls that the sentence imposed on each member of the joint criminal enterprise will reflect the gravity of the offence and criminal conduct of that accused in relation to the commission of that offence. See *Aleksovski* Appeal Judgement, para. 182 and *Čelebići* Appeal Judgement, para. 731; *Jelisić* Appeal Judgement, para. 101, quoting with approval *Kupreškić* Trial Judgement, para. 852.

²¹⁶¹ *Tadić* Appeal Judgement, para. 196; *Čelebići* Appeal Judgement, paras 366; *Vasiljević* Appeal Judgement, para. 101.

²¹⁶² See *Tadić* Appeal Judgement, para. 196; *Čelebići* Appeal Judgement, para. 366; *Vasiljević* Appeal Judgement, para. 101.

²¹⁶³ *Tadić* Appeal Judgement, paras 204-206, 228. *Tadić* Appeal Judgement, para. 220: “In order for responsibility for deaths [which went beyond the original enterprise] to be imputable to the others, however, everyone in the group must have been able to *predict* this result. It should be noted that more than negligence is required. What is required is a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to that result but nevertheless willingly took that risk.” See also *Vasiljević* Appeal Judgement, para. 101 (acting with awareness of possible consequences is equated with “willingly took that risk”); *Ojdanić*: Separate Opinion of Judge Hunt, para. 11; *Prosecutor v Radislav Brdanin*, Case No. IT-99-36-A, Decision on Interlocutory Appeal, 19 March 2004, paras 5-6.

²¹⁶⁴ Indictment, para. 30.

enterprise with the objective of forcible transferring the women and children from the Srebrenica enclave to Kladanj on 12 and 13 July 1995.²¹⁶⁵

706. The Trial Chamber recalls that the forcible transfer of women and children is an underlying act for two counts in the Indictment, namely Count 5 (inhumane acts) and Count 6 (persecutions). Additionally, as has been discussed above, the Trial Chamber observes that forcible transfer is a related underlying act for the charge of complicity in genocide.

707. It has been proved beyond reasonable doubt that the women and children from the Srebrenica enclave were forcibly transferred to Kladanj on 12 and 13 July 1995.²¹⁶⁶

708. The first element which must be established is that a plurality of persons participated in the joint criminal enterprise. It is alleged that the plurality of persons consisted of members of the VRS and MUP officers, including General Mladić, General Živanović, General Krstić, Colonel Beara, Colonel Vujadin Popović, Colonel Vidoje Blagojević, Colonel Pandurević, Major Obrenović, Major Dragan Jokić, and Captain Momir Nikolić.²¹⁶⁷

709. The Trial Chamber finds that there was a plurality of persons who participated in the forcible transfer of women and children from the Srebrenica enclave on 12 and 13 July. Based on the evidence before it in this case, the participants in the joint criminal enterprise were officers of the VRS and members of the MUP.

710. The second element which must be established is the existence of a common plan that amounts to or involves the commission of a crime provided for in the Statute. The Trial Chamber finds that there is evidence of a common plan to commit the crime of forcible transfer.²¹⁶⁸

711. The third element which must be established is the participation of the accused in the execution of the common plan. The Trial Chamber finds that there is evidence that the Accused, Vidoje Blagojević, participated in the forcible transfer.²¹⁶⁹

712. Recalling that forcible transfer is charged as under the first category of joint criminal enterprise, the Trial Chamber must determine whether Vidoje Blagojević shared the intent, along with the other participants in the joint criminal enterprise, to commit forcible transfer and whether

²¹⁶⁵ See Judgement on Motions for Acquittal, para. 48. The Trial Chamber further recalls that the Prosecution specified that through the complicity in genocide charge it was alleging that Vidoje Blagojević aiding and abetted the commission of genocide.

²¹⁶⁶ See *supra* section II. D. 1. (f).

²¹⁶⁷ See Indictment, para. 33.

²¹⁶⁸ See *supra* sections II. C., particularly paras 96-97, 103-104, 106, 111-112, 120, and section II. D. 1.

²¹⁶⁹ See *supra* section II. C., particularly paras 138-140, section II. D. 1. (e), particularly paras 172-173, section II. D. 1. (f), particularly paras 180-181, 186, 189.

he voluntarily participated in the enterprise. The Trial Chamber finds that Colonel Blagojević did not have the requisite intent to commit forcible transfer.

713. As will be discussed below and recalling that joint criminal enterprise is a form of “commission”, the Trial Chamber finds that the form of liability more appropriate to describe Colonel Blagojević’s participation in the forcible transfer is aiding and abetting.

714. Accordingly, the Trial Chamber finds that Vidoje Blagojević did not commit forcible transfer as part of a joint criminal enterprise.

(c) Findings in relation to Dragan Jokić

715. It is recalled that the Prosecution alleged that Dragan Jokić participated in a joint criminal enterprise. In the Indictment, the Prosecution set out two objectives of this enterprise, namely:

- (1) to forcibly transfer the women and children from the Srebrenica enclave to Kladanj, on 12 July and 13 July 1995; and
- (2) to capture, detain, summarily execute by firing squad, bury, and rebury thousands of Bosnian Muslim men and boys aged 16 to 60 from Srebrenica enclave from 12 July 1995 until and about 19 July 1995. [...] ²¹⁷⁰

716. The Prosecution did not charge Dragan Jokić with criminal liability for forcible transfer.²¹⁷¹ Furthermore, during its Closing Arguments, the Prosecution clarified that it does not find that Dragan Jokić should be held responsible for the incidents that occurred in the area of Bratunac.²¹⁷² The Trial Chamber must therefore consider Dragan Jokić’s liability for participating in a joint criminal enterprise with the objective of capturing, detaining, summarily executing by firing squad, burying and reburying thousands of Bosnian Muslim men and boys aged 16 to 60 from Srebrenica enclave from 12 July to about 19 July 1995.

717. The Trial Chamber observes that the Indictment elaborates on this objective in the following manner:

The initial plan was to summarily execute more than 1000 Bosnian Muslim men and boys, aged 16 to 60, who were separated from the group of Bosnian Muslims in Potocari on 12 and 13 July. On 12 July, this plan was broadened to include the summary execution of over 6000 men and boys, aged 16 to 60, who were captured from the column of Bosnian Muslim men escaping the

²¹⁷⁰ Indictment, para. 30.

²¹⁷¹ In the chapeau paragraph to the persecutions count, the Prosecution specifically excluded forcible transfer as an underlying act for which Dragan Jokić is alleged to bear criminal responsibility. *See* Indictment, Count 5.

²¹⁷² During the Prosecution Rebuttal Statement, Peter McCloskey stated (T. 12602):

First of all, I want to clarify that it’s not the position of the Prosecutor that Mr. Jokić should be held responsible for the incidents that occurred in the area of Bratunac, and it is – there are some cases and under joint criminal enterprise where perhaps this is appropriate. It is not my viewpoint that in this case it is. I want you to begin looking at this case seriously regarding Mr. Jokić on the morning of the 14th of July when he takes over as duty officer.

Srebrenica enclave on 12 July through about 19 July 1995. Most of these men and boys from the column were captured along the Bratunac/Milici road on 13 July 1995.²¹⁷³

718. The Trial Chamber does not find that the “broadening” of the “initial plan” from the execution of 1000 Bosnian Muslim men and boys to the execution of over 6000 Bosnian Muslim men and boys reflects an “escalation” of the joint criminal enterprise. The overarching objective remains the same.

719. It has been proved beyond reasonable doubt above that thousands of Bosnian Muslim boys and men were captured, detained, executed, buried and reburied above.²¹⁷⁴

720. The Trial Chamber finds that there was a plurality of persons who participated in the capture, detention, execution by firing squad, burial and reburial of thousands of Bosnian Muslim men and boys aged 16 to 60 from Srebrenica enclave from 12 July to about 19 July 1995. Based on the evidence before it in this case, the participants in the joint criminal enterprise were officers of the VRS and members of the MUP.

721. The second element which must be established is the existence of a common plan that amounts to or involves the commission of a crime provided for in the Statute. The Trial Chamber finds that there is evidence of a common plan to commit the crimes of murder, extermination and persecutions through capturing, detaining, executing and burying over 7,000 Bosnian Muslim men and boys. The Trial Chamber infers the existence of such a plan from the fact that over 7,000 men and boys were captured, detained, murdered and buried in the space of only five days: this would not have been possible unless there was a plan and co-ordination between the members of the joint criminal enterprise.

722. The third element which must be established is the participation of the accused in the execution of the common plan. The Trial Chamber finds that there is evidence that the Accused, Dragan Jokić, participated the crimes of murder, extermination and persecutions.

723. Recalling that murder, extermination and persecutions are charged as under the first category of joint criminal enterprise, the Trial Chamber must determine whether Dragan Jokić shared the intent, along with the other participants in the joint criminal enterprise, to commit these crimes and whether he voluntarily participated in the enterprise. The Trial Chamber finds that Dragan Jokić did not have the requisite intent to commit murder, extermination and persecutions.

²¹⁷³ Indictment, para. 30.

²¹⁷⁴ See *supra* section II. D. 1. (g).

724. As will be discussed below and recalling that joint criminal enterprise is a form of “commission”, the Trial Chamber finds that the appropriate form of liability to describe Dragan Jokić’s participation in these crimes is aiding and abetting.

725. Accordingly, the Trial Chamber finds that Dragan Jokić did not commit murder, extermination or persecutions as part of a joint criminal enterprise.

2. Aiding and Abetting

(a) Applicable Law

726. The Trial Chamber finds that the *actus reus* for ‘aiding and abetting’ is that the accused carried out an act which consisted of practical assistance, encouragement or moral support to the principal.²¹⁷⁵ The criminal act of the principal for which the aider and abettor is responsible must be established.²¹⁷⁶ The assistance need not have caused the act of the principal, but it must have had a “substantial effect” on the commission of the crime.²¹⁷⁷ The assistance may be provided by either an act or by an omission,²¹⁷⁸ and it may occur before, during or after the act of the principal.²¹⁷⁹

727. For aiding and abetting, it is not required that the aider and abettor shared the *mens rea* required for the crime; it is sufficient that the aider and abettor had knowledge that his or her own acts assisted in the commission of the specific crime by the principal offender.²¹⁸⁰ The aider and abettor must also be aware of the “essential elements” of the crime committed by the principal offender, including the state of mind of the principal offender.²¹⁸¹

²¹⁷⁵ *Tadić* Appeal Judgement, para. 229 (iii); *Vasiljević* Appeal Judgement, para. 102 (i). See also Criminal Code of SFRY, Art. 24(2):

The following, in particular, shall be considered as aiding: the giving of instructions or counselling about how to commit a criminal act, the supply of tools and resources for the crime, the removal of obstacles to the commission of a crime, as well as the promise, prior to the commission of the act, to conceal the existence of the criminal act, to hide the offender, the means to commit the crime, its traces, or goods gained through the commission of a criminal act.

²¹⁷⁶ *Aleksovski* Appeal Judgement, para. 165.

²¹⁷⁷ *Čelebići* Appeal Judgement, para. 352; *Blaškić* Appeal Judgment, para. 48; *Furundzija* Trial Judgment, para. 235. “Mere presence” at the scene of the crime is not conclusive of aiding and abetting unless it is demonstrated to have a significant encouraging effect on the principal offender. *Furundzija* Trial Judgment, para. 249.

²¹⁷⁸ *Blaškić* Appeal Judgement, para. 47.

²¹⁷⁹ *Čelebići* Appeal Judgement, para. 352, adopting the *Čelebići* Trial Judgement, para. 327 which held that “[subject to the caveat that it be found to have contributed to, or have had an effect on, the commission of the crime, the relevant act of assistance may be removed in time and place from the actual commission of the offence.” See also *Aleksovski* Appeal Judgement, para. 62; *Blaškić* Appeal Judgement, para. 48.

²¹⁸⁰ *Tadić* Appeal Judgement, para. 229(iv); *Vasiljević* Appeal Judgement, para. 102 (ii); and *Blaškić* Appeal Judgement, para. 45.

²¹⁸¹ *Aleksovski* Appeal Judgement, para. 162. See also *Krnjelac* Trial Judgment, para. 90.

728. The Trial Chamber recalls that Article 7(1) of the Statute provides for individual criminal responsibility for persons who “aided and abetted in the planning, preparation or execution of a crime” provided for in the Statute. Accordingly, in order to incur criminal liability, the Trial Chamber finds that the Accused must have the requisite *mens rea* at the time of the planning, preparation or execution of the crime.

(b) Findings in relation to Vidoje Blagojević

729. Recalling its finding above in relation to the competencies and responsibilities of Colonel Blagojević as commander of the Bratunac Brigade,²¹⁸² the Trial Chamber finds that liability may be attached to Colonel Blagojević for aiding and abetting the crime when it can be found that he knew about the commission of a crime and that he permitted the use of personnel or resources to facilitate the commission of these crimes.²¹⁸³

(i) Preliminary Matter: Reburial Operation

730. The Trial Chamber notes that the Prosecution has pled that the reburials were “a natural and foreseeable consequence of the execution and original burial plan conceived by the Joint Criminal Enterprise.” In its Judgement on Motions for Acquittal pursuant to Rule 98 *bis*, the Trial Chamber found that “no reasonable trier of fact could reach the conclusions that the reburials, conducted a few months after the executions, was foreseeable at the time the executions were carried out. [...] On the contrary, the evidence would rather indicate that this operation was decided in response to the scrutiny of the international community of the events following the take-over of Srebrenica, *i.e.* as a consequence of a fact that falls outside the scope of the joint criminal enterprise. As a result, the Trial Chamber finds that the efforts to conceal the crimes a few months after their commission could only be characterised by a reasonable trier of fact as *ex post facto* aiding and abetting in the planning, preparation or execution of the murder operation.”²¹⁸⁴

731. It is required for *ex post facto* aiding and abetting that at the time of the planning, preparation or execution of the crime, a prior agreement exists between the principal and the person who subsequently aids and abets in the commission of the crime.²¹⁸⁵ As the reburial operation was a direct result of the scrutiny of the international community of the events following the take-over of Srebrenica, the Trial Chamber finds that the evidence does not support a

²¹⁸² See *supra* section III. A.

²¹⁸³ See *Krstić* Appeal Judgement, para. 144.

²¹⁸⁴ Judgement on Motions for Acquittal, 5 April 2004, para. 51.

²¹⁸⁵ See *infra* section VI. B. 2.

conclusion that the reburial operation itself was agreed upon at the time of the planning, preparation or execution of the crimes. Consequently, the Trial Chamber finds that any involvement of Colonel Blagojević in the reburial operation could not amount to aiding and abetting the murder operation.²¹⁸⁶

(ii) Murder (under Articles 3 and 5 of the Statute)

732. Murder, as a violation of the laws or customs of war and as a crime against humanity, has been established. To determine whether Vidoje Blagojević bears criminal responsibility for aiding and abetting murder, the Trial Chamber must first determine whether he or units for which he was responsible carried out an act or acts which consisted of practical assistance, encouragement or moral support to the principal, such that this act or acts had a substantial effect on the commission of the crime. If this is found, the Trial Chamber will assess whether Vidoje Blagojević had knowledge that his acts assisted in the commission of the crime. The Trial Chamber will first make its findings in relation to the mass executions or murder operation, and then make its findings in relation to the opportunistic killings.

a. Mass Executions

733. The Trial Chamber finds that there are acts committed by Colonel Blagojević or members of the Bratunac Brigade which provided practical assistance to the murder operation that resulted in the death of more than 7,000 Bosnian Muslim men and boys.

734. Specifically, the Trial Chamber finds that members of the Bratunac Brigade Military Police and command participated in the separation of Bosnian Muslim men from the rest of the Bosnian Muslim population in Potočari. This act was one of the first steps in bringing Bosnian Muslim men under the control of the Bosnian Serb forces; there was little to no opportunity for the Bosnian Muslim men separated in Potočari to influence their fate after they were separated and detained in Potočari. Members of the Bratunac Brigade, including members of the 2nd Battalion, 3rd Battalion, Artillery Group and Military Police, through their presence in and around Potočari on 11-13 July, contributed to the creation of an atmosphere of terror. Furthermore, through their presence in and around Potočari, these members of the Bratunac Brigade assisted in guarding and the continued detention of Bosnian Muslim men. Finally, the Trial Chamber finds that members of the Bratunac Brigade, including members of the Bratunac Brigade Military Police, participated

²¹⁸⁶ Recalling the *Tadić* Judgement, para. 748, and recalling that the Fourth Hague Convention and the Geneva Conventions I and III contain regulate treatment of the dead, the Trial Chamber notes that the Prosecution could have considered charging the reburial operation as a crime in itself, for example as violations of the laws and customs of war.

in the transport of the Bosnian Muslim men from Potočari to Bratunac on 12 and 13 July and thereby assisted in keeping the Bosnian Muslim men under the control of Bosnian Serb forces.

735. The Trial Chamber finds that the guarding of Bosnian Muslim men in the town of Bratunac from 12 to 14 July by members of the Bratunac Brigade served as further assistance to the murder operation. The Bratunac Brigade Military Police members who were present at the Vuk Karadžić school and were patrolling the town contributed to the further detention of the men, a necessary step in the overall murder operation.

736. The Trial Chamber further finds that the participation of the Bratunac Brigade battalions, and indeed, Colonel Blagojević himself, in the search operation was a form of practical assistance to the murder operation. Searching of the terrain, or “mopping up” as the Bratunac Brigade referred to this action in its daily combat report to the Drina Corps,²¹⁸⁷ for Bosnian Muslim men could be seen as a legitimate action: the Bosnian Serb forces at the time did not know exactly where the ABiH forces were, or indeed, what percentage of the column was armed, and it had a legitimate concern in protecting the Bosnian Serb civilian population in the area. However, the search operation and the detention of the men who were captured as a result of the heavy presence of Bosnian Serb forces, including members of the Bratunac Brigade battalions in the hills around the Bratunac-Konjević Polje road, were not conducted in a lawful manner with a lawful purpose. In many cases, Bosnian Muslim men from the column, consisting mainly of civilians, surrendered to the Bosnian Serb forces in many cases after seeing UN marked vehicles or troops wearing UN helmets and jackets, or after being told over megaphones that they would be turned over to the ICRC or exchanged up on surrender. The Drina Corps order did not specify that only members of the ABiH or armed men should be detained: it specifically provided that “any Muslim groups observed” should be discovered, blocked, disarmed and captured in order “to prevent their crossing into Muslim territory.”²¹⁸⁸ The Bratunac Brigade, working with other units including the MUP, thus blocked Bosnian Muslim men from escaping into non-Serb held territory and effectively cut-off any escape route for the men. The effect of this operation was that thousands of Bosnian Muslim men were forced down from the hills, onto the Bratunac-Konjević Polje-Milići roads, where they were captured and subsequently transported to their death.

737. Finally the Trial Chamber finds that by escorting the convoys of buses filled with Bosnian Muslim men from Bratunac to detention sites in Zvornik on the morning of 14 July, members of the Bratunac Brigade Military Police gave practical assistance to the murder operation.

²¹⁸⁷ Ex. P441, Bratunac Brigade daily combat report, dated 12 July, signed for Colonel Blagojević.

²¹⁸⁸ Ex. P467, Drina Corps order, dated 13 July 1995.

738. The Trial Chamber finds, that these acts taken together establish that members of the Bratunac Brigade and Colonel Blagojević himself provided practical assistance to the murder operation which had a substantial effect on the commission of murder.

739. Turning to the *mens rea* required for aiding and abetting murder, the Trial Chamber recalls that in order to find Colonel Blagojević guilty for this crime, it must establish that he had knowledge that his acts or those of members of the Bratunac Brigade assisted in the commission of the crime of murder, in relation to the murder operation.

740. The Trial Chamber has determined that there is insufficient evidence to establish that Colonel Blagojević knew that members of the Bratunac Brigade Military Police were participating in the separation of Bosnian Muslim men in Potočari on 12 July. It is convinced, however, that he knew of their participating in the separation of men as part of the forcible transfer process in Potočari on 13 July. Furthermore, the Trial Chamber has concluded that Colonel Blagojević knew that members of the Bratunac Brigade participated in the transport of the Bosnian Muslim population out of Potočari on 12 and 13 July, including the Bosnian Muslim men who were transported to Bratunac town and detained there. Finally, the Trial Chamber has found that Colonel Blagojević knew that members of the Bratunac Brigade were involved in the detention of Bosnian Muslim men in Bratunac on 12-14 July. The Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt, however, that through their participation in these acts on 12 -14 July, Colonel Blagojević knew that members of his brigade were assisting in the commission of the crime of murder.²¹⁸⁹

741. Colonel Blagojević knew that Bosnian Muslim men were being detained in large numbers as a result of the search operation. The 13 July order from the Drina Corps for the search operation specifically provides that “[t]hrough interim reports, ensure that all units are kept informed of the current situation in all areas of responsibility so that the Command of the Drina Corps may be able to take measures in good time.”²¹⁹⁰ As one of the Brigade commanders whose units were participating in the search operation, Colonel Blagojević must have been informed of the “progress” of the operation, including the detention of men in the Sandići meadow. Furthermore, there is evidence that Colonel Blagojević travelled on the Bratunac-Konjević Polje road on 13 or 14 July during the search operation, which would further indicate that he had

²¹⁸⁹ See *supra* para. 472. The Trial Chamber found that Momir Nikolić cannot be considered a wholly credible or reliable witness and that on fundamental factual allegations, such as what he reported to Colonel Blagojević during those meetings or was told to do, it must require corroboration in order to enter a finding against the Accused.

²¹⁹⁰ Ex. P467, Drina Corps order, dated 13 July 1995, para. 8.

knowledge that Bosnian Muslim men were being captured and detained as a result of the search operation.

