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**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-06-90-PT

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Christine Van Den Wyngaert
Judge Bakone Justice Moloto

Registrar: Mr. Hans Holthuis

Date filed: 23 March 2007

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

**SUBMISSION OF PUBLIC VERSION OF
PROSECUTION PRE-TRIAL BRIEF**

The Office of the Prosecutor:

Alan Tieger

Counsel for the Accused:

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Mr. Čedo Prodanović and Ms. Jadranka Sloković for Ivan Čermak

Mr. Miroslav Šeparović and Mr. Goran Mikuličić for Mladen Markač

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1. As indicated in the Prosecution's Submission Pursuant to Rule 65 *ter* (E) filed on 16 March 2007, the Prosecution hereby files, as Annex A, a public version of its Pre-Trial Brief.¹
2. The following information has been corrected in the public version:
 - Missing diacritics have been added;
 - A crime-base witness name has been deleted from footnote 85;
 - The name of one witness has been replaced by WS ("witness statement") in footnotes 13 and 298, and in Annexes A, C and E to the Pre-Trial Brief;
 - The acronym VF has been corrected to HV in paragraph 109;
 - The date of the Gračac exhumation has been corrected to 2002 in paragraph 45;
 - Footnote references to SW or PW have been corrected to WS ("witness statement");
 - A glossary of acronyms has been added.

Word Count: 136



Alan Tieger
Senior Trial Attorney

Dated this 23rd Day of March 2007
In The Hague
The Netherlands

¹ Annex A to *Confidential and Partially Ex Parte* Prosecution's Submission Pursuant to Rule 65 *ter* (e), 16 March 2007.

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1. The three accused, Ante Gotovina, Ivan Čermak, and Mladen Markač are charged with five counts of crimes against humanity pursuant to Article 5 of the ICTY Statute (persecution, deportation, inhumane acts of forcible transfer, murder, and inhumane acts of cruel treatment) and four counts of war crimes pursuant to Article 3 of the ICTY Statute (plunder, wanton destruction, murder, and cruel treatment). They are criminally responsible pursuant to Article 7(1), including through joint criminal enterprise liability, and Article 7(3).
2. At all relevant times Gotovina was the overall operational commander of the Croatian forces deployed in the southern portion of the Krajina region, which principally included the Split Military District. After troops entered, Čermak became the garrison commander of the Knin Garrison and assumed the role of military governor of Knin. Markač was the Assistant Minister of the Interior and commanded the Special Police deployed during and after Operation Storm.

(A) Overview of the case

3. The backdrop to this case has been the subject of previous litigation in the Tribunal. The disintegration of Yugoslavia triggered polarization and enmity between its ethnic groups. In Bosnia and particularly in Croatia, where memories of World War II genocide at the hands of Croatian forces were resurrected by the re-emergence of symbols from that period, Serbs feared becoming threatened minorities and took steps to ensure that they were not separated from Serbs in other parts of former Yugoslavia. In Croatia, where Serbs represented approximately 13% of the population, Serb leaders formed Serbian Autonomous Regions and later, in December 1991, the Republic of Serbian Krajina (“RSK”). In combination with the JNA, Croatian Serb forces seized control of territories through military operations, forcibly displacing ethnic Croats from those areas. The RSK military force was later known as the Srpska Vojska Krajine (Serbian Army of Krajina or “SVK” a.k.a. “ARSK”).
4. Pursuant to international diplomatic efforts, the Vance Plan resulted in the deployment from 1992 to 1995 of a United Nations peace-keeping force (“UNPROFOR”, later “UNCRO”) in four protected areas where Croatian Serbs constituted a majority or substantial minority. Between 1992 and August 1995, Croatian forces engaged in several military actions to retake territory held by the RSK (Miljevački Plateau–June 1992; Maslenica Bridge–January 1993; Medak Pocket–September 1993; and Flash–May 1995), which resulted in allegations both by Serbs and the international community

- of instances of unlawful killing of Serbs, destruction of Serbian property, and the ensuing flight of Serb civilians.
5. Over the course of 1995, members of the international community increased their efforts in an attempt to bring the parties to a negotiated resolution of the conflict.
 6. In late July 1995, following actions against Bihać by RSK and Bosnian Serb forces, Croatian forces under the direction of Gotovina conducted Operation Summer to capture the strategic strongholds of Glamoč and Grahovo, thereby providing conditions for military actions in the Croatian portion of the Krajina, and particularly Knin.¹
 7. Believing that the international political circumstances were propitious for the capture of the Krajina, President Tuđman, along with various military and political leaders, finalised military plans for Operation Storm on 31 July 1995.² Deeply concerned about the prospect of Croatian military action that threatened a widening war and civilian casualties, the international community intensified negotiating efforts. The Croatian delegation rejected, on 3 August in Geneva, a proposal that international representatives believed was sufficient to forestall military action.³
 8. On 4 August 1995, at 0500hrs, the approximately 130,000-strong Croatian forces launched Operation Storm. The attack began with an intense artillery bombardment, targeting towns and villages throughout the Krajina. The cities of Knin, Benkovac, Obrovac, and Gračac, as well as smaller towns and villages, were shelled intensely and indiscriminately.⁴ During this time an estimated 1500-1800 projectiles impacted upon the city,⁵ killing and wounding civilians.⁶ The next morning, another 1000 to 1500 more