742. The Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt that Colonel Blagojević knew that the detention and capture of the Bosnian Muslim men was a further step in the murder operation; it is reasonable to conclude, as will be discussed below, that he saw these actions as further steps in transporting the Bosnian Muslim population out of Serb-held territory in Eastern Bosnia. In making this finding, the Trial Chamber has carefully assessed all the evidence and in particular the evidence in relation to the detention of men in Sandići meadow. Sandići meadow was in the area of responsibility of the Bratunac Brigade and was near to the area where members of the Bratunac Brigade battalions were searching the terrain. There is evidence to establish that the men from Sandići meadow went to Kravica Warehouse, either by bus or on foot, where they were they were murdered on the evening and night of 13 July. Kravica Warehouse is located on the main Bratunac-Konjević Polje road, near to the IKM of the 4th Battalion of the Bratunac Brigade. Many people in and around Bratunac knew of what had happened at the Kravica Warehouse within 24-hours of the incident,²¹⁹¹ and more learned about it in the days immediately thereafter.²¹⁹² The Trial Chamber finds that even when taken together, however, this circumstantial evidence is not sufficient to establish beyond reasonable doubt that Colonel Blagojević knew about the mass execution during the days following the massacre, when he and his units continued to participate in the search operation. In this regard, the Trial Chamber recalls that when relying upon proof of a state of mind of an accused by inference, that inference must be the only reasonable one available on the evidence.²¹⁹³ It remains possible that Colonel Blagojević did not learn of this mass execution until 2-3 days after it had happened, and thereby did not know that his participation in the search operation was rendering practical assistance to a murder operation.

743. Finally, there is insufficient evidence to establish that Colonel Blagojević knew that the buses being escorted from Bratunac to Zvornik by members of the Bratunac Brigade Military Police were taking the Bosnian Muslim men to temporary detention centres in order to execute them.

744. Accordingly, the Trial Chamber finds that there is insufficient evidence to find that the *mens rea* requirement for aiding and abetting murder has been established in relation to the mass executions.

²¹⁹¹ See e.g., Miroslav Deronjić, KT. 124; Witness DP-102, T. 8270-71; Jovan Nikolić, T. 8011-16

²¹⁹² See e.g., Dragomir Zekić, T. 8899-8901.

²¹⁹³ See *Krstić* Appeal Judgement, para. 41.

745. The Trial Chamber therefore finds that there is insufficient evidence to establish the responsibility of Colonel Blagojević for aiding and abetting murder in relation to the mass executions.

b. “Opportunistic Killings”

746. Recalling its finding in its Judgement on the Motions for Acquittal,²¹⁹⁴ the Trial Chamber will now address the remaining allegations of opportunistic killings which have been established, in relation to Vidoje Blagojević’s liability for aiding and abetting: opportunistic killings in Bratunac between 12 and 15 July, and the killing of Rešid Sinanović.

i. Vuk Karadžić School

747. The Trial Chamber has established that members of the Bratunac Brigade Military Police participated in guarding hundreds of Bosnian Muslim men detained in the Vuk Karadžić school complex and the buses parked around Bratunac town on the night of 12 and 13 July. The Trial Chamber finds that through this act, members of the Bratunac Brigade gave practical assistance to the perpetrators of the murders which had a substantial effect on the commission of the murders. By ensuring the further detention of the men and indeed by helping to control who entered and left the Vuk Karadžić school, members of the Bratunac Brigade permitted these murders to take place.

748. In assessing whether Colonel Blagojević had the knowledge that the action of members of his brigade assisted in the commission of murder in the town of Bratunac, the Trial Chamber recalls that Colonel Blagojević was present in Bratunac town between 12 and 14 July. On these days, where shooting is reported to have been heard throughout the night, Colonel Blagojević was at the brigade headquarters and slept at his apartment located close to the Vuk Karadžić school.²¹⁹⁵ He was aware of the situation in Bratunac town, including the conditions under which the men in Bratunac town were being detained.²¹⁹⁶ The Trial Chamber finds that based on these factors, the only reasonable inference that can be made is that Colonel Blagojević knew that members of the Bratunac Brigade gave practical assistance to the murder of men in Bratunac town.

749. Accordingly, the Trial Chamber finds that it has been established beyond doubt that Colonel Blagojević aided and abetted the commission of murder, in relation to the murders committed in Bratunac town.

²¹⁹⁴ Specifically, the Trial Chamber rejected: para. 43(a) to (d); para. 45(b) and (e); para. 47(1), 47(2), 47(3), 47(4), 47(5), with the exception of the victim named Rešić Sinanović, 47(6), 47(8) and 48.

²¹⁹⁵ Witness P-210, T. 7375-75.

²¹⁹⁶ See *supra* section II. E. and section V. B.

ii. Rešid Sinanović

750. In relation to the killing of Rešid Sinanović, the Trial Chamber recalls that officers from the Bratunac Brigade were involved in the detention and interrogation of Rešid Sinanović. The evidence further establishes that Rešid Sinanović was taken to the Vuk Karadžić school, with the knowledge of Zlatan Čelanović.²¹⁹⁷ The Trial Chamber does not find any actions attributable to a member of the Bratunac Brigade which may be regarded as providing practical assistance to the murder of Rešid Sinanović. Accordingly, Colonel Blagojević is not liable for aiding and abetting the murder of Rešid Sinanović.

(iii) Extermination

751. The crime of extermination as a crime against humanity has been established. Based on the foregoing findings in relation to murder, the Trial Chamber finds that Colonel Blagojević did not have knowledge that the crime of extermination was being committed at the time of its commission, and therefore cannot incur any liability for acts which may have been taken by himself or members of the Bratunac Brigade which assisted the principals and had a substantial effect on the commission of extermination. Accordingly, Colonel Blagojević is not liable for aiding and abetting extermination.

(iv) Persecutions

752. Persecutions, as a crime against humanity, has been established as having been committed through murder, cruel and inhumane treatment, terrorising the civilian population and forcible transfer.

753. For aiding and abetting persecutions, it is not necessary that the aider and abettor share the discriminatory intent; rather, it must be established that: (a) he or she is aware of the discriminatory intent of the perpetrator of the crime and of the discriminatory context in which the crime is committed; and (b) he or she knows that his or her support or encouragement has a substantial effect on its commission.²¹⁹⁸

754. As the Trial Chamber has already made its findings in relation to aiding and abetting murder above, it will only examine here whether Colonel Blagojević was aware of the discriminatory intent of the perpetrator of the crime and of the discriminatory context in which the

²¹⁹⁷ The Trial Chamber recalls Zlatan Čelanović evidence that he believed that Rešid Sinanović was taken to the school in order to be exchanged. Taking into consideration the testimony of Srbislav Davidović, a friend of Rešid Sinanović, on this matter, the Trial Chamber considers the testimony of Zlatan Čelanović as credible.

²¹⁹⁸ *Krnjelac* Appeal Judgement, para. 52.

crime was committed. The Trial Chamber finds that Colonel Blagojević was aware of the discriminatory intent of the perpetrators of the murder of Bosnian Muslim men in Bratunac, and was aware of the discriminatory context in which the crime was committed. The Trial Chamber infers this knowledge on the basis of Colonel Blagojević's knowledge of the attack on the Srebrenica enclave, its stated purpose, and the consequences of the attack for the Bosnian Muslim population.

755. The Trial Chamber found that cruel and inhumane treatment and terrorising the civilian population were established through inhumane conditions; separations in Potočari; physical abuse and mental suffering in Potočari, including abuse and suffering of the men taken to the "White House"; and detention in Bratunac and Zvornik.²¹⁹⁹ The Trial Chamber finds that members of the Bratunac Brigade Military Police and members of, at least, the 2nd Battalion, 3rd and Artillery Group rendered practical assistance which had a substantial effect on these acts by *inter alia*, shelling and shooting around the civilians, participating in the separations, patrolling the area around Potočari and guarding detainees in Bratunac.

756. The Trial Chamber finds that Colonel Blagojević had knowledge of the participation of members of the Bratunac Brigade in these acts²²⁰⁰ and further knew that these acts assisted in the crime of persecutions through terrorising the civilian population and cruel and inhumane treatment. As previously determined, the Trial Chamber is convinced that Colonel Blagojević knew of the discriminatory intent of the perpetrators of the crime and the discriminatory context in which these acts were committed.

757. Finally, the Trial Chamber finds that members of the Bratunac Brigade, including members of the Military Police and members of the battalions which secured the Potočari area, rendered practical assistance to the forcible transfer of the Bosnian Muslim population out of the Srebrenica area. Through their participation in separating the population, loading the buses, counting the people as they entered the buses, escorting the buses, and patrolling the area around which the population was held until the transfer was complete, the contribution made to by members of the Bratunac Brigade had a substantial effect on the commission of the crime.

758. The Trial Chamber further finds that Colonel Blagojević knew of the assistance rendered by members of his brigade, and that the acts undertaken by them assisted in the commission of forcible transfer. As discussed above, Colonel Blagojević, as a commander involved in the Krivaja 95 operation, knew the objective and result of that operation: the elimination of the

²¹⁹⁹ See *supra* Section V. D. (3) (b) and (c).

²²⁰⁰ See *supra* section III. C., particularly paras 474-478, 483-484.

Srebrenica enclave. This objective necessarily entailed removing the Bosnian Muslim population from that area. Over the course of 12-14 July, Colonel Blagojević, through his presence at the IKM, in Srebrenica town and in Bratunac, would have seen for himself the manifestation of that objective as busload after busload of Bosnian Muslim women, children and elderly travelled from Potočari to Kladanj through Bratunac, and then the temporary detention of the Bosnian Muslim men in Bratunac pending their transfer out of the area. He further knew of the role played by members of his brigade in this operation. Colonel Blagojević knew that the forcible transfer was carried out on discriminatory grounds, as the objective of the forcible transfer was to remove the Bosnian Muslims from that part of Bosnia.

759. Accordingly, the Trial Chamber finds that it has been established beyond reasonable doubt that Colonel Blagojević aided and abetted persecutions through the underlying acts of murder, cruel and inhumane treatment, terrorising the civilian population and forcible transfer.

(v) Inhumane Acts (Forcible transfer)

760. Having established that Colonel Blagojević bears criminal responsibility for aiding and abetting persecutions through forcible transfer, due to the practical assistance given by members of the Bratunac Brigade to the forcible transfer operation of Bosnian Muslims from Srebrenica to non-Serb held territory (in relation to the women, children and elderly) and to Bratunac town and beyond (in relation to the men), and the knowledge of Colonel Blagojević that these acts assisted in the commission of forcible transfer, the Trial Chamber finds that Colonel Blagojević aided and abetted the crime of inhumane acts (forcible transfer).

(c) Findings in relation to Dragan Jokić

(i) Murder (under Article 3 and 5 of the Statute)

761. The Trial Chamber has found that murder, both as a violation of the laws or customs of war and as a crime against humanity, has been established. To determine whether Dragan Jokić bears criminal responsibility for aiding and abetting murder the Trial Chamber will assess whether he rendered practical assistance, encouragement or moral support to the principal, which had a substantial effect on the commission of the crime. As for the *mens rea* required for aiding and abetting, the Trial Chamber will assess if Dragan Jokić had knowledge that his acts assisted in the commission of the crime(s).

a. Kravica and Glogova

762. The Trial Chamber recalls that during Closing Arguments, the Prosecution conceded that it had not proven beyond reasonable doubt that Dragan Jokić had knowledge that he was sending Ostoja Stanojević to Kravica Warehouse or to participate in any way in the burials following the Kravica Warehouse massacre.²²⁰¹

b. Orahovac

763. The evidence shows that between 1,000 and 2,500 Bosnian Muslim men were detained from around noon on 14 July at the Grbavci School at Orahovac. The evidence also shows that later that day the prisoners were brought to a nearby field and executed. The executions continued throughout the afternoon and after the night fell and lasted until around 05:00 in the morning of 15 July. At night, the execution field was lit up using the headlights of either a loader or an excavator. The Trial Chamber has been furnished with credible evidence from Cvijetin Ristanović, a machine operator of the Zvornik Brigade Engineering Company, that around noon on 14 July Dragan Jokić told him to load a excavator and go to the school in Orahovac. Ristanović testified that the deputy commander of the Zvornik Brigade Engineering Company, Slavko Bogičević, was present when Dragan Jokić told Ristanović to go to Orahovac. Ristanović further testified that it was Bogičević, who had also come to Orahovac, who instructed Ristanović as to how to dig the mass graves. Ristanović remained digging until after dark. The evidence also shows that around midnight on 14 July some Zvornik Brigade officers returned to the headquarters and were in a room adjacent to the duty officer's office. The men talked of a "job well done" and how the soldiers should be rewarded. The Trial Chamber has been furnished with an intercept of a conversation from 14 July at 22:27 between Dragan Jokić and General Miletić of the Main Staff, in which Miletić tasked Dragan Jokić to organise the mobilisation of men in order to solve problems with the column. The only reasonable inference that can be drawn from this order is that Dragan Jokić was in the duty officer's office when the Zvornik Brigade officers celebrated next door as he had to organise the mobilisation. The following day, Ristanović was told by Damjan Lazarević, commander of the fortification platoon of the Zvornik Brigade Engineering Company, to return to Orahovac to continue the digging.

764. The Trial Chamber observes that Dragan Jokić, who at the time functioned as duty officer, told Cvijetin Ristanović to go to Orahovac while the killings were ongoing and that this was done in the presence of Slavko Bogičević, who subsequently at Orahovac instructed Ristanović as to the grave digging. Moreover, the Trial Chamber recalls the function of the duty officer to remain

²²⁰¹ Prosecution Rebuttal Statement, 1 October 2004, T. 12602. The Trial Chamber finds that the evidence before it has not proven beyond reasonable doubt that Dragan Jokić knew that he was sending Ostoja Stanojević to the Kravica Warehouse to take part in the burials of the bodies at the Glogova gravesite.

informed of the units within the brigade and the evidence that as duty officer Dragan Jokić received and conveyed information. The Trial Chamber is convinced that Dragan Jokić knew that Bosnian Muslim prisoners were detained at the Grbaveci School awaiting their execution when he told Ristanović to go there. The Trial Chamber therefore finds that Dragan Jokić knew that Ristanović was sent to Orahovac specifically in order to dig mass graves for the victims of the executions. By telling Cvijetin Ristanović to take the excavator to Orahovac, Dragan Jokić provided practical assistance that had a substantial effect on the commission of the crime.

c. Petkovci School and Dam near Petkovci

765. The Trial Chamber has been furnished with evidence that around noon on 14 July Marko Milošević, deputy commander of the Zvornik Brigade's 6th Infantry Battalion, received a phone call at the battalion command in Petkovci from the brigade's duty officer. While the duty officer did not introduce himself, the Trial Chamber is convinced that it was Dragan Jokić who made the phone call to Milošević. Milošević was informed that Bosnian Muslim prisoners would arrive from Srebrenica to be detained in the school. The fate of the prisoners was not discussed. The Trial Chamber finds that while this evidence is in line with previous evidence regarding Dragan Jokić's knowledge as to the detention of prisoners in the Zvornik Brigade area, it cannot on this basis conclude that Dragan Jokić provided substantial assistance to the mass execution that was subsequently committed at Petkovci School and Dam. The Trial Chamber recalls that it has not found evidence that any Zvornik Brigade members took part in this execution.

d. Pilica School and Branjevo Military Farm

766. The Trial Chamber recalls that it has previously found that Dragan Jokić knew that Bosnian Muslim prisoners were detained in the Pilica School sports hall between 14-16 July.²²⁰² The Trial Chamber has also found that on 16 July the prisoners were taken by bus from the school to the nearby Branjevo Military Farm where they were executed. The Zvornik Brigade duty officer's workbook shows that at 22:10 on 16 July the brigade's 1st Battalion, which was stationed at the farm, requested a loader, an excavator and a dump truck to be in Pilica at 08:00 on 17 July. The workbook further contains the information that this request was conveyed to "Jokić," which is also corroborated by witness testimony. The Trial Chamber finds that the notation refers to Dragan Jokić and that he was informed in his capacity as Chief of Engineering. Early in the morning on 17 July, the workbook notes that the 1st Battalion called to verify that "the engineering machines had been secured." The evidence establishes that an excavator and a loader were sent to the 1st Battalion. On 17 July Cvijetin Ristanović was ordered by fortification platoon commander

Damjan Lazarević to go to the Branjevo Military Farm with his excavator. Once there, Ristanović again dug a mass grave. The Engineering Company commander's daily order for 17 July reads that an excavator was transported to Branjevo by a flatbed trailer, just as testified by Ristanović, and that an excavator and a loader were working at the site.²²⁰³

767. The Trial Chamber reiterates its finding that Dragan Jokić knew of the detention of Bosnian Muslim prisoners at the Pilica School as early as 14 July. Furthermore, the Trial Chamber finds that it has been established beyond reasonable doubt that Jokić, as Chief of Engineering, was informed of the 16 July request for heavy machinery and was in contact with Engineering Company members in order to effectuate the request. As a result of Dragan Jokić's actions Zvornik Brigade engineering resources and personnel were sent. The Trial Chamber is convinced that Dragan Jokić knew that these resources were sent in order to dig mass graves.

e. Kozluk

768. On 16 July at around 08:00, Miloš Mitrović, a machine operator of the fortification platoon of the Zvornik Brigade Engineering Company, was told by Dragan Jokić to take an excavator and go with another member of the Engineering Company, Nikola Ricanović, to Kozluk. This use of Engineering Company resources is corroborated by documentary evidence.²²⁰⁴ While Dragan Jokić did not tell Mitrović what their tasks were going to be in Kozluk, he told Mitrović that Damjan Lazarević, commander of the fortification platoon of the Engineering Company, was going to inform them on-site. This establishes that Dragan Jokić, as Chief of Engineering, not only knew what the tasks were going to be but also that mass killings had been committed in Kozluk. Upon arrival, Lazarević ordered Mitrović to put earth on bodies that had been put in already-dug graves. Mitrović worked in Kozluk until it was decided that his machine could not finish the task because it was only operating at 30% capacity and was in fact not designed for this kind of work.

769. The Defence of Dragan Jokić has argued that Dragan Jokić could not have been aware of the executions in Kozluk as he sent Mitrović with an excavator that was not able to do what was required.²²⁰⁵ The Trial Chamber considers this argument irrelevant for two reasons. First, while the evidence shows that the excavator did not work at full capacity and was designed for smaller road works, it was sent to the site by Dragan Jokić and was used there until another machine, also from the Zvornik Brigade Engineering Company, was sent to finish the task. Secondly, this was the third time since 14 July that Dragan Jokić participated in the deployment of Zvornik Brigade

²²⁰² See *supra* para. 347

²²⁰³ See *supra* para. 352-353 and 531-532.

²²⁰⁴ Ex. P516, vehicle work log for the month of July 1995 for an excavator.

²²⁰⁵ Defence Rejoinder Statement, T. 12625.

engineering resources to sites where Bosnian Muslims were detained awaiting execution or executed. With particular regard to Kozluk, therefore, by 17 July the evidence is clear as to Dragan Jokić's knowledge that hundreds of Bosnian Muslims had been murdered. With this knowledge, he provided practical assistance that had a substantial effect on the commission of the crimes and the Trial Chamber is convinced that Dragan Jokić knew that the Zvornik Brigade's engineering resources were to be used to dig mass graves for the executed victims.

f. Conclusion

770. The Trial Chamber finds that Dragan Jokic rendered practical assistance which had a substantial effect on the commission of the mass executions in Orahovac, Pilica/Branjevo Military Farm, and Kozluk. His acts of assistance included co-ordinating, sending and monitoring the deployment of Zvornik Brigade resources and equipment to the mass execution sites between 14-17 July. Furthermore, he rendered this assistance with the knowledge that his acts assisted the commission of murder. The Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt that Dragan Jokić aided and abetted the murders committed at Orahovac, Pilica/Branjevo Military Farm, and Kozluk.

(ii) Extermination

771. The Trial Chamber has found that extermination was committed.²²⁰⁶ The Trial Chamber finds that Dragan Jokić rendered practical assistance, which had a substantial effect on the crime of extermination. The Trial Chamber will assess if Dragan Jokić had knowledge that his acts assisted in the commission of extermination.

772. The Trial Chamber has been furnished with evidence that Dragan Jokić knew about the detention of Bosnian Muslims at the Grbavci School at Orahovac, at the Petkovci School, at the Pilica School, and at Kozluk. Further, the fact that Dragan Jokić sent Zvornik Brigade heavy digging equipment and personnel to operate this equipment to dig mass graves where executions were either ongoing or had just taken place proves beyond reasonable doubt that Dragan Jokić knew that the murders were committed on a vast scale. With this knowledge, Dragan Jokić rendered practical assistance, which had a substantial effect on the crimes committed. The Trial Chamber therefore finds that Dragan Jokić aided and abetted extermination.

(iii) Persecutions

²²⁰⁶ See *supra* section V. C. 2.

773. Under Count 5, Persecutions, the Prosecution charges Dragan Jokić with the four underlying acts of murder, cruel and inhumane treatment, terrorising the civilian population, and destruction of property. The Trial Chamber recalls its findings that for the underlying acts with which Dragan Jokić have been charged the murder, the cruel and inhumane treatment, and the terrorising of the Bosnian Muslim civilians constituted part of the persecutorial campaign against the Bosnian Muslim population.²²⁰⁷

774. The Trial Chamber finds that no evidence has been presented which would enable it to conclude that Dragan Jokić rendered practical assistance, encouragement or moral support, which had a substantial effect on the cruel and inhumane treatment or the terrorising of the civilian population. The Trial Chamber therefore concludes that Dragan Jokić does not bear any liability for these underlying acts.

775. With regard to the underlying act of murder, the Trial Chamber has found beyond reasonable doubt that Dragan Jokić aided and abetted the commission of the murders committed at Orahovac, Pilica/Branjevo Military Farm, and Kozluk. The evidence shows that from 14 July onwards Dragan Jokić knew that thousands of Bosnian Muslim men and boys were being detained in the Zvornik Brigade area. The evidence further establishes that Dragan Jokić knew that these men and boys were detained on discriminatory grounds because they were Bosnian Muslim. The Trial Chamber is therefore convinced that Dragan Jokić knew that the crimes committed at Orahovac, Pilica/Branjevo Military Farm, and Kozluk were committed by the principal perpetrators against the victims because they were Bosnian Muslims. Consequently, the Trial Chamber finds that by his actions as described previously Dragan Jokić aided and abetted the crime of persecutions committed through murder at Orahovac, Pilica/Branjevo Military Farm, and Kozluk.

3. Complicity

(a) Applicable Law

776. As mentioned above, complicity is a form of criminal participation governed by the general principles of criminal law.²²⁰⁸ Complicity has generally been broadly conceived as a form

²²⁰⁷ See *supra* section V. D. 3 and 4.

²²⁰⁸ *Brđanin* Trial Judgement, para. 724, citing *Čelibići* Trial Judgement, para. 321. See also *Tadić* Appeal Judgement, para. 338; *Akayesu* Trial Judgement, para. 527. The Trial Chamber has taken into consideration the definitions of complicity in some national legal systems. For the definitions in France, England and Germany, the Trial Chamber refers to *Stakić 98 bis* Decision, paras 58-58. Moreover the Trial Chamber has considered the following national legal systems.

The Criminal Code of the Socialist Federal Republic of Yugoslavia defined “complicity” in Article 22 at the time as follows: “If several persons jointly commit a criminal act by participating in the act of commission or in

of secondary liability²²⁰⁹ and as such, it covers various heads of responsibility listed under Article 7(1).²²¹⁰ In the context of genocide, while the principal perpetrator²²¹¹ has been defined as “one who fulfils ‘a key coordinating role’ and whose ‘participation is of an extremely significant nature and at the leadership level’,”²²¹² the accomplice²²¹³ has been defined as someone who associates him or herself in the crime of genocide committed by another.²²¹⁴

777. The Appeals Chamber has acknowledged that complicity in genocide includes the notion of aiding and abetting in the planning, preparation or execution of a crime, as well as other forms of liability.²²¹⁵ In this regard, the ICTR, relying on the Rwandan criminal code, had distinguished three forms of liability under complicity in genocide, namely complicity by procuring means,

some other way, each of them shall be punished as prescribed for the act.” Complicity is the collective realisation of a criminal offence committed by a number of persons aware of the fact that they act in co-operation. Yugoslav theory has accepted the division into complicity *stricto sensu* which includes incitement, aiding and organising criminal associations and complicity *lato sensu* which includes, besides the above-mentioned forms of complicity, participating in the form of co-perpetration. (See International Encyclopedia of Laws, Criminal Law, Vol. 5, Kluwer, 1993, Yugoslavia 113-114)

Under Chinese criminal law, the accomplice is any person who plays a secondary or auxiliary role in a joint crime – where joint crime refers to an intentional crime committed by two or more persons jointly (. An accomplice shall yield to the principal criminal in committing a crime. (Articles 25 and 27 of the Criminal Code of 1997)

The Argentinean criminal code makes a distinction between two main forms of participation to a crime. The so-called “first-degree accomplice”(primary participant) is the person who takes part in the execution of the act or who offers the author an assistance or co-operation without which the act could not be committed, as well as the person who has directly determined another person to commit the act (the latter is defined as an “instigator”). The primary participant is considered responsible at the same level of the perpetrator. The so-called “second-degree accomplice” (secondary participant) is the person who co-operates in any other way to the perpetration of the crime or who offers an assistance after the commission of the crime, following a promise previously given.. If the accomplice intended to offer assistance in the perpetration of a crime that was less serious than the one committed by the perpetrator, he/she will be responsible only for the less serious crime ((See *Código Penal de la República Argentina*, Articles 45-47).

²²⁰⁹ See, e.g., *Krnjelac* Appeal Judgement, paras 70-73; *Krstić* Trial Judgement, para. 643. The *Krstić* Appeal Judgement (in para. 139) relies on the *Krnjelac* Appeal Judgement when defining the term complicity, thereby implicitly accepting the characterization of complicity as a form of secondary or accessory liability. See also *Prosecution v. Milan Milutinović et al.*, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, Case No. IT- 99-37-AR72, 21 May 2003, separate opinion of Judge Shahabuddeen, para. 7.

²²¹⁰ See, e.g., *Brdanin* Trial Judgement, para. 725.

²²¹¹ *Akayesu* Trial Judgement, para. 532; *Stakić* Rule 98 bis Decision, para. 49.

²²¹² *Krstić* Trial Judgement, para. 643; *Stakić* Rule 98 bis Decision, para. 51.

²²¹³ As in the *Brdanin* Trial Judgement (para. 723), the Trial Chamber uses the terms ‘complicity’ and ‘accomplice liability’ interchangeably. The term “accomplice” has already been defined *supra* in section VI. B. 1, in particular para 695.

²²¹⁴ *Brdanin* Trial Judgement, para. 727; *Stakić* Trial Judgement, para. 533. This interpretation is consistent with the preparatory works of the Genocide Convention, in which the United States representative stated that complicity refers to “accessoryship before and after the fact and to aiding and abetting in the commission of the crimes enumerated in this article”. Report of the Committee and Draft Convention Drawn up by the Committee, Ad Hoc Committee on Genocide, E/794, 24 May 1948, p 21.

²²¹⁵ *Krstić* Appeal Judgement, para. 139, states that “the two provisions [Article 7(1) and Article 4(3)] may be reconciled, because the terms ‘complicity’ and ‘accomplice’ may encompass conduct broader than that of aiding and abetting”. It thereby recognizes that complicity, under Article 4, encompasses the notion of aiding and abetting, under Article 7(1). See also para. 142. The *Milošević* Decision on Motion for Acquittal, noting that this part of the *Krstić* Appeal Judgement was *obiter dicta*, departed from this analysis and considered that, in the case against Milošević, complicity in genocide should be equated with aiding and abetting genocide. Para. 297.

complicity by knowingly aiding and abetting and complicity by instigation.²²¹⁶ In the *Tadić* Trial Judgement and *Furundžija* Trial Judgement, the post-Second World War jurisprudence on aiding and abetting was considered in detail. In *Tadić* the terms “participation” and “complicity” are used interchangeably. According to the Trial Chamber in *Tadić*, the participant must directly and substantially affect the commission of the offence, through supporting the actual commission before, during or after the incident - where “substantially affect” means “a contribution that in fact has an effect on the commission of the crime”.²²¹⁷ The accomplice “will also be responsible for all that naturally results from the commission of the act in question.”²²¹⁸ The Trial Chamber in *Furundžija* found that the offence of aiding and abetting required the following elements: practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of a crime.²²¹⁹ Aiding and abetting genocide refers to “all acts of assistance or encouragement that have substantially contributed to, or have had a substantial effect on, the completion of the crime of genocide”.²²²⁰ This Trial Chamber relies on these definitions of aiding and abetting in considering whether the Accused can be found to have participated in supporting acts of genocide.

778. The Trial Chamber finds that since complicity in genocide has been interpreted to include various forms of participation listed under Article 7(1) of the Statute, the charge should be pled in such a way that the accused is on notice of the exact nature and extent of his alleged responsibility.

779. As for the *mens rea* required for an aider and abettor, “an individual who aids and abets a specific intent offence may be held responsible if he assists the commission of the crime knowing the intent behind the crime”.²²²¹ This principle applies to the Statute’s prohibition of genocide. The Appeals Chamber concluded that “[t]he conviction for aiding and abetting genocide upon proof that the defendant knew about the principal perpetrator’s specific intent is permitted by the Statute and case-law of the Tribunal”.²²²²

780. The Indictment does not expressly specify the exact mode of accomplice liability of Vidoje Blagojević under Article 7(1). However, the Prosecution Final Brief specifically limits the charge

²²¹⁶ *Akayesu* Trial Judgement, paras 533-537, *Musema* Trial Judgement, para. 179, *Bagilishema* Trial Judgement, para. 69, *Semanza* Trial Judgement, para. 393.

²²¹⁷ *Tadić* Judgement, para. 688.

²²¹⁸ *Tadić* Judgement, para. 692.

²²¹⁹ *Furundžija* Trial Judgement, para. 249.

²²²⁰ *Brdanin* Trial Judgement, para. 729, citing *Semanza* Trial Judgement, para. 395. See also *Stakić* Trial Judgement, para. 533.

²²²¹ *Krstić* Appeal Judgement, para. 140, citing *Krnojelac* Appeal Judgement, para. 52, *Vasiljević* Appeal Judgement, para. 142.

²²²² *Krstić* Appeal Judgement, para. 140; *Ntakirutimana* Appeal Judgement, paras 500-501.

of complicity to aiding and abetting genocide.²²²³ The Trial Chamber further recalls that the Indictment does not plead that Blagojević shared the specific intent but alleges that Blagojević “knew that the crime was being committed in furtherance of the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such.”²²²⁴ The Trial Chamber finds that the Accused had been properly put on notice that the charge of complicity in genocide in this case is limited to aiding and abetting and that for this form of liability the individual charged need only possess knowledge of the principal’s perpetrator’s specific intent.

781. Accordingly, the count of complicity in genocide is limited to an allegation of Blagojević’s guilt as an aider and abettor.

782. An individual may be held responsible for aiding and abetting genocide if it is shown that he assisted in the commission of the crime in the knowledge of the principal perpetrator’s specific intent.²²²⁵ Aiding and abetting genocide is therefore defined by the following elements:

- the accused carried out an act which consisted of practical assistance, encouragement or moral support to the principal that had a “substantial effect” on the commission of the crime;
- the accused had knowledge that his or her own acts assisted in the commission of the specific crime by the principal offender; and
- the accused knew that the crime was committed with specific intent.

(b) Findings

783. The Trial Chamber has established that the acts through which genocide was committed are killing members of the group and causing serious bodily or mental harm to members of the group.²²²⁶ In order to assess Colonel Blagojević’s liability for complicity in genocide, it must determine first whether he rendered acts of practical assistance that had a substantial effect on the commission of the killings and serious bodily or mental harm that underlie the crime of genocide. If this finding is in the affirmative, the Trial Chamber will first determine whether Colonel Blagojević had knowledge that his acts assisted in the commission of these underlying acts. Then, the Trial Chamber will then whether Colonel Blagojević’s knew of the principal perpetrator’s specific intent to destroy the Bosnian Muslim group in whole or in part.

²²²³ Prosecution Final Brief, paras 582, 583.

²²²⁴ Indictment, para. 54. The Blagojević Defence has never contested this, but, on the contrary, has consistently expressed this understanding of the case until the Prosecution’ Motion to amend the Indictment was submitted. *See supra* paras 636, 637.

²²²⁵ *Krstić* Appeal Judgement, para. 140.

²²²⁶ *See supra* section V. F. 2.(i) , in particular paras 643 and 654.

784. The Trial Chamber has found that Colonel Blagojević aided and abetted the murders committed in Bratunac town. The Trial Chamber has further found that Colonel Blagojević aided and abetted persecutions committed through the underlying acts of murder, cruel and inhumane treatment, terrorising the civilian population and forcible transfer, as well as that he aided and abetted the commission of other inhumane acts through forcible transfer. His assistance was primarily in the form of permitting resources of the Bratunac Brigade to be used in the commission of those acts, as discussed above. As such, the Trial Chamber finds that Colonel Blagojević rendered practical assistance in the killings²²²⁷ and in causing serious bodily or mental harm to the Bosnian Muslims from Srebrenica. The Trial Chamber finds that these acts of practical assistance had a substantial effect on the commission of genocide.²²²⁸

785. The Trial Chamber further finds that Colonel Blagojević knew that by allowing the resources of the Bratunac Brigade to be used he was making a substantial contribution to the killing of Bosnian Muslim men and to the infliction of serious bodily or mental harm on the Bosnian Muslim population.

786. The Trial Chamber finds that Colonel Blagojević knew of the principal perpetrators' intent to destroy in whole or in part the Bosnian Muslim group as such.²²²⁹ The Trial Chamber infers this knowledge from all the circumstances that surrounded the take-over of the Srebrenica enclave and the acts directed at the Bosnian Muslim population which followed. In particular, the Trial Chamber recalls:

- Colonel Blagojević's knew the goal of the Krivaja 95 operation, namely to create conditions for the elimination of the Srebrenica enclave
- Colonel Blagojević knew that the Bosnian Muslim population in its entirety was driven out of Srebrenica town to Potočari
- Colonel Blagojević knew that the Bosnian Muslim men were separated from the rest of the Bosnian Muslim population
- Colonel Blagojević knew that the Bosnian Muslim women, children and elderly were forcibly transferred to non-Serb held territory

²²²⁷ In this regard, the Trial Chamber recalls its finding that while Colonel Blagojević may have rendered practical assistance that had a substantial effect on the commission of the mass executions, due to the lack of the requisite *mens rea*, he does not incur criminal liability for mass executions. See *supra* section V.C.2. in particular paras 732-737 and 741-743.

²²²⁸ See *supra* section II.D.1.(j), section II.E.5., section III.C.2 and 4.

²²²⁹ See *supra* section II. C.5. in particular paras 137 and 138, and section V.F. 2.(i).b., in particular paras 643, 647, 749, 650, 652, 653

- Colonel Blagojević knew that the Bosnian Muslim men were detained in inhumane conditions in temporary detention centres pending further transport
- Colonel Blagojević knew that members of the Bratunac Brigade contributed to the murder of Bosnian Muslim men detained in Bratunac
- Colonel Blagojević knew of and participated in an operation to search the terrain for the purpose of capturing and detaining Bosnian Muslim men, so as to prevent the men from “breaking through” to Tuzla or Kladanj, *i.e.*, territory under the control of the Bosnian Muslims

787. Having found that Colonel Blagojević rendered practical assistance that had a substantial effect on the commission of genocide in the knowledge that the principal perpetrators of these acts had the intent to destroy in whole or in part the Bosnian Muslim group from Srebrenica, the Trial Chamber therefore finds Colonel Blagojević is responsible for complicity in genocide through aiding and abetting the commission of genocide.

C. Article 7(3) of the Statute

1. Applicable Law

788. In relation to the alleged command responsibility of Colonel Blagojević, the Prosecution alleges that this form of criminal liability arises from him being “in command of the 1st Bratunac Light Infantry Brigade” and being “present in Bratunac Brigade zone of responsibility exercising command through at least 17 July 1995.”²²³⁰ It further asserts that “[a]s a brigade commander he was responsible for planning, directing and monitoring the activities of all the subordinate formations of his brigade, in accordance with the directives received from his higher command at the Corps and Main Staff levels.”²²³¹

789. Article 7(3) of the Statute provides:

The fact that any of the acts referred to in articles 2 and 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.

²²³⁰ Indictment, para. 2.

²²³¹ Indictment, para. 3.

As the Appeals Chamber has held, “[t]he principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary law.”²²³²

790. To hold a commander responsible for the crimes of his subordinates under customary international law, it must be established beyond reasonable doubt that:

- i. there existed a superior-subordinate relationship between the superior and the perpetrator of the crime;
- 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 to punish the perpetrator thereof.²²³³

791. The existence of a superior-subordinate relationship is most obviously characterised by a formal hierarchical relationship between the superior and subordinate; a hierarchical relationship may also, however, arise out of an informal and indirect relationship.²²³⁴ The hierarchical relationship may exist by virtue of a person’s *de jure* or *de facto* position of authority.²²³⁵ The critical factor that must be established to find a superior-subordinate relationship is that the superior had “effective control” over the person or persons in question, namely those persons committing the offences.²²³⁶ Effective control means the “material ability to prevent or punish the commission of the offences”.²²³⁷ “Substantial influence” over subordinates that does not meet the threshold of “effective control” is not a sufficient basis for imputing criminal liability under customary law.²²³⁸ Where a commander has effective control and fails to exercise that power he can be held responsible for the crimes committed by his subordinates.²²³⁹ A commander vested with *de jure* authority who does not, in reality, have effective control over his or her subordinates would not incur criminal responsibility pursuant to the doctrine of command responsibility, while a *de facto* commander who lacks formal letters of appointment, superior rank or commission but

²²³² *Čelebići* Appeal Judgement, para. 195.

²²³³ *Čelebići* Trial Judgement, para. 346, applied and affirmed in deciding appeal, *Čelebići* Appeal Judgement, paras 192-198, 225-226, 238-239, 256, 266-267.

²²³⁴ *Čelebići* Appeal Judgement, paras 252, and 302-303. *See also* ICRC Commentary on Additional Protocol I, para. 3544.

²²³⁵ *Čelebići* Trial Judgement, para. 370. *See also* *Čelebići* Appeal Judgement, para. 193. The superior-subordinate relationship need not have been formalised, and it is not necessarily determined by “formal status alone”. *Čelebići* Appeal Judgement, paras 193-97.

²²³⁶ *Čelebići* Appeal Judgement, para. 197. *See also* *Ibid*, para. 256: “The concept of effective *control* over a subordinate – in the sense of a material ability to prevent or punish criminal conduct, however that control is exercised – is the threshold to be reached in establishing a superior-subordinate relationship for the purpose of Article 7(3) of the Statute.”

²²³⁷ *Čelebići* Trial Judgement, para. 378, affirmed in *Čelebići* Appeal Judgement, para. 256.

²²³⁸ *Čelebići* Appeal Judgement, para. 266.

²²³⁹ *Čelebići* Appeal Judgement, paras 196-98. *See also* *Aleksovski* Appeal Judgement, para. 76.

does, in reality, have effective control over the perpetrators of offences could incur criminal responsibility under the doctrine of command responsibility.²²⁴⁰

792. Command responsibility is not a form of strict liability.²²⁴¹ To find a commander criminally responsible under Article 7(3), it must be established that he “knew or had reason to know” that his subordinate was about to commit or had committed a crime. The *mens rea* requirement is satisfied when it is established that: (i) the commander had actual knowledge, established through either direct or circumstantial evidence, that his subordinates were committing or about to commit crimes within the jurisdiction of the Tribunal; or (ii) he had in his possession such information which would put him on notice of the risk of such offences, in that it indicated or alerted him to the need for additional investigation in order to determine whether such crimes had been or were about to be committed by his subordinates.²²⁴² Drawing on the indicia identified by the Commission of Experts in their Final Report, Trial Chambers have relied on the following factors to establish “actual knowledge” in lieu of direct evidence: the number, type and scope of the illegal acts; the time during which the illegal acts occurred; the number and type of troops involved; the logistics involved, if any; the geographical location of the acts; the widespread occurrence of the acts; the speed of the operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the commander at the time.²²⁴³ Additionally, the fact that a military commander “will most probably” be part of an organised structure with reporting and monitoring systems has been cited as a factor that could facilitate the showing of actual knowledge.²²⁴⁴ Knowledge may be presumed if a superior had the means to obtain the relevant information of a crime and deliberately refrained from doing so.²²⁴⁵

793. The third element which must be established is that the superior failed to take the necessary and reasonable measures to prevent or punish the crimes of his subordinates. The measures required of the commander are limited to those which are “within his power”, meaning those measures which are “within his material possibility”.²²⁴⁶ A commander is not obliged to perform the impossible; he does, however, have a duty to exercise the measures that are possible

²²⁴⁰ *Čelebići* Appeal Judgement, para. 197.

²²⁴¹ *Čelebići* Appeal Judgement, para. 239.

²²⁴² *Čelebići* Trial Judgement, para. 383, affirmed by *Čelebići* Appeal Judgement, para. 241. *See also Blaškić* Appeal Judgement, para. 69: “The indicators of effective control are more a matter of evidence than of substantive law, and those indicators 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.” (citations omitted).

²²⁴³ *Čelebići* Trial Judgment, para. 386, citing Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992), (UN Document S/1994/674), para. 58. *See also Naletilić* Judgement, paras 70-71.

²²⁴⁴ *Naletilić* Judgement, para. 72.

²²⁴⁵ *Čelebići* Appeal Judgement, para. 227. *See Blaškić* Appeal Judgement, para. 61: “One of the duties of a commander is therefore to be informed of the behaviour of his subordinates.”

within the circumstances,²²⁴⁷ including those measures that may be beyond his legal competence.²²⁴⁸ The obligation to prevent or punish may, under some circumstances, be satisfied by reporting the matter to the competent authorities.²²⁴⁹ Finally, the failure to take the necessary and reasonable measures to prevent an offence of which a superior knew or had reason to know cannot be cured simply by subsequently punishing the subordinate for the commission of the offence.²²⁵⁰

2. Findings in relation to Vidoje Blagojević

794. The Trial Chamber finds that the participation of units of the Bratunac Brigade in the crimes established above has been reflected in the responsibility of Colonel Blagojević for aiding and abetting, with the following exceptions. In relation to the participation of the units in the murder operation, the Trial Chamber is convinced that they rendered practical assistance that furthered the crimes of murder and extermination. However, the Trial Chamber is unable to determine that they “committed” any of the crimes charged under the counts of murder or extermination. Therefore, the Trial Chamber cannot, with any precision, identify the specific perpetrators for whom Colonel Blagojević had the duty to punish.

795. The Trial Chamber further finds that Momir Nikolić, a subordinate of Colonel Blagojević committed crimes, including, at least, persecutions. The Trial Chamber further finds that at some point in time, Colonel Blagojević had knowledge of this. However, considering that during the period between July and November 1995 senior members of the VRS were in the Srebrenica area issuing orders and instructions, and taking into consideration the Trial Chamber’s findings in relation to the functional chain of command for the security organ, the Trial Chamber is unable to conclude that Colonel Blagojević had ‘effective control’ over Momir Nikolić to the threshold required in order to establish a superior-subordinate relationship for the purpose of Article 7(3) of the Statute – namely, that he had the “material ability to prevent or punish the commission of the offences”.²²⁵¹ Moreover, while recognising that Colonel Blagojević failed to take any measure to prevent or punish the crimes of Momir Nikolić, the Trial Chamber is convinced that “a commander is not obliged to perform the impossible”²²⁵² and that reporting the matter to the

²²⁴⁶ *Čelebići* Trial Judgement, para. 395. The Trial Chamber also takes note of the views expressed by the Appeals Chamber in relation to command responsibility for General Krstić, *Krstić* Appeal Judgement, fn. 250.

²²⁴⁷ *Krnjelac* Trial Judgement, para. 95.

²²⁴⁸ *Čelebići* Trial Judgement, para. 395.

²²⁴⁹ *Blaškić* Trial Judgement, para. 335, affirmed on appeal, *Blaškić* Appeal Judgement, para. 72.

²²⁵⁰ *Blaškić* Trial Judgement, para. 336. See *Blaškić* Appeal Judgement, para. 83: “The failure to punish and failure to prevent involve different crimes committed at different time: the failure to punish concerns past crimes committed by subordinates, whereas the failure to prevent concerns future crimes of subordinates.”

²²⁵¹ *Čelebići* Trial Judgement, para. 378, affirmed in *Čelebići* Appeal Judgement, para. 256.

²²⁵² *Krnjelac* Trial Judgement, para. 95.

competent authorities may not have been, in the circumstances at that time, a reasonable measure that would have led to the punishment of Momir Nikolić.²²⁵³

796. For the above mentioned reasons, the Trial Chamber concludes that the mode of liability under Article 7(1) - in particular aiding and abetting the commission of the proven crimes – best reflects Colonel Blagojević’s criminal liability.

²²⁵³ As the Appeals Chamber found in the *Krstić* case, the Trial Chamber has found that the most Colonel Blagojević could have done as a commander was to report the use of his personnel and assets, in facilitating the killings, to the Drina Corps or VRS Main Staff and to his superior, General Mladić, “the very people who ordered the executions and were active participants in them.” *Krstić* Appeal Judgement, para. 143, fn. 250. Further, the Trial Chamber considers that, although Colonel Blagojević could have tried to punish his subordinates for their participation in facilitating the executions, it is unlikely that he would have had the support of his superiors in doing so at that time. The same reasoning was adopted by the *Krstić* Appeal Chamber. See *Krstić* Appeal Judgement, para. 143, fn. 250, citing *Krnjelac* Trial Judgement, para. 127; not changed on appeal.

VII. FINDINGS OF THE TRIAL CHAMBER

A. Charges against Vidoje Blagojevic

797. In relation to the charges brought against Colonel Blagojević, the Trial Chamber finds:

- **Count 1B: Complicity in Genocide**, charged pursuant to Articles 4(3)(e), 7(1) and 7(3) of the Statute, through (a) killing members of the group by summary execution, and (b) causing serious bodily or mental harm to members of the group

Vidoje Blagojević is **guilty** of complicity in genocide by aiding and abetting genocide pursuant to Articles 4(3)(e) and 7(1) of the Statute, through (a) killings members of the group and (b) causing serious bodily or mental harm to members of the group.

- **Count 2: Extermination**, charged pursuant to Articles 5(b), 7(1) and 7(3) of the Statute.

Vidoje Blagojević is **not guilty** of extermination, a crime against humanity.

- **Count 3: Murder**, charged pursuant to Articles 5(a), 7(1) and 7(3) of the Statute, as alleged in paragraph 45(a)(c)(d) and(f), paragraph 46.1-46.12, and paragraph 47(5) in relation to Rešid Sinanović
- **Count 4: Murder**, charged pursuant to Articles 3, 7(1) and 7(3) of the Statute, as alleged in paragraph 45(a)(c)(d) and(f), paragraph 46.1-46.12, and paragraph 47(5) in relation to Rešid Sinanović

Vidoje Blagojević is **not guilty** of murder, as a crime against humanity or as a violation of the laws or customs of war in relation to paragraphs 46.1-46.12 and 47(5).

Vidoje Blagojević is **guilty** of for aiding and abetting murder, as a crime against humanity and as a violation of the laws or customs of war in relation to paragraph 45(a)(c)(d) and (f).

- **Count 5: Persecutions**, charged pursuant to Articles 5(h), 7(1) and 7(3) of the Statute, through (a) murder of thousands of Bosnian Muslim civilians, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians in Srebrenica and at Potočari, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) the forcible transfer of the Bosnian Muslims from the Srebrenica enclave

Vidoje Blagojević is **guilty** of aiding and abetting persecutions, a crime against humanity, through murder, cruel and inhumane treatment, terrorising of Bosnian Muslim civilians in Srebrenica and at Potočari, and the forcible transfer of the Bosnian Muslims from the Srebrenica enclave.

- **Count 6: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i), 7(1) and 7(3) of the Statute

Vidoje Blagojević is **guilty** of aiding and abetting other inhumane acts (forcible transfer), a crime against humanity.

B. Charges against Dragan Jokić

798. In relation to the charges brought against Dragan Jokić, the Trial Chamber finds:

- **Count 2: Extermination**, charged pursuant to Articles 5(b) and 7(1) of the Statute.

Dragan Jokić is guilty of extermination, a crime against humanity.

- **Count 3: Murder**, charged pursuant to Articles 5(a) and 7(1) of the Statute, as alleged in paragraph 46.1-12 and paragraph 47.6.
- **Count 4: Murder**, charged pursuant to Articles 3 and 7(1) of the Statute, as alleged in paragraph 46.1-12 and paragraph 47.6.

Dragan Jokić is **not guilty** of murder, as a crime against humanity and as a violation of the laws or customs of war in relation to paragraphs 46.1, 46.2, 46.3, 46.4, 46.5, 46.7, 46.8, 46.9, 46.11, and 47.6.

Dragan Jokić is **guilty** of aiding and abetting murder, as a crime against humanity and as a violation of the laws or customs of war in relation to paragraph 46.6, 46.10, and 46.12.

- **Count 5: Persecutions**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder of thousands of Bosnian Muslim civilians, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians in Srebrenica and at Potočari, and (d) destruction of personal property and effects belonging to the Bosnian Muslims.

Dragan Jokić is **guilty** of aiding and abetting persecutions, a crime against humanity, through murder.

VIII. CUMULATIVE CONVICTIONS

A. Cumulative convictions

799. The established jurisprudence of the Tribunal is that multiple convictions entered under different statutory provisions, but based on the same conduct, are permissible only if each statutory provision has a materially distinct element not contained within the other.²²⁵⁴ An element is materially distinct from another if it requires proof of a fact not required by the other.²²⁵⁵ When this test is not met, only the conviction under the more specific provision will be entered.²²⁵⁶ The more specific offence subsumes the less specific one, because the commission of the former necessarily entails the commission of the latter.²²⁵⁷

1. Murder under Article 3 and 5 of the Statute

800. Convictions based upon the same conduct for charges brought under Articles 3 and 5 of the Statute are permissibly cumulative as each Article contains materially distinct elements in the *chapeau* requirements.²²⁵⁸ The materially distinct element in Article 3 is the close nexus requirement between the acts of the accused and the armed conflict whereas Article 5 requires that the attack be widespread or systematic and directed against a civilian population. The Trial Chamber finds therefore that both convictions for murder under Article 3 (Count 4) and for murder under Article 5 (Count 3) based on the same conduct are in principle permissible.

2. Extermination (Article 5) and murder under Article 3 of the Statute

801. For the reasons given in the preceding paragraph, the Trial Chamber finds that it is permissible to enter convictions for both extermination under Article 5 (Count 2) and murder under Article 3 of the Statute (Count 4).

²²⁵⁴ *Čelebići* Appeal Judgement, para. 412. See also *Jelisić* Appeal Judgement, para. 78; *Kupreskić et al.* Appeal Judgement, para. 387; *Kunarac et al.* Appeal Judgement, para. 168; *Vasiljević* Appeal Judgement, paras. 135, 146. *Krstić* Appeals Judgement, para. 217. This approach has also been endorsed by the Appeals Chamber of the ICTR. See *Musema* Appeal Judgement, para. 363.

²²⁵⁵ *Čelebići* Appeal Judgement, para. 412; see also *Jelisić* Appeal Judgement, para. 78; *Kupreskić et al.* Appeal Judgement, para. 387; *Kunarac et al.* Appeal Judgement, paras. 168, 173; *Krstić* Appeal Judgement, para. 217.

²²⁵⁶ *Čelebići* Appeal Judgement, para. 413. This two-pronged test is generally referred to as the '*Čelebići* test'. See also *Jelisić* Appeal Judgement, para. 79; *Kupreskić et al.* Appeal Judgement, para. 387; *Kunarac et al.* Appeal Judgement, para. 168; *Krstić* Appeal Judgement, para. 217.

²²⁵⁷ *Krstić* Appeal Judgement, para. 217.

²²⁵⁸ *Jelisić* Appeal Judgement, para. 82. Indeed, the Appeals Chamber in the *Kunarac* case affirmed that convictions for the same conduct under Article 3 of the Statute and Article 5 of the Statute are permissible, believing that the Security Council intended that convictions for the same conduct constituting distinct offences under several of the Articles of the Statute be entered. See *Stakić* Trial Judgement, citing *Kunarac* Appeal Judgement, paras 176 and 178; and *Krstić* Trial Judgement, para. 674.

3. Extermination and murder under Article 5 of the Statute

802. The Appeals Chamber has recently stated that convictions for murder as a crime against humanity and for extermination as a crime against humanity, based on the same set of facts, cannot be cumulative.²²⁵⁹ It explained that “[m]urder as a crime against humanity does not contain a materially distinct element from extermination as a crime against humanity; each involves killing within the context of a widespread or systematic attack against the civilian population, and the only element that distinguishes these offences is the requirement of the offence of extermination that the killings occur on a mass scale.”²²⁶⁰

803. The Trial Chamber therefore finds that it is not permissible to enter convictions both for extermination (Count 2) and murder under Article 5 (Count 3).

4. Persecutions and other crimes under Article 5

804. The Appeals Chamber has until recently held that convictions for both persecutions, a crime against humanity pursuant to Article 5 of the Statute, and another crime under Article 5 of the Statute, on the basis of the same acts, were not permissible. The *Vasiljević* Appeals Chamber held that it is impermissible to enter a conviction for persecutions and convictions for murder and inhumane acts under Article 5, when the conviction for persecutions is based on these acts.²²⁶¹ The Appeals Chamber stated that:

the Trial Chamber found that persecution under Article 5(h) of the Statute [...] requires the materially distinct elements of a discriminatory act and a discriminatory intent and is therefore *more specific* than murder as a crime against humanity under Article 5(a) of the Statute [...] and inhumane acts as a crime against humanity under Article 5(i) of the Statute [...]. The Appeals Chamber finds the Appellant guilty of aiding and abetting [...] the crime of persecution under Article 5(h) of the Statute *by way of* murder of the five Muslim men [...].²²⁶²

²²⁵⁹ *Ntakirutimana* Appeal Judgement, para. 542, referring to *Kayishema and Ruzindana* Trial Judgement, paras 647-650; *Rutaganda* Trial Judgement, para. 422; *Musema* Trial Judgement, para. 957; *Semanza* Trial Judgement, paras 500-505. A different view was adopted in the *Akayesu* Trial Judgement, where a series of murder charges in relation to named persons were held collectively to constitute extermination and Akayesu was convicted of both murder and extermination. *Akayesu* Trial Judgement, para. 744. See also paras 469-470. These convictions were upheld on appeal. *Akayesu* Appeal Judgement, Disposition. A similar approach has also been taken by the *Stakić* Trial Chamber which found that in order to reflect the totality of the accused’s criminal conduct directed both at individual victims and at groups of victims on a large scale, it is in principle permissible to enter convictions both for extermination and murder under Article 5. *Stakić* Trial Judgement, para. 877.

²²⁶⁰ *Ntakirutimana* Appeal Judgement, para. 542.

²²⁶¹ *Vasiljević* Appeal Judgement, paras 135, 146.

²²⁶² *Vasiljević* Appeal Judgement, paras 146-147 (emphases added), and Disposition.

805. The same result was reached by the Appeals Chamber in *Krnojelac*, which concluded that “the crime of persecution in the form of inhumane acts subsumes the crime against humanity of inhumane acts.”²²⁶³

806. This same approach was confirmed in *Krstić* where the Appeals Chamber found that

[w]here the charge of persecution is premised on murder or inhumane acts, and such charge is proven, the Prosecution need not prove any additional fact in order to secure the conviction for murder [...] as well. The proof that the accused committed persecution through murder [...] necessarily includes proof of murder or inhumane acts under Article 5. These offenses become subsumed within the offence of persecution.²²⁶⁴

807. The *Kordić and Čerkez* Appeals Chamber, however, departed from this jurisprudence,²²⁶⁵ and held that cumulative convictions for persecutions, as a crime against humanity pursuant to Article 5 of the Statute and another crime under Article 5 of the Statute, if both convictions are based on the same criminal conduct, are permissible.²²⁶⁶ The Appeals Chamber considered that “cogent reasons” warranted a departure from the above-mentioned jurisprudence, which it found to be “an incorrect application of the *Čelebići* test to *intra*-Article 5 convictions”,²²⁶⁷ and stated that:

[...] the Appeals Chamber in *Čelebići* expressly rejected an approach that takes into account the actual conduct of the accused as determinative of whether multiple convictions for that conduct are permissible. Rather, what is required is an examination, as a matter of law, of the elements of each offence in the Statute that pertain to that conduct for which the accused has been convicted. It must be considered whether each offence charged has a materially distinct element not contained in the other; that is, whether each offence has an element that requires proof of a fact not required by the other offence.²²⁶⁸

808. In relation to the question of cumulative convictions for both persecutions as a crime against humanity under Article 5(h) of the Statute and murder as a crime against humanity under Article 5(a) of the Statute, the Appeals Chamber found that:

²²⁶³ *Krnojelac* Appeal Judgement, para. 188, and Disposition in relation to inhumane acts and persecutions. In the same case the Appeals Chamber confirmed that Trial Chamber’s view that *intra*-Article 5 convictions for imprisonment and persecutions – both crimes against humanity – are impermissibly cumulative, and that where persecutions take the form of imprisonment, the former subsumes the latter. *Krnojelac* Trial Judgement, paras 438, 503 and 534, affirmed in the *Krnojelac* Appeal Judgement (*see* para 41 and the Disposition in relation to persecutions and imprisonment as crimes against humanity).

²²⁶⁴ *Krstić* Appeal Judgement, para. 232 (emphasis in the original).

²²⁶⁵ *Čelebići* Appeal Judgement, *Krnojelac* Appeal Judgement, *Vasiljević* Appeal Judgement, and *Krstić* Appeal Judgement. This jurisprudence has also recently been followed by Trial Chambers in *Naletilić and Martinović*, *Stakić*, *Simić et al.*, and *Brdanin*.

²²⁶⁶ *Kordić and Čerkez* Appeal Judgement, paras 1040-43.

²²⁶⁷ *Kordić and Čerkez* Appeal Judgement, para. 1040, referring to *Aleksovski* Appeal Judgement, paras 107-109. According to the *Kordić and Čerkez* Appeal Chamber, the above-mentioned cases are “in direct contradiction to the reasoning and proper application of the test” by the Appeal Chambers in *Jelisić*, *Kupreškić*, *Kunarac*, and *Musema*. *Kordić and Čerkez* Appeal Judgement, para. 1040

²²⁶⁸ *Kordić and Čerkez* Appeal Judgement, para. 1040. Two of the five judges of the Appeals Chamber disagreed with the majority’s view. *Kordić and Čerkez* Appeal Judgement, Joint Dissenting Opinion of Judge Schomburg and Judge Güney on cumulative convictions, paras 1-13.

the definition of persecutions contains materially distinct elements not present in the definition of murder under Article 5 of the Statute: the requirement of proof that an act or omission discriminates in fact *and* proof that the act or omission was committed with specific intent to discriminate. Murder, by contrast, requires proof that the accused caused the death of one or more persons, regardless of whether the act or omission causing the death discriminates in fact or was specifically intended as discriminatory, which is not required by persecutions.²²⁶⁹

809. As for the question of cumulative convictions for both persecutions and other inhumane acts as a crime against humanity under Article 5(i) of the Statute, the Appeals Chamber found that:

the definition of persecutions contains materially distinct elements not present in the definition of other inhumane acts under Article 5 of the Statute: the requirement of proof that an act or omission discriminates in fact *and* proof that the act or omission was committed with specific intent to discriminate. Other inhumane acts, by contrast, require proof that the accused caused serious bodily or mental harm to the victim(s), regardless of whether the act or omission causing the harm discriminates in fact or was specifically intended as discriminatory, which is not required by persecutions.²²⁷⁰

Thus the Appeals Chamber concluded that cumulative convictions on the basis of the same acts under Article 5 of the Statute are permissible in relation to these crimes.²²⁷¹

810. Recalling the binding force of decisions of the Tribunal's Appeals Chamber upon the Trial Chambers,²²⁷² and in light of the latest pronouncement of the Appeals Chamber, this Trial Chamber finds that convictions for murder under Article 5 (Count 3) and for persecutions based on the underlying act of murder (Count 5), when both convictions are based on the same acts, are in principle permissible. Similarly, convictions for other inhumane acts (forcible transfer) under Article 5 (Count 6) and for persecutions based on the underlying act of forcible transfer (Count 5) are also in principle permissible.

²²⁶⁹ *Kordić and Čerkez* Appeal Judgement, para. 1041.

²²⁷⁰ *Kordić and Čerkez* Appeal Judgement, para. 1042.

²²⁷¹ *Kordić and Čerkez* Appeal Judgement, paras 1041-42.

²²⁷² *Kupreškić et al.* Appeal Judgement, para. 540.

IX. SENTENCING

A. Applicable Law of the Tribunal

811. Article 24 of the Statute prescribes the possible penalties upon conviction before the Tribunal and the factors to be taken into account in determining the sentence of an accused.

Article 24

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

812. Rules 101 of the Rules are the provisions applicable to the penalty of imprisonment.

Rule 101

Penalties

- (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:
 - (i) any aggravating circumstances;
 - (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
 - (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;
 - (iv) 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, as referred to in Article 10, paragraph 3, of the Statute.
- (C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

813. Article 27 of the Statute is the applicable provision for the enforcement of sentences.²²⁷³

²²⁷³ Article 27 provides: Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons. Such

B. Principles and Purposes of Punishment

814. The Tribunal was established to prosecute persons from a particular area, namely the former Yugoslavia, for crimes committed during a specific situation, based on international law. The punishment must therefore reflect both the calls for justice from the persons who have – directly or indirectly – been victims of the crimes, as well as respond to the call from the international community as a whole to end impunity for massive human rights violations and crimes committed during armed conflicts.

815. Despite the enormity of the crime base that underlies this case, the Trial Chamber must remember that in this case, as in all cases before the Tribunal, it is called upon to determine a sentence for two individuals, based solely on their particular conduct and circumstances.

816. As the Tribunal is applying international law, it must also have due regard for the impact of its application of internationally recognised norms and principles on the global level. Thus, a trial chamber must consider its obligations to the individual accused in light of its responsibility to ensure that it is upholding the purposes and principles of international criminal law. This task becomes particularly difficult in relation to punishment. As a cursory review of the history of punishment reveals that the forms of punishment reflect norms and values of a particular society at a given time. This Trial Chamber must discern the underlying principles and rationales for punishment that respond to both the needs of the society of the former Yugoslavia and the international community.

817. The Trial Chamber finds that the purposes of punishment recognised under the jurisprudence of the Tribunal are retribution, deterrence and rehabilitation.

818. The Trial Chamber observes that by the very wording of Article 24(2) of the Statute and the subsequent jurisprudence of the Tribunal, which has focused on gravity of the offence as the primary consideration in determining a sentence, retribution or “just deserts” as a purpose of punishment has enjoyed prominence.²²⁷⁴ In light of the purposes of the Tribunal and international humanitarian law generally, the Trial Chamber understands retribution to be the expression of condemnation and outrage of the international community at such grave violations of, and disregard for, fundamental human rights at a time that people may be at their most vulnerable,

imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal.

²²⁷⁴ See *e.g.* *Čelebići* Appeal Judgement, para. 806, *Aleksovski* Appeal Judgement, para. 185.

namely during armed conflict.²²⁷⁵ It is also recognition of the harm and suffering caused to the victims.

819. Furthermore, within the context of international criminal justice, retribution is understood as a clear statement by the international community that crimes will be punished and impunity will not prevail. Recourse to the gravity of the offence, with considerations for the role of the accused in the commission of the offence and the impact of the offence on victims, should help guide a trial chamber in its determination of what sentence is necessary to reflect the indignation and condemnation of the international community for the crimes committed.

820. Punishment usually reflects social norms or practices of a particular society. For this reason, the Trial Chamber has considered the purposes of punishment as contained in the SFRY Criminal Code. Under the SFRY Criminal Code, the purposes of punishment are:

(1) preventing the offender from committing criminal acts and his rehabilitation; (2) rehabilitative influence on others not to commit criminal acts; (3) strengthening the moral fibre of a socialist self-managing society and influence on the development of citizens' social responsibility and discipline.²²⁷⁶

821. Thus, deterrence, both specific and general, and rehabilitation were primary purposes of punishment in the former Yugoslavia. The Trial Chamber interprets the third purpose to include the concepts of public safety and protection, as well as the promotion of the rule of law. It notes that this third purpose is in line with the purposes listed in the jurisprudence of this Tribunal.²²⁷⁷

822. The deterrent effect of punishment consist in discouraging the commission of similar crimes. The primary effect sought is to turn the perpetrator away from future wrongdoing (individual or specific deterrence), but it is presumed that punishment will also have the effect of discouraging others from committing the same kind of crime under statute (general deterrence).²²⁷⁸ The Appeals Chamber has expressly included commanders as persons to whom the deterrence purpose is directed.²²⁷⁹ Command responsibility recognises the unique role of a

²²⁷⁵ See *Aleksovski* Appeal Judgement, para. 185, *Kupreškić* Trial Judgement, para. 848.

²²⁷⁶ SFRY Criminal Code (1976), Article 33. See also the Criminal Code of the Federation of Bosnia and Herzegovina, published by "Official Gazette of Federation of Bosnia and Herzegovina", No. 43-98 (1998), Article 38, which lists two purposes of punishment: "(1) prevention of perpetrator committing criminal offenses and his/her rehabilitation; (2) preventive influence on others not to commit criminal offenses."

²²⁷⁷ See e.g. *Kordić and Čerkez* Appeal Judgement, para 1073, 1080, listing as a second purpose of sentencing: "individual and general affirmative prevention aimed at influencing the legal awareness of the accused, the victims, their relatives, the witnesses, and the general public in order to reassure them that the legal system is being implemented and enforced" ; and *Blaškić* Appeal Judgement, para 678.

²²⁷⁸ *Kordić and Čerkez* Appeal Judgement, fn 1420, citing *Babić* Sentencing Judgement, para 45; *Aleksovski* Appeal Judgement, para 185; *Čelebići* Appeal Judgement, para 806.

²²⁷⁹ See *Kordić and Čerkez* Appeal Judgement, para. 1073; *Blaškić* Appeal Judgement, para. 678, both listing the following purpose: "individual and general deterrence concerning an accused and, in particular, commanders in similar situations in the future."

superior – and particularly the duty imposed on a military commander²²⁸⁰ – in promoting and ensuring compliance with the rules of international humanitarian law.²²⁸¹ In relation to Article 87 of Additional Protocol I (“Duty of Commanders”), the provision upon which Article 7(3) of the Tribunal’s Statute is largely modelled, the Commentary on the Additional Protocols states:

We are concerned here with the very essence of the problem of enforcement of treaty rules in the field. [...] In fact, the role of commanders is decisive. Whether they are concerned with the theatre of military operations, occupied territories or places of internment, the necessary measures for the proper applications of the [Geneva] Conventions and the Protocol must be taken at the level of the troops, so that a fatal gap between the undertakings entered into by Parties to the conflict and the conduct of individuals is avoided. At this level, everything depends on commanders, and without their conscientious supervision, general legal requirements are unlikely to be effective.²²⁸²

823. Provisions such as Article 7(3) seek to ensure that a commander fulfils his obligation to promote compliance with the laws of war by his subordinates and punish any violations thereof, thereby curtailing any such violations, and must be given their full effect when the legal requirements are satisfied.²²⁸³

824. The Trial Chamber finds that in sentencing an accused it must strive to attain a third goal: rehabilitation. Particularly in cases where the crime was committed on a discriminatory basis, like this case, this process of reflection – and hearing the victims testify – can inspire tolerance and understanding of “the other”, thereby reducing the risk of recidivism.²²⁸⁴ Reconciliation and peace would thereby be promoted. However, the Trial Chamber notes that the rehabilitative purpose of sentencing will not be given undue prominence in determining the sentence.

825. In conclusion, the Trial Chamber endorses these principles of punishment that readily lend themselves to promoting the rule of law and the realisation that violations thereof will not be tolerated.

²²⁸⁰ The Trial Chamber recalls the observations of the Commission of Experts in relation to military commanders: “Military commanders are under a special obligation, with respect to members of armed forces under their command or other persons under their control, to prevent, and where necessary, to suppress [war crimes and crimes against humanity] and to report them to competent authorities.” Final Report of 27 May 1994, UN Doc. S/1994/674, para. 53.

²²⁸¹ Commentary on the Additional Protocols, on Article 86 (“Failure to Act”), para. 3529: “[t]he importance of this provision cannot be doubted,” and on Article 87 (“Duty of Commanders”), para. 3562: “The object of these texts is to ensure that military commanders at every level exercise the power vested in them, both with regard to the provisions [sic] of the Conventions and Protocol, and with regard to other Rules of the army to which they belong. Such powers exist in all armies.” See also *Hadžihasanović et al.*, Trial Decision on Joint Challenge to Jurisdiction, paras 66, 197 and 200.

²²⁸² Commentary on the Additional Protocols, para. 3450.

²²⁸³ The Commission of Experts stated in its Final Report: “The doctrine of command responsibility is directed primarily at military commanders because such persons have a personal obligation to ensure the maintenance of discipline among troops under their command. Most legal cases in which the doctrine of command responsibility has been considered have involved military or paramilitary accused. Political leaders and political officials have also been held liable under the doctrine in certain circumstances.” Final Report of 27 May 1994, UN Doc. S/1994/674, para. 57.

²²⁸⁴ See *Momir Nikolić Sentencing Judgement*, para. 93.

C. Sentencing Factors

826. Article 24 of the Statute and Rule 101 of the Rules provide the framework within which the Trial Chamber shall determine the sentence to be imposed. These factors are not exhaustive, but provide guidance in the effort to ensure that the punishment imposed is just and equitable.²²⁸⁵ Among the factors included are the gravity of the offence and the individual circumstances of the convicted person, as well as the sentencing practice in the former Yugoslavia. The individual circumstances of the convicted person include consideration of aggravating and mitigating factors.

1. Penalties Imposed in the former Yugoslavia

827. It is well recognised within the jurisprudence of the Tribunal that although it must consider sentencing practices in the former Yugoslavia, the Tribunal is not bound by such practice. Rather, the Tribunal should refer to this practice as an aid in determining an appropriate sentence.²²⁸⁶ Rule 101(A) of the Rules, which grants the power to imprison for the remainder of the convicted person's life, is indicative of the fact that the Trial Chamber is not bound by a maximum sentence possible under a particular national legal system.²²⁸⁷

828. In examining the sentencing practices of the former Yugoslavia, the Trial Chamber takes into consideration the historical and political circumstances particular to the region and the legal implications thereof: the Criminal Code of the Socialist Federative Republic of Yugoslavia was adopted in 1976, and served as the applicable law in the entire territory of the former Yugoslavia until 1991. Following the break-up of SFRY, most of the newly formed countries adopted their own criminal codes between 1994 and 1998, drawing heavily on the provisions of the SFRY Criminal Code.²²⁸⁸ At the time relevant to this Indictment, the law that was applicable in Bosnia and Herzegovina was the SFRY Criminal Code.

829. The Trial Chamber takes into consideration the offences and the punishments that could have been imposed under the criminal law of the former Yugoslavia. Article 34 of the SFRY Criminal Code establishes the types of punishment to be imposed, including capital punishment

²²⁸⁵ See Article 21(1) of the Statute.

²²⁸⁶ *Tadić* Sentencing Appeal Judgement, para. 20, *Kupreškić* Appeal Judgement, para. 418, *Jelisić* Appeal Judgement, para. 117 and *Čelebići* Appeal Judgement, para. 813. The Prosecution submits that such sentencing practice is to be used as a tool to guide, but not delimit, the determination of an appropriate sentence. Prosecution Sentencing Brief, para. 31.

²²⁸⁷ *Tadić* Sentencing Appeal Judgement, para. 21.

²²⁸⁸ See e.g. the Criminal Code of the Republic of Croatia, which was ratified on 19 September 1997 and entered into force on 1 January 1998; the Criminal Code of the Republic of Macedonia, enacted on 23 July 1996 and entered into force on 1 November 1996. The Criminal Code of the Federation of Bosnia and Herzegovina, published by "Official Gazette of Federation of Bosnia and Herzegovina", No. 43-98, came into force on 28 November 1998. The Criminal Code for the Republika Srpska was published in the Official Gazette on 31 July 2000 and by virtue of Article 444, entered into force on 1 October 2000.

and imprisonment.²²⁸⁹ Further, Article 38 of the SFRY Criminal Code sets out the terms of imprisonment: although imprisonment could not usually exceed 15 years, this was extended to a maximum of 20 years for those crimes eligible for the death penalty.²²⁹⁰ In 1977, the death penalty was abolished in some republics of the SFRY by constitutional amendment, but Bosnia and Herzegovina was not among them. The Trial Chamber finds that when Bosnia and Herzegovina abolished the death penalty in 1998, it was replaced by imprisonment of 20-40 years for the gravest criminal offences in the Federation of Bosnia and Herzegovina and with life imprisonment in the Republika Srpska in October 2000.²²⁹¹

830. Chapter XVI of the SFRY Criminal Code relates to “Criminal Acts Against Humanity and International Law”, and covers crimes committed during armed conflict. Article 142 of the SFRY Criminal Code permits a range of sentence from five years as a minimum to the maximum penalty of death for violations of international law in times of war or armed conflict.²²⁹² Subsequent provisions elaborate upon specific crimes and provide for different punishments.²²⁹³

²²⁸⁹ Article 34 of the SFRY Criminal Code states, “The following punishments may be imposed on the perpetrators of criminal acts: 1) capital punishment; 2) imprisonment; 3) fine; 4) confiscation of property.”

²²⁹⁰ Article 38 of the SFRY Criminal Code states, “Imprisonment: (1) The punishment of imprisonment may not be shorter than 15 days nor longer than 15 years. (2) The court may impose a punishment of imprisonment for a term of 20 years for criminal acts eligible for the death penalty. (3) For criminal acts committed with intent for which the punishment of fifteen years imprisonment may be imposed under statute, and which were perpetrated under particularly aggravating circumstances or caused especially grave consequences, a punishment of imprisonment for a term of 20 years may be imposed when so provided by statute.”

²²⁹¹ Article 38 of the Criminal Code of the Federation of Bosnia and Herzegovina provides for long term imprisonment ranging from 20 to 40 years for “the gravest forms of criminal offences [...] committed with intention.” Article 32 of the Criminal Code of the Republika Srpska, which entered into force on 1 October 2000, provides for life imprisonment as a method of punishment. Further, Article 451 provides that “The final and binding death punishment pronounced before the entry into force of this Code is turned into the sentence of life imprisonment.”

²²⁹² Article 142 of the SFRY Criminal Code (“War crime against the civilian population”) states, in part, “Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, order that civilian population be subject to killings, torture, inhuman treatment, biological experiments, immense suffering of violation of bodily integrity or health; dislocation or displacement of forcible conversion to another nationality or religion; forcible prostitution or rape; application of measures of intimidation and terror, taking hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial; forcible service in the armed forces of enemy’s army or in its intelligence service or administration; forcible labour, starvation of the population, property confiscation, pillaging, [...] who commits one of the foregoing acts, shall be punished by imprisonment for not less than five years or by the death penalty.”

²²⁹³ Article 154 of the SFRY Criminal Code (“Racial and other discrimination”) states, in part, “(1) Whoever on the basis of distinction of race, colour, nationality or ethnic background violates basic human rights and freedoms recognized by the international community, shall be punished by imprisonment for a term exceeding six months but not exceeding five years.” Further, Article 145 of the SFRY Criminal Code (“Organizing a group and instigating the commission of genocide and war crimes”) provides, in part: “(1) Whoever organizes a group for the purpose of committing criminal acts referred to in articles 141 to 144 of this law, shall be punished by imprisonment for not less than five years. (2) Whoever becomes a member of a group referred to in paragraph 1 of this article, shall be punished by imprisonment for not less than one year. [...] (4) Whoever calls on or instigates the commission of criminal acts referred to in articles 141 to 144 of this law, shall be punished by imprisonment for a term exceeding one year but not exceeding 10 years.” Article 141 relates to “genocide”; Article 143 relates to “war crime against the wounded and sick”; and Article 144 relates to “war crime against prisoners of war”.

2. Gravity of the Offence

831. Article 24(2) of the Statute dictates that the Trial Chamber must consider the gravity of the offence in determining sentence. As expressed by the *Kupreškić* Trial Judgement:

The sentences to be imposed must reflect the inherent gravity of the criminal conduct of the accused. The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of participation of the accused in the crime.²²⁹⁴

832. The Appeals Chamber has endorsed the view that the gravity of the offence is the “litmus test” in the determination of an appropriate sentence.²²⁹⁵ Furthermore, the Appeals Chamber has stressed that the sentence should be individualised and that the particular circumstances of the case are therefore of primary importance.²²⁹⁶

833. By “gravity of the offence” the Trial Chamber understands that it must consider the crimes for which each Accused has been convicted, the underlying criminal conduct generally, and the specific role played by Vidoje Blagojević and Dragan Jokić in the commission of the crime.²²⁹⁷ Additionally, the Trial Chamber will take into account the impact of the crimes on the victims.

834. All crimes falling within the jurisdiction of this Tribunal are characterised as “serious violations of international humanitarian law.” The crimes for which the Accused in this case have been convicted clearly warrant such a label. While not seeking to minimise the gravity of any other crimes, the Trial Chamber finds that two of the crimes for which the Accused have been convicted warrant special attention due to their targeting of groups because on discriminatory grounds: genocide and persecutions as a crimes against humanity. Vidoje Blagojević has been convicted of complicity in genocide.²²⁹⁸ While it has not been established that he had the specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group, it has been established that he aided and abetted persons who did, knowing that such destruction was the intent of the crimes for which he gave assistance. The crime of persecutions is also particularly grave because it incorporates manifold acts committed with discriminatory intent.²²⁹⁹

835. In relation to Vidoje Blagojević, the Trial Chamber finds that he was not one of the major participants in the commission of the crimes. The Trial Chamber has found that while

²²⁹⁴ *Kupreškić* Trial Judgement, para. 852.

²²⁹⁵ *Aleksovski* Appeal Judgement, para. 182 and *Čelebići* Appeal Judgement, para. 731 cite the *Čelebići* Trial Judgement, para. 1225 with approval.

²²⁹⁶ *Jelišić* Appeal Judgement, para. 101, quoting with approval *Kupreškić* Trial Judgement, para. 852.

²²⁹⁷ *Tadić* Sentencing Appeal Judgement, para. 55; *Čelebići* Appeal Judgement, para. 847.

²²⁹⁸ *Krstić* Trial Judgement, para. 700; *Blaskić* Trial Judgement, para. 800 referring to *Kambanda* Trial judgement, para. 16.

²²⁹⁹ *Nikolić* Sentencing Judgement, para. 105.

commanders of the Main Staff and the MUP played the key roles in designing and executing the common plan to kill thousands of Bosnian Muslim men and to forcibly transfer over 30,000 Bosnian Muslims, Vidoje Blagojević's contribution to the commission of the crimes was primarily through his substantial assistance to the forcible transfer – assistance which the Trial Chamber found was rendered without him having knowledge of the organised murder operation – and due to his knowledge of the objective to eliminate the Bosnian Muslim enclave of Srebrenica. The Trial Chamber must consider, however, that the practical assistance he rendered had a substantial effect on the commission of the crime of genocide.

836. Dragan Jokić, like Vidoje Blagojević, did not play a major role in the commission of the crimes. In addition, the Trial Chamber has found that he was not in a command position. He could not issue orders on his own, but conveyed the orders from superiors to the members of the Engineering Company of the Zvornik Brigade. However, he substantially assisted in the commission of the crimes by sending machinery of the Engineering Company to the execution sites and members of the Engineering Company to take part in the burial operation.

837. The campaign of persecutions in the present case was enormous in scale and encompassed a criminal enterprise to murder over 7,000 Bosnian Muslim men and forcibly transfer more than 25,000 Bosnian Muslims.

838. The Appeals Chamber has held that as the factors to be taken into account for aggravation or mitigation of a sentence have not been defined exhaustively by the Statute or the Rules, a trial chamber has considerable discretion in deciding what constitutes such factors.²³⁰⁰ The Trial Chamber is obliged to take into account mitigating circumstances when determining the sentence, but the weight to be attached is within the discretion of the Trial Chamber.²³⁰¹

839. The Prosecution submits sentencing factors for the Trial Chamber to consider in determining the appropriate sentences for both Accused. The Defence for Blagojević has pled in its Final Brief that Vidoje Blagojević should be acquitted of all charges against him and has not made any submission regarding sentencing factors to be considered by the Trial Chamber. The submissions by the Defence for Dragan Jokić will be referred to below. While the Trial Chamber addresses the aggravating and mitigating circumstances of the Accused together below, it emphasises that in determining an appropriate sentence, it considers the *individual* circumstances and conduct of each Accused.

²³⁰⁰ Čelebići Appeal Judgement, para. 780.

²³⁰¹ Čelebići Appeal Judgement, para. 777.

3. Aggravating Circumstances

840. Rule 101 (B)(i) of the Rules requires the Trial Chamber, in determining sentence, to examine any aggravating circumstances in relation to the crimes of which the accused stands convicted. The weight to be given to the aggravating circumstances lies within the discretion of the Trial Chamber.²³⁰² Aggravating factors must be proved beyond reasonable doubt.²³⁰³ The Trial Chamber notes that if a particular circumstance has been included as an element of the offence under consideration, it will not also be regarded as an aggravating factor.

(a) In relation to both Accused

(i) Numbers of Victims

841. The Prosecution submits that, in accordance with the *Blaškić* Trial Chamber, this Trial Chamber should consider the vast number of victims an aggravating circumstance.²³⁰⁴ While agreeing that the number of victims of the crimes of both Vidoje Blagojević and Dragan Jokić is, indeed, very large, the Trial Chamber finds that the scale of the crimes committed is reflected in the crimes for which each accused has been convicted, specifically complicity in genocide and extermination, respectively.

(ii) Status, Vulnerability of the Victims and Victim Impact

842. The Prosecution submits that the targeted group was predominantly civilian and included women, children and elderly people.²³⁰⁵ It further submits that “the violence inflicted on the Srebrenica survivors has caused serious and lasting damage, both physical and emotional.”²³⁰⁶ The Prosecution highlights the emotional damage done to the children of this community, who were severely affected as well, suffering from learning problems and a generalised fear of people.²³⁰⁷ It is also argued that children and adults in the community are “unable to establish any kind of social relationship.”²³⁰⁸

843. As the status of the victims has been taken into account as part of the definition of the crimes of which the Accused have been found guilty, the Trial Chamber cannot take that factor into account as an aggravating circumstance.

²³⁰² *Čelebići* Appeal Judgement, para. 777.

²³⁰³ *Čelebići* Appeal Judgement, para. 763, *Kunarac* Trial Judgement, para. 847 and *Sikirica* Sentencing Judgement, para. 110.

²³⁰⁴ Prosecution Final Brief, para. 635, *citing Blaškić* Trial Judgement, para. 784.

²³⁰⁵ Prosecution Final Brief, para. 637.

²³⁰⁶ Prosecution Final Brief, para. 638.

²³⁰⁷ Prosecution Final Brief, para. 640.

²³⁰⁸ Prosecution Final Brief, para. 641, *citing* Teufika Ibrahimfendić, KT. 5824.

844. The Trial Chamber takes particular note of the vulnerability of the victims, who included women, children and elderly, as well as captured and wounded men. These victims were all in a position of helplessness and were subject to cruel treatment at the hands of their captors. In this situation, the Trial Chamber finds this to be an aggravating circumstance.

845. While recognising that the serious bodily and mental harm inflicted on the victims is the basis upon which some of the convictions have been based, the Trial Chamber agrees that victim impact amounts to an aggravating circumstance in this case. The impact of the events of Srebrenica upon the lives of the families affected has created what is known as the “Srebrenica syndrome”.²³⁰⁹ The most stressful traumatic event for Srebrenica survivors is the disappearance of thousands of men, such that every woman suffered the loss of her husband, father, son or brother and many of the families still do not know the truth regarding the fate of their family members.²³¹⁰

(iii) Educational background of the Accused.

846. The Trial Chamber does not consider the educational background of the Accused to be a circumstance directly related to the commission of the offence. Accordingly, the Trial Chamber will not treat this as an aggravating circumstance for the Accused.

(b) In relation to Vidoje Blagojević

(i) Senior Position of the Accused and Abuse of Authority

847. The Prosecution submits that the Trial Chamber should consider Vidoje Blagojević’s position of authority as an aggravating circumstance.²³¹¹ The Prosecution is of the opinion that Colonel Blagojević, as Commander of the Bratunac Brigade, within the Bratunac Brigade area of responsibility was the third in command after Generals Mladić and Krstić.²³¹² Finally, the Prosecution submits that Colonel Blagojević was held in “exceptionally high esteem” and that he abused his position of authority and influence in support of the crimes.²³¹³

848. The Trial Chamber has found that the role of Vidoje Blagojević in relation to the crime for which he has been convicted was not that of a commanding officer issuing orders, but the role of a commander who facilitated the use of Bratunac Brigade personnel and assets under his command. Therefore, the Trial Chamber considers the role of Vidoje Blagojević in the commission of the

²³⁰⁹ *Nikolić* Sentencing Judgement, para. 113 referring to the testimony of Teufika Ibrahimfendić, KT. 5817-18.

²³¹⁰ Teufika Ibrahimfendić, KT. 5817-18. See also Witness P-205, who testified that she still hopes that her husband and sons will return. KT. 5761.

²³¹¹ Prosecution Final Brief, paras 629 and 630.

²³¹² Prosecution Final Brief, para. 629.

²³¹³ Prosecution Final Brief, para. 631.

crimes to have been a limited one. Accordingly, the Trial Chamber will not take the position of authority of, nor abuse of authority by, Vidoje Blagojević into account as an aggravating circumstance.

(ii) Voluntary Participation and Prolonged Nature of the Crime

849. The Prosecution argues that the “willing participation of the accused in the genocidal and persecutory campaign against the Muslims of Srebrenica should be considered as an aggravating circumstance.”²³¹⁴ The Trial Chamber has already examined the criminal responsibility of the Accused in order to determine his guilt. The element of voluntary or willingness of his participation is part of that examination and should not be reviewed as an aggravating circumstance.

4. Mitigating circumstances

850. Rule 101 (B)(ii) of the Rules requires the Trial Chamber, in determining the sentence, to take into account “any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction.” Some of the factors that have been considered in mitigation of sentence by the Tribunal are: voluntary surrender,²³¹⁵ good character,²³¹⁶ family circumstances,²³¹⁷ and remorse.²³¹⁸ Mitigating factors need to be established on the balance of probabilities, and not beyond reasonable doubt.²³¹⁹

(a) Mitigating circumstances relating to Dragan Jokić

851. The Defence for Dragan Jokić presented numerous factors in relation to the character and situation of Dragan Jokić which it believed should be considered in mitigation. The Trial Chamber will assess these factors generally below.

(i) Good character

852. The Defence for Dragan Jokić submits that Dragan Jokić is a man of good character and that he has never been convicted for an offence.²³²⁰ Particular attention is also given to the fact

²³¹⁴ Prosecution Final Brief, para. 632.

²³¹⁵ *Simić* Sentencing Judgement, para. 107, *Kupreškić* Appeal Judgement, para. 430.

²³¹⁶ *Kupreškić* Appeal Judgement, para. 459, *Krnojelac* Trial Judgement, para. 519.

²³¹⁷ *Furundžija* Trial Judgement, para. 284, *Kunarac* Appeal Judgement, para. 362, 408 and *Tadić* Sentencing Judgement, para. 26.

²³¹⁸ *Erdemović* First Sentencing Judgement, paras 15-17, *Simić* Sentencing Judgement, para. 94.

²³¹⁹ *Kunarac* Trial Judgement, para. 847, *Sikirica* Sentencing Judgement, para. 110 and *Simić* Sentencing Judgement, para. 40.

²³²⁰ Jokić Defence Final Brief, para. 356.

that when Dragan Jokić's marriage was legally dissolved before the war he was given custody of his then-minor son.²³²¹

853. The Trial Chamber finds that generally the character of an Accused before the crimes were committed is not a factor to be taken into consideration in mitigation of the sentence in crimes of this nature.

854. The Trial Chamber has heard evidence to establish both the character and the fact that Dragan Jokić did not discriminate against Bosnian Muslims. Dragan Jokić ensured the safe passage through a minefield of a group of Bosnian Muslim boys.²³²² The Trial Chamber has assessed this evidence in light of the fact that Dragan Jokić has been convicted for the crime of persecutions, which requires discriminatory intent. The Trial Chamber considers that this act, in the midst of ongoing fighting, merits consideration when arriving at the appropriate sentence. The Trial Chamber will consider it as a mitigating circumstance.

(ii) Family circumstances

855. The Trial Chamber finds that the evidence presented regarding Dragan Jokić's family situation merits consideration in mitigation of sentence. Of particular significance is the fact that he is the guardian of his teen-age son. Given the severity of the crimes, however, this factor will not be given undue weight.

(iii) Voluntary Surrender and Behaviour towards the Tribunal

856. The Jokić Defence argues that Dragan Jokić has fulfilled all his obligations towards the Tribunal. He appeared as requested and scheduled for two interviews with the Prosecution in 1999 and 2000. It further submits that Dragan Jokić, as the first VRS officer, voluntarily surrendered to the authority of the Tribunal on 15 September 2001. Lastly, the Defence highlights that Dragan Jokić has complied fully with the conditions regarding the provisional release granted to him by the Appeals Chamber.²³²³

857. The Trial Chamber finds that Dragan Jokić has co-operated with the Prosecution. He appeared for two interviews with the Prosecutor and voluntarily surrendered to the Authorities of this Tribunal. Accordingly, the Trial Chamber will take this into consideration as a mitigating factor.

²³²¹ Jokić Defence Final Brief, para. 357.

²³²² Brano Đurić, T. 11972-74.

²³²³ Jokić Defence Final Brief, paras 391-395.

(b) Mitigating Factor in relation to Both Accused

(i) Behaviour after the commission of the crimes

858. The Trial Chamber has heard evidence that after the Dayton Peace Accords, Vidoje Blagojević has been actively engaged in planning, managing and organising a system of de-mining in the army of the Republika Srpska. Mihajlo Cvijetić testified:

He was a member of the initial conference that held -- that was held in Vienna in 1996. And from then on, from that meeting on, Mr. Blagojevic planned, managed and organised the system of de-mining in the army of Republika Srpska, and he also cooperated with the army of the federation, the SFOR and other international organisations. His cooperation was very correct, very good, very rich. And this was a very fruitful period in the life of Colonel Blagojevic in that area.²³²⁴

859. Mihajlo Cvijetić also worked closely with Dragan Jokić in demining activities. As to Dragan Jokić's involvement in demining, Cvijetić testified:

With respect to his personal involvement, I will again refer to the complexity of the situation we found ourselves in. What I wish to say here is that Mr. Jokic took an instrument in his hand to feel for the mines, and he personally -- it was a kind of probe. And he personally took part in demining to ensure that it proceeded according to plan. All this took place in villages, hamlets, to which mostly Muslims were to return, the Muslim population. That was the situation. Jokic first did this personally, then he trained a group, and later on he did this in cooperation with SFOR. SFOR helped us to organise ourselves, and he took part in these activities then.

Q. Did Mr. Jokic take part in training de-mining personnel?

Yes, yes. As soon as the first training course was completed by SFOR we organised training in our units, and Mr. Jokic was in charge of this training.²³²⁵

860. The Trial Chamber emphasises that it condemns the use of mines as a means of warfare and fully supports the efforts taken by states and individuals in demining. Therefore, the Trial Chamber considers the activities of Vidoje Blagojević and Dragan Jokić in the work of de-mining a mitigating circumstance.

²³²⁴ Mihajlo Cvijetić, T. 12258-59.

²³²⁵ Mihajlo Cvijetić, T. 12248-49.

X. DISPOSITION

Having considered all of the evidence and the arguments of the Parties, and based upon the facts and legal findings as determined by the Trial Chamber in this judgement; We, Judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, decide as follows:

The Accused **Vidoje Blagojević** is found **NOT GUILTY** and therefore acquitted of the following counts:

- **Count 2:** Extermination

The Accused **Vidoje Blagojević** is found not guilty under Article 7(3) of the Statute but **GUILTY** pursuant to Article 7(1), through aiding and abetting, of the Statute of the following counts:

- **Count 1B:** Complicity to Commit Genocide;
- **Count 3:** Murder, as a crime against humanity;
- **Count 4:** Murder, as a violation of the laws or customs of war;
- **Count 5:** Persecutions, as a crime against humanity; and
- **Count 6:** Inhumane Acts (forcible transfer)

The Trial Chamber sentences **Vidoje Blagojević** to a single sentence of imprisonment for **18 years**.

Vidoje Blagojević was arrested and taken into the custody of the Tribunal on 10 August 2001. Accordingly, he has been in custody now for 1256. He is entitled to credit for that period towards service of the sentence imposed, together with the period he will serve in custody pending a determination by the President pursuant to Rule 103(A) as to the State where the sentence is to be served. He is to remain in custody until such determination is made.

In relation to the following count against **Dragan Jokić**, the Trial Chamber **DECLINES** to enter a conviction for:

- **Count 3:** Murder, as a crime against humanity

The Accused **Dragan Jokić** is found **GUILTY** pursuant to Article 7(1), through aiding and abetting, of the Statute of the following counts:

- **Count 2:** Extermination, as a crime against humanity;
- **Count 4:** Murder, as a violation of the laws or customs of war; and
- **Count 5:** Persecutions, as a crime against humanity

861. The Trial Chamber sentences **Dragan Jokić** to a single sentence of imprisonment for **9 years**.

862. Dragan Jokić voluntarily surrendered to the Tribunal on 15 August 2001. He was granted provisional release during the pre-trial phase. Accordingly, he has been in custody now for 917 days. He is entitled to credit for that period towards service of the sentence imposed, together with the period he will serve in custody pending a determination by the President pursuant to Rule 103(A) as to the State where the sentence is to be served. He is to remain in custody until such determination is made.

Done in English and French, the English text being authoritative.

Liu Daqun
Presiding

Volodymyr Vassylenko

Carmen Maria Argibay

Dated this seventeenth day of January 2005,
At The Hague
The Netherlands

[Seal of the Tribunal]

I. ANNEX 1: GLOSSARY

A. Filings in the Case of the Prosecution v. Vidoje Blagojević and Dragan Jokić

Prosecution Pre-Trial Brief	Prosecution Amended Pre-Trial Brief, 8 November 2002
Blagojević Pre-Trial Brief	Accused Blagojević's Response to the Prosecution's Pre-Trial Brief Pursuant to Rule 65 <i>ter</i> (F), 10 January 2003
Jokić Pre-Trial Brief	Pre-Trial Brief of Dragan Jokić Pursuant to Rule 65 <i>ter</i> (F) of the Rules of Procedure and Evidence, 10 January 2003
Guidelines	Guidelines on the Standards Governing the Admission of Evidence, 23 April 2003, with annex
Amended Joinder Indictment	Amended Joinder Indictment, Case No. IT-02-60-T, 26 May 2003
Agreed Facts	Decision for Prosecution Motion for Judicial notice of Adjudicated Facts and Documentary Evidence, 18 December 2003
Blagojević Motion for Acquittal	Vidoje Blagojević's Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , 2 March 2004
Jokić Motion for Acquittal	Redacted Defendant Dragan Jokić's Motion for Acquittal Pursuant to Rule 98 <i>bis</i> , 2 March 2004
Judgement on Motions for Acquittal	Judgements on Motions for Acquittal Pursuant to 98 <i>bis</i> , 5 April 2004
Prosecution Final Brief	Case No. IT-02-60-T, Prosecution's Closing Brief, 6 October 2004
Blagojević Defence Final Brief	Final Brief of Vidoje Blagojević , 27 September 2004
Jokić Defence Final Brief	Defendant Dragan Jokić's Final Trial Brief, 27 September 2004

B. 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> – Decision on Prosecutor’s Appeal on Admissibility of Evidence	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95/14/1 –AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, February 1999
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgement, 3 March 2000
<i>Blaškić</i> Appeal Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 30 July 2004
<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 et al</i> , Case No. IT-96-21-A, Judgement, 20 February 2001
<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić et al</i> , Case No. IT-96-21-T, Judgement, 16 November 1998
 <i>Erdemović</i> First Sentencing Judgement	<i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-T, Sentencing Judgement, 29 November 1996
<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> Trial Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement, 5 December 2003
<i>Hadžihasanović et al.</i> , Trial Decision on Joint Challenge to Jurisdiction	<i>Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura</i> , Case No. IT-01-47-PT, Decision on Joint Challenge to Jurisdiction, 12 November 2002
 <i>Jelisić</i> Appeal Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, Judgement, 5 July 2001
<i>Jelisić</i> Trial Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-T, Judgement, 14 December 1999
<i>Kordić</i> Appeal Judgement	<i>Prosecutor v. Dario Kordić & Mario Čerkez</i> , Case No. IT-95-14/2-A, Judgement, 17 December 2004
<i>Kordić</i> Trial Judgement	<i>Prosecutor v. Dario Kordić & Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001
<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</i> Appeal Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23/1-A, Judgement, 12 June 2002
<i>Kunarac</i> Trial Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23/1-T, Judgement, 22 February 2001
<i>Kupreškić</i> Appeal Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No.: IT-95-16-A, Judgement, 23 October 2001
<i>Kupreškić</i> Trial Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No.: IT-95-16-T, Judgement, 14 January 2000
<i>Kvočka</i> Trial Judgement	<i>Prosecutor v. Miroslav Kvočka et al.</i> , Case No. IT-98-30-T, Judgement, 2 November 2001
<i>Naletilić</i> Trial Judgement	<i>The Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No. IT-98-34-T, Judgement, 31 March 2003
<i>Nikolić</i> Sentencing Judgement	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-S, Sentencing Judgement, 2 December 2003
<i>Obrenović</i> Sentencing Judgement	<i>Prosecutor v. Dragan Obrenović</i> , Case No. IT-02-60/2-S, Sentencing Judgement, 10 December 2003
<i>Ojdanić</i> Decision	<i>The Prosecutor v. Milan Milutinović, Nikola Šainović & Dragoljub Ojdanić</i> , Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction-Joint Criminal Enterprise, 21 May 2003
<i>Ojdanić</i> Separate Opinion of Judge Hunt	<i>Prosecutor v. Milan Milutinović, Nikola Šainović & Dragoljub Ojdanić</i> , Case No. IT-99-37-AR72, Separate Opinion of Judge David Hunt on Challenge by Ojdanić to Jurisdiction: Joint Criminal Enterprise, 21 May 2003
<i>Ojdanić</i> Separate Opinion of Judge Shahabuddeen	<i>Prosecutor v. Milan Milutinović, Nikola Šainović & Dragoljub Ojdanić</i> , Case No. IT-99-37-AR72, Separate Opinion of Judge Shahabuddeen, 21 May 2003
<i>Sikirica 98 bis</i> Decision	<i>Prosecutor v. Duško Sikirica, Damir Došen, and Dragan Kolundžija</i> , Case No. IT-95-8-T, Judgement on Defence Motions to Acquit, 3 Sept. 2001
<i>Sikirica</i> Sentencing Judgement	<i>Prosecutor v. Duško Sikirica et al.</i> , Case No. IT-95-8-S, Sentencing Judgement, 13 Nov. 2001
<i>Simić</i> Trial Judgement	<i>Prosecutor v. Blagoje Simić et al.</i> Case No. IT-95-9-T, Judgement, 17 October 2003

<i>Stakić</i> Trial Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, Judgement, 31 July 2003
<i>Stakić</i> Decision on Rule 98 bis	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, Motion for Judgement of Acquittal Judgement, 31 October 2002
<i>Tadić</i> Appeal Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No.: IT-95-1-A, Judgement, 15 July 1999
<i>Tadić</i> 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>Tadić</i> Trial Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No.: IT-95-1-T, Judgement, 7 May 1997
<i>Tadić</i> Decision on Defence Motion on Hearsay Decision	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-T, Decision on Defence Motion on Hearsay, 5 August 1996
<i>Todorović</i> Sentencing Judgement	<i>Prosecutor v. Stevan Todorović</i> , Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001
<i>Vasiljević</i> Trial Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, Judgement, 29 November 2002
<i>Vasiljević</i> Appeal Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004

C. ICTR Judgements

<i>Akayesu</i> Appeal Judgement	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-A, Judgement, 1 June 2001
<i>Akayesu</i> Trial Judgement	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-T, Judgement, 2 September 1998
<i>Bagilishema</i> Trial Judgment	<i>Prosecutor v. Ignance Bagilishema</i> , Case No. ICTR-95-1A-T
<i>Kajelijeli</i> Trial Judgement	<i>Prosecutor v. Juvénal Kajelijeli</i> , Case No. ICTR-98-44A-T, Judgement and Sentence, 1 December 2003
<i>Kambanda</i> Sentencing Judgement	<i>Prosecutor v. Jean Kambanda</i> , Case No. ICTR-97-23-S, Judgement, 4 September 1998
<i>Kayishema</i> Appeal Judgement	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-A, Judgement, 1 June 2001

<i>Kayishema</i> Trial Judgement	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-T, Judgement, 21 May 1999
<i>Musema</i> Appeal Judgment	<i>Alfred Musema v. Prosecutor</i> , Case No. ICTR-96-13-A, Judgement, 16 November 2001
<i>Musema</i> Trial Judgment	<i>Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-A, Judgement, 27 January 2000
<i>Ntagerura, Bagambiki and Imanishimwe</i> Trial Judgment	<i>Prosecutor v. André Ntagerura, Emmanuel Bagambiki, and Samuel Imanishimwe</i> , Case No. ICTR-99-46-T, Judgement and Sentence, 25 February 2004
<i>Ntakirutimana</i> Appeal Judgement	<i>Prosecutor v. Elizaphan and Gérard Ntakirutimana</i> , Case Nos.: ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004
<i>Rutaganda</i> Trial Judgement	<i>Prosecutor v. George Rutaganda</i> , Case No. ICTR-96-3-T, Judgement and Sentence, 6 December 1999
<i>Semanza</i> Trial Judgement	<i>Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-T, Judgement, 15 May 2003
<i>Serushago</i> Sentencing Judgement	<i>Prosecutor v. Omar Serushago</i> , Case No. ICTR-98-39-S, Sentence, 5 February 1999

D. List of other authorities

1. Domestic Laws

Argentina	Articles 45-47, Código Penal de la República Argentina
China	Articles 25 and 27 of the Chinese Criminal Code of 1997
Socialist Federal Republic of Yugoslavia	The Criminal Code of the Socialist Federal Republic of Yugoslavia.
United States of America	Rule 801(c), United States Federal Rules of Evidence

2. International Legal Instruments and Commentaries

Additional Protocol 1	Geneva Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 12 December 1977
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Additional Protocol 2	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva 12 December 1977
Commentary on Geneva Convention IV	Commentary to the Geneva Convention IV relative to the Protection of Civilian Persons in Time of War 1949, International Committee of the Red Cross, Geneva, 1958
Commentary on Additional Protocols	Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, International Committee of the Red Cross, Geneva 1987
ICTR Statute	Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955
Geneva Convention I	Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in the Field, 12 August 1949.
Geneva Convention III	Geneva Convention III, relative to the Treatment of Prisoners of war, August 12, 1949.
Geneva Convention IV	Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949.
Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1948.
Nuremburg Charter	London Agreement and Annexed Charter of the International Military Tribunal for the Prosecution and Punishment of the German Major War Criminals of the London, 8 August 1945.
Tokyo Charter	Charter of the International Military Tribunal for the Far East, Tokyo, 19 January 1946

3. Select list of other legal authorities

Archbold, *“Criminal Pleading, Evidence and Practice”*, Sweet and Maxwell, London, 2001

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4. Reports

Report of the Committee and Draft Convention Drawn up by the Committee, Ad Hoc Committee on Genocide, E/794, 24 May 1948

International Law Commission Report, *Report of the International Law Commission on the work of its forty-eight session, 6 May -26 July 1996, UNGA, Official Records, 51st Session, Supplement No.10 (A/51/10)*

Report of the International Law Commission on the work of its forty-eighth session 6 May-26 July 1996, Documents of the United Nations General Assembly's 51st session, Supplement no. 10 (A/51/10), p 97.

Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), UNSC, UN Doc. S/25704 (1993), para. 34, reprinted in 32 ILM (1993) 1163.

Final Report of the Commission of Experts, Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674, 27 May 1994

5. UN Resolutions

UN General Assembly Resolution 47/121, UN Doc. AG/Res/47/121(18 December 1992)

UN General Assembly Resolution 96(I), 1 GAOR, 1st Session, 55th meeting, UN Doc. A/64/Add.1, 1947.

United Nations Security Council Resolution 836 (1993) of 4 June 1993

United Nations Security Council Resolution 819 (1993) of 16 April 1993

6. List of Abbreviations

28 th Division	28 Division of the Army of Bosnia-Herzegovina.
ABiH	Army of Bosnia-Herzegovina
Accused	Colonel Vidoje Blagojević and Major Dragan Jokić
APC	Armoured Personnel Carrier
BiH	Bosnia and Herzegovina
Blagojević Defence	The accused Vidoje Blagojević, and/or Blagojević's Counsel
CJB	Centre for Public Security
CSB	Security Services Centre

Common Article 3	Article 3 common to the four Geneva Conventions of 1949
Dayton Agreements	Agreements between the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, initialled in Dayton 1 November 1995 and signed in Paris on 14 December 1995
Defence	Counsel for the Accused
DutchBat	Dutch Battalion of UNPROFOR
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950
Ex. P	Prosecution Exhibit
Ex. D/1	Defence exhibit for the accused Vidoje Blagojević
Ex. D/3	Defence exhibit for the accused Dragan Jokić
FRY	Federal Republic of Yugoslavia (Serbia and Montenegro)
GAOR	General Assembly Official Records
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights, 16 December 1966
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 Such Serious Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994
ICTR Statute	Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955
ICTY or Tribunal	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

ILC	International Law Commission
IKM	Serbo-Croatian acronym for “ <i>čistureno komandno mesto</i> ”, the equivalent of “Forward Command Post”
ILM	International Legal Materials
ILR	International Law Reports
JNA	Yugoslav People’s Army (Army of the Socialist Federal Republic of Yugoslavia)
Jokić Defence	The accused Dragan Jokić, and/or Dragan Jokić Counsel
KAT.	Transcript page from hearings before the <i>Krstić</i> Appeals Chamber, <i>Prosecutor v Radislav Krstić</i> , IT-98-33-A. Please note that all transcript page numbers referred to are from the unofficial, uncorrected version of the transcript, unless specified otherwise. Minor differences may therefore exist between the pagination therein and that of the final transcript released to the public.
KMT.	Transcript pages from <i>Prosecutor v. Radovan Karadzic and Ratko Mladic</i> , Cases Nos. IT-95-5-R61 and IT-95-18-R61, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, 11 July 1996. (see note at KAT.)
KT.	Transcript page from hearings before the <i>Krstić</i> Trial Chamber, <i>Prosecutor v Radislav Krstić</i> , IT-98-33-T (See note at KAT.)
MT.	Transcript page from hearings before the <i>Milošević</i> Trial Chamber. (See note at KAT); <i>Prosecutor v. Slobodan Milošević</i> , Case No. IT-02-54-T
MUP	Ministry of the Interior in Republika Srpska, unless otherwise indicated.
NIOD	Netherlands Institute for War Documentation
NT.	Transcript page from hearings before the <i>Nikolić</i> Sentencing hearing: <i>Prosecutor v Momir Nikolić</i> , IT-02-61/1-S
OP	Observation Post
OTP/Prosecution	Office of the Prosecutor

p.	page
pp.	pages
para. paras	paragraph paragraphs
Parties	The Prosecutor and the Defence in <i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i>
PJP company/unit	Special Police Unit
RS	Republika Srpska, being one of the entities of BiH
Rules	Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia
SDA	Party for Democratic Action
SDS	Serbian Democratic Party
SFOR	Stabilisation Force (NATO - Bosnia)
SFRY	Former Socialist Federal Republic of Yugoslavia
SJB	Public Security Station
SRK	Sarajevo Romanjia Corps
Statute	The Statute of the International Tribunal for the Former Yugoslavia established by Security Council Resolution 827
Suspect	A person concerning whom the Prosecutor possesses reliable information which tends to show that the person may have committed a crime over which the Tribunal has jurisdiction
T.	Transcript page from hearings before the Trial Chamber. (See note at KMT)
TO	Territorial Defence forces
Tribunal	See: ICTY
UN	United Nations
UNHCR	United Nations High Commission for Refugees
UNMO	United Nations Military Observer
UNPROFOR	United Nations Protection Force

Victim	A person against whom a crime of which the Tribunal has jurisdiction has been allegedly committed
VRS	Army of the Republika Srpska
92 <i>bis</i> statement	Name, 92 <i>bis</i> statement, in the <u>current</u> case (e.g. name, 92 <i>bis</i> statement, p.1234)

II. ANNEX 2: PROCEDURAL HISTORY

A. Pre-Trial Proceedings

1. Arrest, Indictment and Assignment of Counsel

(a) Vidoje Blagojević

863. On 30 October 1998, Colonel Blagojević was charged with genocide and in the alternative complicity in genocide, extermination as a crime against humanity, murder as a crime against humanity and a violation of the laws or customs of war, and persecutions on political, racial and religious grounds as a crime against humanity, under both Article 7(1) and Article 7(3) of the Statute.²³²⁶ The indictment was amended on 27 October 1999; two new charges were added, namely deportation as a crime against humanity and inhumane acts based on forcible transfer as a crime against humanity.²³²⁷ The indictment was kept sealed until Colonel Blagojević's arrest.²³²⁸

864. Vidoje Blagojević was arrested by SFOR on 10 August 2001 and made his initial appearance before Judge Liu Daqun on 16 August 2001. He pled not guilty to all counts and was ordered detained on remand.²³²⁹ His case was assigned to Trial Chamber III.²³³⁰

865. At his initial appearance, Vidoje Blagojević was represented by Duty Counsel, Mr. van der Spoel.²³³¹ Vidoje Blagojević claimed to lack the means to retain counsel and subsequently qualified to have counsel assigned. The Registrar assigned Michael Karnavas as Counsel for Vidoje Blagojević, pursuant to Vidoje Blagojević's request, on 5 September 2001.²³³² Suzana Tomanović was assigned as co-counsel on 25 September 2002, based on the request of lead counsel.²³³³

²³²⁶ *Prosecutor v. Vidoje Blagojević*, Indictment, Case No. IT-98-33, 30 October 1998. Judge Florence Mumba confirmed an indictment against Vidoje Blagojević, Radislav Krstić and Vinko Pandurević on 2 November 1998.

²³²⁷ *Prosecutor v. Vidoje Blagojević*, Indictment, Case No. IT-98-33/1, 27 October 1999. The case against Colonel Vidoje Blagojević was separated from the other accused.

²³²⁸ *Prosecutor v. Vidoje Blagojević*, Indictment, Case No. IT-98-33-I, Order on Review of Indictment Pursuant to Article 19 of the Statute, 2 November 1998.

²³²⁹ *Prosecutor v. Vidoje Blagojević*, Case No. IT-98-33/1, Order for Detention on Remand, 16 August 2001.

²³³⁰ *Prosecutor v. Vidoje Blagojević*, Case No. IT-98-33/1, Order of the President Assigning a Case to a Trial Chamber, 16 August 2001. Trial Chamber III was composed of: Judge Richard May presiding, Judge Patrick Robinson and Judge El Habib Fassi Fihri. Judge Fassi Fihri was assigned as Pre-Trial Judge. *The Prosecutor v. Vidoje Blagojević*, Case No. IT-98-33/1, Order Designating a Pre-Trial Judge, 16 August 2001.

²³³¹ *Prosecutor v. Vidoje Blagojević*, Case No. IT-98-33/1, initial appearance, 16 August 2001.

²³³² *Prosecutor v. Vidoje Blagojević*, Case No. IT-98-33/1, Decision of the Registrar Regarding Assignment of an Attorney, 5 September 2001, dated 3 September 2001.

²³³³ Decision of the Registrar, 31 August 2001; Decision of the Registrar, 25 September 2002.

(b) Dragan Jokić

866. An indictment against Dragan Jokić was confirmed by Judge Liu Daqun on 30 May 2001, but was kept sealed until 15 August 2001.²³³⁴ The indictment alleged individual criminal responsibility for extermination as a crime against humanity, murder as a crime against humanity and as a violation of the laws or customs of war, and persecutions on political, racial and religious grounds as a crime against humanity.

867. Dragan Jokić voluntarily surrendered on 15 August 2001 and was ordered detained on remand by Judge Liu.²³³⁵ Dragan Jokić made his initial appearance before Judge Liu on 21 August 2001 and he pled not guilty to all counts. Pursuant to an Order of the President, Dragan Jokić's case was assigned to Trial Chamber I.²³³⁶

868. Mr. Ivan Lawrence was appointed as temporary counsel for Dragan Jokić by the Registrar on 20 August 2001. Dragan Jokić stated that he lacked the means to retain counsel,²³³⁷ and on 18 September 2001, Miodrag Stojanović was assigned as lead counsel for Dragan Jokić.²³³⁸ On 5 February 2002, Cynthia Sinatra was assigned co-counsel for the accused.²³³⁹ On 8 January 2004, following the withdrawal of Ms. Sinatra, the Registrar assigned Branko Lukić as co-counsel.²³⁴⁰

2. Joinder of the Cases

869. Dragan Obrenović, among others, was also charged in relation with the events that occurred after the fall of Srebrenica.²³⁴¹ On 15 April 2001 Dragan Obrenović was arrested and made his initial appearance on 18 April 2001.²³⁴² On 23 November 2001, his case was assigned to Trial Chamber II.²³⁴³

²³³⁴ *Prosecutor v. Dragan Jokić*, Case No. IT-01-44, Indictment. The indictment was filed on 31 May 2001.

²³³⁵ Order for Detention on Remand, *Prosecution v. Jokić*, Case No. IT-01-44, 15 August 2001.

²³³⁶ *Prosecutor v. Jokić*, Case No. IT-01-44, Order of the President, 16 August 2001. Trial Chamber I was composed of Judge Almiro Rodrigues presiding, Judge Fouad Riad and Judge Liu Daqun.

²³³⁷ *Prosecutor v. Jokić*, Case No. IT-01-44, Initial Appearance, 21 August 2001.

²³³⁸ Decision by the Registrar Assigning Counsel, dated 24 September 2001, filed 26 September 2001.

²³³⁹ Decision by the Registrar Assigning Counsel, 5 February 2002.

²³⁴⁰ Decision of the Registrar, 8 January 2004.

²³⁴¹ *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43, Indictment alleging complicity in genocide; extermination, a crime against humanity; murder, a crime against humanity; murder as a violation of the laws or customs of war; and persecutions on political, racial and religious grounds, a crime against humanity, 23 March 2001.

²³⁴² *Prosecutor v. Dragan Obrenović* Case No. IT-01-43, Order of the President Assigning a Case to a Trial Chamber, 18 April 2001.

²³⁴³ Order of the President on the Composition of a Trial Chamber for a Case, IT-01-43, dated 23 November 2001, filed 12 December 2002.

870. On 11 September 2001, the Prosecution filed a motion before all three Trial Chambers to join the indictments of Vidoje Blagojević, Dragan Jokić and Dragan Obrenović.²³⁴⁴ On 14 September 2001, the President issued an order assigning the determination of the Motion for Joinder to Trial Chamber II.²³⁴⁵

871. On 2 and 5 November 2001 Vidoje Blagojević, Dragan Jokić and Dragan Obrenović filed motions opposing the Prosecution's Motion for Joinder.²³⁴⁶ Judge Wolfgang Schomburg, Judge Carmel Agius and Judge O-Gon Kwon were assigned as Judges to Trial Chamber II on 26 November 2001.²³⁴⁷ Following its oral decision of 15 January 2002, the Trial Chamber ordered that the three accused be joined.²³⁴⁸ Pursuant to the oral directive of the Trial Chamber, the Prosecution submitted an amended indictment on 22 January 2002 to reflect the joinder of the three accused.²³⁴⁹ In the amended indictment, the count of genocide was dropped against Vidoje Blagojević.²³⁵⁰

872. At a joint status conference held on 21 March 2002, each accused individually entered a plea of not guilty for each of the counts of the amended indictment.

873. In March 2002, the Prosecutor brought an indictment against Momir Nikolić for crimes related to the events in Srebrenica.²³⁵¹ On 26 March 2002 Judge Wolfgang Schomburg confirmed the indictment, and on 31 March 2002 Momir Nikolić was arrested. He made his initial appearance on 3 April 2002, at which he pled not guilty to all counts, and his case was assigned to Trial Chamber II.

²³⁴⁴ *Prosecutor v. Vidoje Blagojević*, Case No. IT-98-33/1, *Prosecutor v. Dragan Jokić*, Case No IT-01-44, *Prosecutor v. Dragan Obrenović*, Case No IT-01-43, Prosecution's Motion for Joinder, 11 September 2001.

²³⁴⁵ Ordonnance du Président relative aux requêtes en jonction d'instance du procureur datées des 6 et 11 septembre 2001, 14 Septembre 2001.

²³⁴⁶ *Prosecutor v. Dragan Jokić*, Case No. IT-01-44-PT, Accused's Opposition to Prosecutor's Motion for Joinder, 2 November 2001; *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-PT, Supplemental Memorandum of Accused Obrenović in Opposition to Motion for Joinder, 2 November 2001; *Prosecutor v. Vidoje Blagojević*, Case No. IT-98-33/1-PT, Accused's Supplemental Response to Prosecutor's Motion for Joinder, 5 November 2001.

²³⁴⁷ Ordonnance du Président Portant Affectation Temporaire d'un Juge d'une Chambre de Première Instance à une Autre, 26 November 2001. Judge O-Gon Kwon was then designated Pre-Trial Judge for the limited purpose of ruling on the Prosecution's motion for joinder,²³⁴⁷ and Judge Schomburg was designated as Pre-Trial Judge for all other matters relating to the case.²³⁴⁷ On 23 November 2001 Judge Florence Mumba replaced Judge Kwon.

²³⁴⁸ Written Reasons Following Oral Decision of 15 January 2002 on the Prosecution's Motion for Joinder, 16 January 2002. The three accused were tried under a new case number, IT-02-53

²³⁴⁹ *Prosecutor v. Blagojević et al.*, Case No. IT-02-53, Motion to File Joinder Indictment Pursuant to the Oral Directive of the Trial Chamber on 15 January 2002, 22 January 2002.

²³⁵⁰ *Prosecution v. Blagojević et al.*, Case No IT-02-53-PT, Joinder Indictment, 22 January 2002

²³⁵¹ *Prosecutor v. Momir Nikolić*, Case No. IT-02-56, Indictment, dated 26 March 2002 and filed 28 March 2002. Momir Nikolić was charged with genocide or in the alternative complicity in genocide, extermination, murder as a crime against humanity and as a violation of the laws or customs of war, persecutions on political racial and religious grounds, inhumane acts.

874. On 3 April 2002, the Prosecution filed a motion to join the case of Momir Nikolić to that of Vidoje Blagojević, Dragan Jokić and Dragan Obrenović.²³⁵² On 17 May 2002 Trial Chamber II issued a decision to jointly charge and try Vidoje Blagojević, Dragan Obrenović, Dragan Jokić and Momir Nikolić under the case number IT-02-60.²³⁵³

875. Following this joinder decision, various motions were filed by the Accused in relation to the Amended Joinder Indictment. Dragan Jokić, the only accused not charged with genocide in any form, filed a motion for a separate trial on 21 June 2002.²³⁵⁴ The Trial Chamber denied this motion on 5 July 2002, finding that the arguments raised in the motion had already been considered and rejected in relation to the motion for joinder.²³⁵⁵ All Defence teams filed motions challenging the form of the Indictment.²³⁵⁶ The Trial Chamber rejected each of the motions in their entirety.²³⁵⁷ Additionally, Vidoje Blagojević filed a motion to dismiss the count of “complicity in genocide” on the ground that such a count violates the principle of *nullum crimen sine lege*. The Trial Chamber rejected this motion.²³⁵⁸

3. Guilty Pleas of Momir Nikolić and Dragan Obrenović and Separation of Proceedings

876. On 6 May 2003, the Prosecution filed the “Joint Motion for Consideration of Plea Agreement between Momir Nikolić and the Office of the Prosecutor” in which it moves for a hearing pursuant to Rule 62 *bis*.²³⁵⁹ An amended plea agreement was filed by the Prosecution on 7 May 2003.²³⁶⁰ This agreement involves a guilty plea by Momir Nikolić for count 5 of the Amended Joinder Indictment which alleges persecutions, a crime against humanity. On 7 May 2003, the Prosecution withdrew the remaining counts sought against Momir Nikolić. Pursuant

²³⁵² *Prosecutor v. Blagojević et al.*, Case No IT-02-53-PT, Prosecution Motion for Joinder and to Stay the Deadline for the Accused Blagojević, Obrenović and Jokić to Challenge the Joinder Indictment in Case IT-02-53-PT, 3 April 2002.

²³⁵³ Decision on Prosecution’s Motion for Joinder, dated 17 May 2002 and filed 23 May 2002.

²³⁵⁴ Dragan Jokić’s Motion for Separate Trial, dated 21 June 2002 and filed 27 June 2002.

²³⁵⁵ Decision on Jokić’s Motion Requesting a Separate Trial, 5 July 2002.

²³⁵⁶ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60, Accused Blagojević’s Motion Challenging the Amended Joinder Indictment Based on Defects in the Form of the Indictment, 24 June 2002; *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60, Dragan Jokić’s Objections to Joinder and Amendment of Indictments, 21 June 2002; *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60, Accused Obrenović’s Motion on the Form of the Amended Joinder Indictment, 2 July 2002; *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60, Accused Nikolić’s Reply to Prosecutions Response to Defence Motions Challenging Form of Amended Joinder Indictment, 23 July 2002.

²³⁵⁷ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-PT, Amended Joinder Indictment, 27 May 2002.

²³⁵⁸ Decision on Motion of Accused Blagojević to Dismiss Count 1B, 1 August 2002; Colonel Blagojević’s Defence team based the motion on the fact that the amended joinder indictment concedes that a significant segment of the Bosnian Muslims from Srebrenica, specifically the women and children, was transferred to safety, thereby demonstrating there was never any intention to destroy a “part” of the Bosnian Muslim population of Srebrenica.

²³⁵⁹ Joint Motion for Consideration of Plea Agreement Between Momir Nikolić and the Office of the Prosecutor, 6 May 2003.

²³⁶⁰ Joint Motion for Consideration of Amended Plea Agreement Between Momir Nikolić and the Office of the Prosecutor, 7 May 2003.

to the amended plea agreement, and on 7 May 2003 the Trial Chamber accepted the plea agreement.²³⁶¹ Pursuant to a motion of Vidoje Blagojević²³⁶², on 13 June 2003, the Trial Chamber distinguished Momir Nikolić's statement from plea discussions between the Prosecution and Momir Nikolić which it considered "questioning" under Rules 43 and 63(B) and Vidoje Blagojević was found not to be an interested party able to raise the complaint of non-performance. Furthermore, the Trial Chamber viewed the notes as privileged and found it in the public interest that plea negotiations be protected from disclosure to third parties.²³⁶³ On 2 December 2003, the Trial Chamber sentenced Momir Nikolić to twenty-seven years of imprisonment.²³⁶⁴

877. On 20 May 2003, the Prosecution submitted a motion for consideration of the plea agreement between Dragan Obrenović and the Prosecution.²³⁶⁵ Under the plea agreement, Dragan Obrenović pled guilty to Count 5 of the Indictment alleging persecutions, a crime against humanity and the Prosecution withdrew the remaining counts sought against him.²³⁶⁶ On 21 May 2003 the Trial Chamber accepted the guilty plea and the dismissal of the remaining counts against Dragan Obrenović,²³⁶⁷ and on 10 December 2003 the Trial Chamber sentenced Dragan Obrenović to seventeen years of imprisonment.²³⁶⁸

4. Disclosure

878. On 6 September 2001, before the Trial Chamber which heard the *Krstić* case,²³⁶⁹ the Prosecution filed a motion requesting the Chamber to authorise the release of confidential materials from the *Krstić* case to the Defence for Dragan Jokić, Vidoje Blagojević and Dragan Obrenović²³⁷⁰ which have been granted.²³⁷¹ The Prosecution submitted that, pursuant to the

²³⁶¹ Motion Hearing, 7 May 2003, T. 294.

²³⁶² Vidoje Blagojević's Expedited Motion to Compel the Prosecution to Disclosure its Notes from its Discussions with the Nikolić Defence Team and During the Negotiating & Debriefing Sessions with Accused Nikolić Resulting in the Agreed Facts in Support of the Guilty Plea Arrangement of Accused Nikolić & Request for an Expedited Open Session Hearing, filed partly confidentially on 19 May 2003

²³⁶³ Decision on Vidoje Blagojević's Expedited Motion to Compel the Prosecution to Disclose its Notes from Plea Discussions with the Accused Nikolić and Request for an Expedited Open Session Hearing, 13 June 2003.

²³⁶⁴ Sentencing Judgement, Case No. IT-02-60/1-S, 2 December 2003. This Judgement is currently on appeal

²³⁶⁵ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-T, Joint Motion for Consideration of Plea Agreement Between Dragan Obrenović and the Office of the Prosecutor, 20 May 2003.

²³⁶⁶ *Ibid.*

²³⁶⁷ Motion Hearing, 21 May 2003, T. 560.

²³⁶⁸ Sentencing Judgement, Case No. IT-02-60/2-S, 10 December 2003.

²³⁶⁹ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T

²³⁷⁰ *The Prosecutor v. Radislav Krstić* Case No. IT-98-33-T, Prosecution's Request to Disclose Closed Session Testimony and Under Seal Exhibits from Case No. IT-98-33-T, 6 September 2001; *The Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Decision on Prosecution's Request to Disclose Closed Session Testimony and Under Seal Exhibits From Case No. IT-98-33-T, 1 October 2001.

²³⁷¹ Order Granting Request for Disclosure, 17 October 2001 and Order for Protective Measures, 4 December 2001.

terms of a confidentiality agreement between the Prosecution and Dragan Jokić, the protected materials would be subject to the same measures as applied in the *Krstić* case.

879. All four Accused filed motions related to disclosure and the production of evidence.²³⁷² At the Status Conferences held in July and November 2002, the Pre-Trial Judge emphasised that issues related to disclosure should first be discussed between the Parties, and only when agreement could not be reached, should the Trial Chamber intervene. The Trial Chamber issued a joint decision on these motions in which it declared moot motions pending in relation to Rule 66(A), dismissed motions pending in relation to Rule 67 and Rule 68, and declared moot parts of the motions relating to Rule 66(B) with the exception of materials sought by Dragan Jokić.²³⁷³ Under this decision Dragan Jokić was permitted to inspect materials that were obtained from the accused or intended for use by the Prosecution at trial or any tangible objects that would be material to the preparation of the defence.²³⁷⁴

880. On 21 January 2003, Trial Chamber II ordered that the Prosecution deliver to the Trial Chamber copies of all witness statements for persons whom the Prosecution intends to call at trial and copies of all exhibits the Prosecution intends to tender at trial in order to assist the Trial Chamber in fulfilling its obligations.²³⁷⁵ Vidoje Blagojević and Dragan Jokić sought certification to appeal the decision from the Trial Chamber, which was granted.²³⁷⁶ On 8 April 2003, the Appeals Chamber dismissed all of the grounds of appeal for both Accused concluding that the review of the disclosure materials “does not affect either parties case” and “does not impair the rights conferred on the Accused by Article 21(3) and (4) of the Statute.” Accordingly, the Appeals Chamber stated that it is within the Trial Chamber’s discretion to determine “whether the disclosure materials are necessary.”²³⁷⁷

²³⁷² Prosecution Consolidated Response to Defence Motions for Production of Evidence, 2 May 2002; Prosecution Response to Dragan Jokić’s Motion for Disclosure, 20 September 2002.

²³⁷³ Joint Decision on Motions Related to Production of Evidence, 12 December 2002.

²³⁷⁴ *Ibid*, para. 15.

²³⁷⁵ Decision on Joint Defence Motions for Reconsideration of Trial Chamber’s Decision to Review all Discovery Materials Provided to the Accused by The Prosecution, 21 January 2003.

²³⁷⁶ Decision on Joint Defence Motions for Certification of Decision on Joint Defence Motions for Reconsideration of Trial Chamber’s Decision to Review all Discovery Materials Provided to the Accused by The Prosecution, 10 February 2003

²³⁷⁷ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-AR73.3, Decision, Appeals Chamber, 8 April 2003.

5. Provisional Release

(a) Dragan Jokić

881. On 10 January 2002, Dragan Jokić filed a motion for provisional release.²³⁷⁸ The Netherlands did not object to the motion upon the condition that if the accused was released, he would leave The Netherlands.²³⁷⁹ The Prosecution submitted a motion to delay any decision on the matter until after 15 March 2002, due to plea agreement discussions between the parties.²³⁸⁰ On 20 March 2002, the Prosecution filed a motion which stated that it had no objection to Dragan Jokić being provisionally released as long as several conditions were met.²³⁸¹ The Trial Chamber denied the motion for provisional release²³⁸² and Dragan Jokić filed an appeal²³⁸³ and on 28 May 2002, the Appeals Chamber granted the appeal and ordered Dragan Jokić's provisional release subject to specific terms and conditions.²³⁸⁴

882. On 21 November 2002, the Trial Chamber held that Dragan Jokić could stay at a location other than the United Nations Detention Centre when returning to The Hague for the 27 November Status Conference subject to certain conditions limiting his movement.²³⁸⁵ An order terminating the provisional release of Dragan Jokić was issued, effective 29 April 2003.²³⁸⁶

(b) Vidoje Blagojević

883. On 17 July 2002, Vidoje Blagojević filed an application for provisional release²³⁸⁷ which the Trial Chamber denied as it was not satisfied that the Accused would return to stand

²³⁷⁸ *Prosecutor v. Dragan Jokić*, Case No. IT-01-44-PT, Proposal for a Provisional Release from Prison for the Defendant Dragan Jokić, 10 January 2002.

²³⁷⁹ See Letter from the Dutch Ministry of Foreign Affairs on Provisional Release of *Mr. Dragan Jokić*, 28 January 2002.

²³⁸⁰ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-53, Motion to Delay Consideration of Proposal for Provisional Release from Prison for the Defendant Dragan Jokić, 29 January 2002.

²³⁸¹ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-53, Prosecution Response to Request for Provisional Release for Accused Jokić, 20 March 2002.

²³⁸² *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-53, Decision on Request for Provisional Release of Accused Jokić, 28 March 2002.

²³⁸³ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-53-AR65, Dragan Jokić's Appeal of Trial Chambers Denial of Request for Provisional Release, 3 May 2002.

²³⁸⁴ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-53-AR65, Decision on Application by Dragan Jokić for Provisional Release, 28 May 2002. The conditions included the supervision of the Accused by appropriate authorities during his journey, the requirement that the Accused inform the Trial Chamber of his address, travel requests, employment status and location, surrender of his passport to the police or prosecutor in Sarajevo, report to the local police on a weekly basis, and to return to the Tribunal when ordered.

²³⁸⁵ Decision on Expedited Motion to Modify Conditions of Appearance for Status Conference, 27 November 2002.

²³⁸⁶ Order for Termination of Provisional Release for Dragan Jokić and Return to the Tribunal, 11 April 2003.

²³⁸⁷ Motion Requesting Vidoje Blagojević's Provisional Release, 17 July 2002.

trial were he released.²³⁸⁸ Further, the Trial Chamber discussed the guarantees given in support of the Accused's application for provisional release by the Republika Srpska. It noted that while this was not the decisive element of the conclusions, the Trial Chamber was of the opinion that it was not possible for the Tribunal to accept such guarantees.²³⁸⁹ The Accused appealed the decision stating, among other factors, the inconsistency between the Trial Chamber's assertion that it did not consider Republika Srpska guarantees in connection with applications because Republika Srpska was an Entity rather than a State and the Appeals Chamber's position in a prior decision²³⁹⁰ that Republika Srpska guarantees were, in fact, valid.²³⁹¹ The Appeals Chamber remanded the matter back to the Trial Chamber noting that the Trial Chamber must take the Republika Srpska guarantees into consideration, but that it May well reach the same conclusion upon consideration of the guarantees.²³⁹² On 19 November 2002 the Trial Chamber issued a second decision refusing provisional release,²³⁹³ which was subsequently appealed by the Accused.²³⁹⁴ After having considered the merits of the application for the provisional release, including the guarantee by the Republika Srpska, the Appeals Chamber denied the appeal.²³⁹⁵

6. Motion for Disqualification of Trial Chamber II

884. On 26 February 2003, Vidoje Blagojević filed a motion in which it alleged "capricious behaviour" and "anti-Serb bias" on the part of the Trial Chamber, due in part to its decisions in relation to provisional release, and therefore sought the disqualification of all three Judges, requesting that the matter be referred to the Bureau for its determination.²³⁹⁶ On 19 March 2003, the Bureau denied the motion.²³⁹⁷ Vidoje Blagojević asked for clarification on the

²³⁸⁸ Decision on Vidoje Blagojević's Application for Provisional Release, 23 July 2002.

²³⁸⁹ *Ibid.*

²³⁹⁰ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-53-AR65, Decision on Application by Dragan Jokić for Provisional Release, 28 May 2002.

²³⁹¹ Appeal from Trial Chambers' Impugned Decision on Vidoje Blagojević's Application for Provisional Release, 2 September 2002.

²³⁹² *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-AR65, Decision on Provisional Release of Vidoje Blagojević and Dragan Obrenović, 3 October 2002.

²³⁹³ Decision on Vidoje Blagojević's Application for provisional release, 19 November 2002.

²³⁹⁴ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-AR65.3, Decision on applications by Blagojević and Obrenović for leave to appeal, 16 January 2003

²³⁹⁵ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-AR65.4, Decision on provisional release application by Blagojević, 17 February 2003.

²³⁹⁶ Vidoje Blagojević's Motion to Disqualify the Trial Chamber (Judges Schomburg, Mumba and Agius) on the Grounds of Actual Bias and an Unacceptable Appearance of Bias and Request for this Matter to be Referred to the Bureau for its Determination, 26 February 2003.

²³⁹⁷ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-PT, Decision on Blagojević's Application Pursuant to Rule 15(B), 19 March 2003. (First Bureau Decision) In this matter the Bureau was comprised of President Theodor Meron, Vice President Fausto Pocar, Judge Richard May, Judge Daqun Liu and Judge Claude Jorda.

Bureau's decision and on 27 March 2003 the Bureau clarified that neither the Statute nor the Rules allow for appeals from decisions of the Bureau.²³⁹⁸

885. On 31 March 2003, Vidoje Blagojević filed a motion moving for disqualification of the Judges of Trial Chamber II pursuant to Rule 73(A) of the Rules and further requesting an appeal if the Trial Chamber denied the motion.²³⁹⁹ The Prosecution filed its response on 31 March 2003 opposing Vidoje Blagojević's request for disqualification of the Trial Chamber but supporting Vidoje Blagojević's request for certification for an interlocutory appeal on the grounds that it may serve justice by avoiding a potentially costly and time consuming appeal of the issue after the judgement proceedings.²⁴⁰⁰ Based on the two decisions of the Bureau, the Trial Chamber rejected Vidoje Blagojević's motion and did not grant certification pursuant to Rule 73(B).²⁴⁰¹

7. Status Conferences

886. Status Conferences for the Accused were held on 26 October 2001, 15 January 2002, 21 March 2002, 19 July 2002, and 27 November 2002, 27 March 2003 and 5 May 2003.²⁴⁰²

887. A Status Conference was held on 27 March 2003, during which it was ordered that the Pre-Trial Conference be held on 5 May 2003. The Trial Chamber ordered that the trial commence on 6 May 2003.²⁴⁰³ The commencement of trial was finally postponed until 14 May 2003.

B. Assignment of Counsel to Vidoje Blagojević

888. At a Status Conference on 27 November 2002, Vidoje Blagojević moved to replace his co-counsel.²⁴⁰⁴ On 9 December 2002, Trial Chamber II denied the motion finding that both lead and co-counsel were assigned by the Registrar in conformity with the Rules of the Tribunal and the Directive of Assignment of Defence Counsel. It also found confidence expressed in co-counsel by lead counsel and did not find that co-counsel was incompetent or acting in anyway

²³⁹⁸ Decision on Blagojević's Motion for Clarification, Second Bureau, 27 March 2003.

²³⁹⁹ Vidoje Blagojević's Motion for Disqualification of the Trial Chamber and Concomitant Request for Certification to Appeal, 31 March 2003.

²⁴⁰⁰ Prosecution's Response to Vidoje Blagojević's Motion for Disqualification of the Trial Chamber and Concomitant Request for Certification, 31 March 2003.

²⁴⁰¹ Decision on Vidoje Blagojević's Motion for Disqualification of the Trial Chamber and Concomitant Request for Certification to Appeal, 31 March 2003.

²⁴⁰² Order dated 27 September 2001, Scheduling Order for Joint Hearing on the Prosecution's Motion for Joinder and Joint Status Conference, 19 December 2001, Scheduling Order, 26 February 2002, Scheduling Order, 4 July 2002, Scheduling Order, 30 October 2002, Scheduling Order, 14 April 2003.

²⁴⁰³ Scheduling Order, 5 May 2003.

²⁴⁰⁴ Status Conference, 27 November 2002.

contrary to the best interest of the client. Rather, it found that problems between Vidoje Blagojević and his defence team were based on Vidoje Blagojević's desire to have another person assigned as co-counsel. The Trial Chamber found that "it is not permissible for an accused to deliberately destroy the atmosphere of trust in order to have a new counsel appointed". Further, since there would be no prejudice involved in maintaining Ms. Tomanović as co-counsel, the Trial Chamber found no cause to replace her.²⁴⁰⁵

889. Vidoje Blagojević again requested to replace his co-counsel at a Status Conference on 27 March 2003.²⁴⁰⁶ Stating that he no longer trusted his lead counsel because his lead counsel had failed to consult him when choosing co-counsel, Vidoje Blagojević requested to replace his entire legal team. On 8 April 2003, the Registrar issued a decision refusing to withdraw the assignment of Ms. Tomanović as co-counsel as well as refusing to withdraw the entire legal team, citing a lack of substantive grounds relating to the performance or professional ethics of Ms. Tomanović. Furthermore, the Registrar indicated that a replacement of counsel could delay the proceedings which would affect Vidoje Blagojević's right to an expeditious trial.²⁴⁰⁷

890. During the Pre-Trial Conference on 5 May 2003, Vidoje Blagojević stated that he considered his defence team fired and had had no communication with lead counsel or any member of his defence team for more than a month.²⁴⁰⁸ On 9 May 2003, the Trial Chamber requested that the Registrar appoint independent counsel to inform Vidoje Blagojević of his rights in relation to the assignment of counsel and assist him in preparing any documentation that may follow their consultations on the issue.²⁴⁰⁹

891. The Registrar appointed Mr. Jan Sjörona as independent counsel on 23 May 2003.²⁴¹⁰ On 5 June 2003, Mr. Sjörona filed a motion seeking that the Trial Chamber instruct the Registrar to appoint a new defence team to Vidoje Blagojević due to an absence of trust and communication with the current team.²⁴¹¹ On 3 July 2003, the Trial Chamber denied Vidoje Blagojević's motion, distinguishing between the "friction" that exists between Vidoje Blagojević and his counsel, and a fundamental lack of trust due to misconduct or manifest

²⁴⁰⁵ Decision to Replace Co-Counsel, 9 December 2002.

²⁴⁰⁶ Status Conference, 27 March 2003.

²⁴⁰⁷ Decision by the Registrar, 8 April 2003.

²⁴⁰⁸ Pre-Trial Conference, 5 May 2003, T. 204-06, 256-58.

²⁴⁰⁹ Order on the Appointment of Independent Legal Counsel, 9 May 2003.

²⁴¹⁰ Decision by the Registrar, 23 May 2003.

²⁴¹¹ Independent Counsel for Vidoje Blagojević's Motion to Instruct the Registrar to Appoint New Lead and Co-Counsel, 5 June 2003; Counsel's and Co-Counsel's Response to the Motion by Independent Counsel, 16 June 2003.

negligence.²⁴¹² The Trial Chamber urged the Blagojević Defence to work to rebuild the trust of its client and, to this end, the Trial Chamber requested that the Registrar appoint a legal representative to assist Vidoje Blagojević and his defence team during the trial process.

892. Independent Counsel for Vidoje Blagojević filed a request to the Trial Chamber for certification to appeal the decision. The request was granted. In a decision dated 15 September 2003, the Appeals Chamber dismissed the appeal.²⁴¹³ The Appeals Chamber found that the absolute right to counsel of his choice is not a right to which the Accused is entitled, and that since the Appeals Chamber was satisfied that the counsel remained committed to representing Vidoje Blagojević, he would receive a fair trial with his current Defence Team assigned to him.²⁴¹⁴

C. Trial Proceedings

1. Assignment of a Bench

893. On 1 April 2003, President Theodor Meron ordered the case transferred to Trial Chamber I. Under this order, the bench consisted of Judge Liu Daqun (China), Presiding, Judge Volodymyr Vassylenko (Ukraine) and Judge Carmen Maria Argibay (Argentina).²⁴¹⁵

2. Protective Measures

894. Following the Trial Chamber's decision of 18 February 2003,²⁴¹⁶ 24 witnesses of the Prosecution were granted protective measures; 22 of them were examined under a pseudonym, one of which testified in closed session. Additionally, the Trial Chamber granted the Prosecution's motion to delay disclosure of the identity of two witnesses, until no less than thirty days prior to the date when the witness would be expected to testify. Finally the Prosecution was ordered to disclose any remaining witness statements for witnesses who would testify.²⁴¹⁷ The Defence of Mr. Blagojević presented 6 witnesses under a pseudonym, three of which testified in closed session. The Defence of Mr. Jokić presented one witness under a pseudonym and in closed session.

²⁴¹² Decision on Independent Counsel for Vidoje Blagojević's Motion to Instruct the Registrar to Appoint New Lead and Co-Counsel, 3 July 2003.

²⁴¹³ Decision on Appeal by Vidoje Blagojević to Replace Defence Team, 15 September 2003.

²⁴¹⁴ Ex Parte and Confidential Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, Case No. IT-02-60-AR73.4, 7 November 2003.

²⁴¹⁵ Order Assigning Judges to a Case Before a Trial Chamber, 1 April 2003.

²⁴¹⁶ Order for Protective Measures and Non-Disclosure to the Public, 18 February 2003. the Trial Chamber defined specific definitions for the purposes of protective measures rendered in the case, as well as ordering all accused not to disclose to the media any confidential materials provided by the Prosecution.

²⁴¹⁷ Decision on Prosecution's Motion for Order of Protection, filed confidentially 18 February 2003.

3. Adjudicated Facts and Agreement of the Parties

895. On 23 June 2003, the Prosecution filed a motion requesting that the Trial Chamber take judicial notice of 419 facts from the Trial Chamber Judgement in Prosecutor v Radislav Krstić (IT-98-33-T), as well as over 165 pieces of documentary evidence from the same case.²⁴¹⁸

896. At the request of the Trial Chamber, the Parties met to discuss the proposed facts and documents. The result was a notice from the Prosecution, issued on 6 August 2003, indicating the facts and documentary evidences on which the parties had agreed and the specific facts and documents to which the Defence Teams objected.²⁴¹⁹ On 6 November 2003, the Senior Legal Officer of the Trial Chamber convened a meeting with the Parties pursuant to Rule 65 *ter* (D), in order to find further agreement among the Parties and to clarify the objections of the Parties as to specific proposed facts, and left the remainder of the facts for the Trial Chamber to decide. Thus, in a decision of 19 December 2003, the Trial Chamber admitted the agreed facts during the different meetings but declines to take judicial notice of the remaining facts and documents proposed in the Prosecution's Motion.²⁴²⁰

4. Leave to Amend the Indictment

897. On 14 May 2004, the Prosecution filed a motion seeking to amend the charge against Vidoje Blagojević from complicity in genocide to genocide but limiting the mode of liability for that charge to aiding and abetting.²⁴²¹ On 10 June 2004, following hearings held pursuant to Rule 50²⁴²², the Trial Chamber dismissed that motion finding that the proposed amendment is not in the interest of the justice.²⁴²³

5. The Prosecution Case

898. The Prosecution case started on 14 May 2003 and concluded on 27 February 2004,²⁴²⁴ during which time the Trial Chamber heard the evidence of 48 *viva voce* witnesses, of whom three witnesses were only called for cross-examination, and admitted the evidence of 37 witnesses pursuant to Rule 92 *bis* of the Rules.²⁴²⁵

²⁴¹⁸ Prosecution's Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 23 June 2003.

²⁴¹⁹ Prosecution's Notice Regarding the Agreement of the Parties on Judicial Notice, 6 August 2003.

²⁴²⁰ Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 December 2003.

²⁴²¹ Prosecution's Motion for Leave to File Fourth Amended Joinder Indictment, 14 May 2004.

²⁴²² Rule 50 Hearings, T. 10446-86, 8 June 2004

²⁴²³ Decision on Prosecution's Motion for Leave to File Fourth Amended Joinder Indictment, 10 June 2004.

²⁴²⁴ Trial Proceedings, 14 May 2003, T. 300, Trial Proceedings, 27 February 2004, T. 7567.

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899. Following the guilty pleas of Momir Nikolić and Dragan Obrenović, the Prosecution indicated that it would be calling the former co-Accused to testify.²⁴²⁶ On 22 May 2003, the Trial Chamber ordered the Prosecution to submit the statements of Momir Nikolić and Dragan Obrenović to the Defence of Vidoje Blagojević and Dragan Jokić, twenty-five days prior to the testimony of each witness.²⁴²⁷

900. On 11 July 2003 the Prosecution expressed its intention to proceed with the testimony of two former co-accused, Dragan Obrenović and Momir Nikolić following the summer recess. All parties requested a delay of trial proceedings in order to prepare to proceed with the testimony of Dragan Obrenović and Momir Nikolić.²⁴²⁸ Balancing both the Accused's right to adequate preparation and the importance of an expeditious trial, the Trial Chamber ordered that the case would resume on 15 September 2003 with the continuation of the Prosecution's presentation of evidence.²⁴²⁹ From 19 September 2003 to 29 September 2003 Momir Nikolić testified as a witness for the Prosecution,²⁴³⁰ and Dragan Obrenović was called to testify on behalf of the Prosecution from 1 October 2003 to 9 October 2003.²⁴³¹

901. Additionally, evidence provided by more than 15 experts from fields including anthropology, demographics, military affairs and forensic pathology, was admitted in the form of reports and testimony.²⁴³² More than 800 exhibits were admitted on behalf of the Prosecution.

(a) Judgement on Motions for Acquittal

902. Following the conclusion of the Prosecution's case on 2 March 2004 both Vidoje Blagojević and Dragan Jokić filed separate motions for full acquittals under Rule 98 *bis*.²⁴³³ On 5 April 2004, the Trial Chamber entered a judgement of acquittal for Vidoje Blagojević on Counts 2 to 4 of the Indictment, insofar as his individual criminal responsibility was alleged under Article 7(1) for planning, instigating, ordering and committing the crimes. The Trial Chamber further entered a judgement of acquittal on Counts 5 and 6 of the Indictment, insofar as Vidoje Blagojević's individual criminal responsibility is alleged under Article 7(1) for planning, instigating and ordering the crimes. Dragan Jokić was acquitted on Counts 2 to 5 of

²⁴²⁶ Motion Hearing, 6 May 2003, T. 264.

²⁴²⁷ Oral Ruling, 22 May 2003.

²⁴²⁸ Trial Proceedings, 11 July 2003, T. 1173.

²⁴²⁹ Scheduling Order, 25 July 2003.

²⁴³⁰ Trial Proceedings, 19, 22-26, 29 September 2003, T. 1593.

²⁴³¹ Trial Proceedings, 1, 2, 6-9 October 2003, T. 2330.

²⁴³² Decision on Prosecution's Motion for Admission of Experts Statements, 7 November 2003.

the Indictment insofar as his individual criminal responsibility is alleged under Article 7(1) for planning, instigating and ordering the crimes. In respect to all other grounds of appeal the motions of the defendants were dismissed.²⁴³⁴

6. The Defence Case for Vidoje Blagojević

903. The Defence for Vidoje Blagojević opened its case on 14 April 2004 and the last witness was heard on 25 June 2004. The Blagojević Defence called 43 live witnesses and tendered into evidence the statements of 19 witnesses pursuant to Rule 92*bis*. Over 170 exhibits were tendered into evidence over the course of the proceedings on behalf of Vidoje Blagojević.

904. The Trial Chamber granted the issuance of more than five subpoenas and orders of safe conducts at the request of Mr. Blagojević's Defence Team. Amongst these requests, The Defence asked for the issuance of a subpoena and an order of safe conduct for Colonel Karremans on 11 May 2004.²⁴³⁵ The Trial Chamber, noting the efforts of the Defence to contact Colonel Karremans, requested the assistance and co-operation of the competent authorities of the Kingdom of Netherlands.²⁴³⁶ On 9 June 2004, the Kingdom of Netherlands informed the Trial Chamber that Mr. Karremans had been contacted and was willing to appear before the Trial Chamber.²⁴³⁷ Mr. Karremans appeared in front of the Trial Chamber on 24 and 25 June 2004.

7. The Defence Case for Dragan Jokić

905. The Defence case for Dragan Jokić was heard between 1 July and 23 July 2004. During this time, 13 live witnesses were heard and one witness statement was tendered into evidence pursuant to Rule 92 *bis*. Over the course of the proceedings, over 60 exhibits were admitted into evidence on behalf of Dragan Jokić.

²⁴³³ Vidoje Blagojević's Motion for Judgement of Acquittal Pursuant to Rule 98 *bis*, Case No. IT-02-60-T, 2 March 2004; Redacted Defendant Dragan Jokić's Motion for Acquittal Pursuant to Rule 98 *bis*, Case No. IT-02-60-T, 2 March 2004.

²⁴³⁴ Judgement on Motions for Acquittal Pursuant to 98*bis*, 5 April 2004.

²⁴³⁵ Vidoje Blagojević's Request For The Issuance of *Subpoenas Ad Testificandum*, An Order For Safe Conduct And An Order For The Service And Execution Of The Subpoena And Order For Safe Conduct, Case No IT-02-60-T, 11 May 2004.

²⁴³⁶ Decision on Vidoje Blagojević's Request for the Issuance of *Subpoenas Ad Testificandum* And Supporting Documentation, And Subsequent Request to the Government of the Netherlands, Case No IT-02-60-T, 27 May 2004.

²⁴³⁷ Letter of the Kingdom of the Netherlands answering the request of the Trial Chamber, 9 June 2004.

8. Statements or Testimony of the Accused

906. Dragan Jokić exercised his right to remain silent throughout the proceedings. On 22 May 2003, the Trial Chamber found that statements taken from Dragan Jokić were inadmissible.²⁴³⁸ On 14 July 2003 Dragan Jokić filed a motion to exclude his statements.²⁴³⁹ The Trial Chamber confirmed their oral decision of inadmissibility on 18 September 2003.²⁴⁴⁰

907. On various occasions during the trial, Vidoje Blagojević expressed the intention to address the Trial Chamber, including as a witness.²⁴⁴¹ On 17 June 2004, the Trial Chamber held a motion hearing during which it explained to Vidoje Blagojević the options available to him in relation with his right to remain silent and his right to address the Trial Chamber. These options were “to exercise his right to remain silent”, “to make a statement under the control of the Trial Chamber” or “to testify under oath like any other witnesses,” meaning that he would answer the questions put to him by his counsel.²⁴⁴² Vidoje Blagojević indicated that he wished to testify before the Trial Chamber in open session, but that it would be impossible for him to answer his counsel’s questions.²⁴⁴³ On 30 July 2004, the Trial Chamber decided that under these circumstances, only two options remained available to Vidoje Blagojević: either to remain silent, or to make a sworn or unsworn statement under the control of the Trial Chamber pursuant to Rule 84 *bis*.²⁴⁴⁴ The Blagojević Defence requested certification to appeal this decision;²⁴⁴⁵ the Trial Chamber denied the request.²⁴⁴⁶ On 9 September 2004, a hearing was held in order to permit Vidoje Blagojević an opportunity to be heard, should he choose to waive his right to remain silent. Refusing again to follow the procedure Vidoje Blagojević declined to choose another possibility than testifying under oath and therefore remained silent.²⁴⁴⁷

²⁴³⁸ Oral Decision, 22 May 2003.

²⁴³⁹ *Mr. Jokić’s Motion to Exclude Statements and Response to Prosecution’s Motion for Clarification of Oral Decision Regarding Admissibility of Statements*, 14 July 2003.

²⁴⁴⁰ *Decision on Prosecution’s Motion for Clarification of Oral Decision Regarding Admissibility of Accused’s Statements*, 18 September 2003.

²⁴⁴¹ During the testimony of former co-accused Momir Nikolić, *Procedural Matters*, 1 October 2003, T. 2322-23; during the Pre-Defence Conference, 7 April 2004, T. 38-42 and on the final week of his defence case, *Trial Proceedings*, 4 June 2004, T. 10356-58.

²⁴⁴² *Motion Hearing*, 17 June 2004, T. 10922-25.

²⁴⁴³ *Ex parte Hearing*, 13 July 2004, T. 11862 (Private Session) and *Procedural Matters*, 23 July 2004, T. 12273-77 (Private Session).

²⁴⁴⁴ *Decision on Vidoje Blagojević’s Oral Request*, Case No IT-02-60-T, 30 July 2004.

²⁴⁴⁵ *Request for Certification to Appeal the Trial Chamber’s Decision on Vidoje Blagojević’s Oral Request and Request for the Appointment of an Independent Counsel for this Interlocutory Appeal Should Certification Be Granted*, Case No IT-02-60-T, 8 August 2004.

²⁴⁴⁶ *Decision on Request for Certification to Appeal the Trial Chamber’s Decision on Vidoje Blagojević’s Oral Request and Request for the Appointment of an Independent Counsel for this Interlocutory Appeal Should Certification Be Granted*, Case No IT-02-60-T, 2 September 2004.

²⁴⁴⁷ *Hearings*, T. 12280-81.

9. Rebuttal and Re-opening

908. On 26 August 2004, the Prosecution filed a motion to admit evidence in rebuttal and to re-open its case for the limited purpose of introducing evidence regarding alleged executions at the soccer stadium in Bratunac.²⁴⁴⁸ The Trial Chamber denied the motion.²⁴⁴⁹

10. Closing Arguments

909. Closing arguments for the Prosecution were heard on 29 September 2004. Closing arguments for Vidoje Blagojević were heard on 30 September 2004 and for Dragan Jokić on 1 October 2004.

D. The Site Visit

910. Pursuant to a confidential joint motion for an on-site visit, the Trial Chamber and the Parties conducted an on-site visit to various places and sites in the Srebrenica, Bratunac and Zvornik municipalities in the Republika Srpska, Republic of Bosnia and Herzegovina on 14 and 15 September 2004.²⁴⁵⁰ The purpose of the site visit was to assist the Trial Chamber in familiarising itself with the sites mentioned in the indictment and during the trial.

²⁴⁴⁸ Prosecution's Motion to Admit Evidence in Rebuttal under Rule 85 *bis* and Incorporated Motion to Admit Evidence under Rule 92 *bis* in its Case on Rebuttal and to Re-open its Case for a Limited Purpose, 26 August 2004.

²⁴⁴⁹ Decision on Prosecution's Motion to Admit Evidence in Rebuttal under Rule 85 *bis* and Incorporated Motion to Admit Evidence under Rule 92 *bis* in its Case on Rebuttal and to Re-open its Case for a Limited Purpose, 13 September 2004.

²⁴⁵⁰ Joint Motion for On-Site Visit; Case No IT-02-60-T, 2 June 2004.