¹ *Offensives and Operations of HV & HVO* (1996):0249-8948-0249-9106(BCS),pp.57-58.

² Presidential Transcript (31.07.95):0304-9043-0304-9075.

³ See e.g. ECOMM Zagreb Report (04.08.95):R027-4439-R027-4441.

⁴ Forand:0042-5964-0042-5979,pp.0042-5968-0042-5970,0042-5975;Leslie:0039-3016-0039-3024,pp.0039-3018-0039-3021;Marker-Hansen:0038-9345-0038-9355,p.0038-9347;Hill:0042-3173-0042-3179,pp.0042-3176-0042-3177;Dangerfield:0038-7797-0038-7806,pp.0038-7803-0038-7804;Dawes0042-3180-0042-3191,p.0042-3182-0042-3186;Dijkstra:0039-3052-0039-3055,pp.0039-3053-0039-3055;Williams:0042-5930-0042-5938,p.0042-3033-0042-3034,p.0042-3036;Dreyer:0039-3031-0039-3037,pp.0039-3033-0039-3036;Balfour:0038-7809-0038-7815,p.0038-7810-0038-7812;Berikoff:0042-5991-0042-5995pp.0042-5992-0042-5993;Tymchuk:0061-7872-0061-7893,p.0061-7873;Bellerose0090-1334-0090-1340,p.0090-1336;Liborius0038-9356-0038-9360,p.0038-9358-0038-9359.

⁵ Leslie:0039-3016-0039-3024,p.0039-3018;Berikoff:0042-5991-0042-5995,p.0042.5992.

⁶ WS:0059-8492-0059-8498,p.0059-8494; UNPHAO List:0038-5334-0038-5345,p.0038-5337;Berikoff:0064-5523-0064-5587,p.0064-5536;Leslie:0035-1489-0035-1493,p.035-1490;Dawes 0042-3180-0042-3191,p.0042-3183;Bellerose 0090-1334-0090-1334,p.0090-1337;WS:0041-3793-0041-3805,p.0041-3799.

projectiles were launched upon Knin until Croatian infantry arrived in the city at around 1130hrs.⁷

9. A relatively small number of Serbs had fled in anticipation of the Croatian attack. Amidst the panic and terror generated by the artillery assault, coupled with psychological operations by the Croatian forces, many more Serbs began to flee their homes towards safety. The civilians fled towards villages further from the front line or towards larger cities such as Knin. Fearing for their lives, people left quickly, leaving virtually everything behind.
10. The artillery action continued throughout the day. In the late afternoon the RSK authorities ordered the evacuation of Serb civilians from Benkovac, Obrovac, Gračac, Drniš, and Knin towards Srb, to ensure that the civilian population was removed from the line of fire and that further civilian casualties from the continuing artillery attacks were prevented. The RSK authorities also wanted to reassure their soldiers on the front line about the safety of their families.⁸
11. By the evening of 4 August, long convoys of Serbs fleeing the area under attack were clogging the roads. Approximately 200,000 Serbs fled Croatian territory in the aftermath of Operation Storm.⁹ At three locations within former UN Sector South JORBat personnel recorded 46,200 refugees as having crossed into Bosnia-Herzegovina by midday of 6 August 1995,¹⁰ and a total of 72,000 by 11 August 1995.¹¹ The remaining Serbs, only a small fraction of the Serbian community in the RSK before the attack, mainly comprised the elderly or infirm or those who had successfully sought shelter at the UN compound in Knin.¹²
12. Once Croatian troops entered towns and villages, they imposed a strict restriction-of-movement (“ROM”) upon international observers¹³ and began the systematic looting and burning of Serbian property as well as the widespread killing of the relatively few Serbs who remained. In Knin, for example, the 7th “Puma” Brigade entered

⁷ Leslie:0039-3016-0039-3024,p.0039-3018.

⁸ Press Statement-Sekulić book(04.08.1995):0607-2271-0607-2272.

⁹ Rehn:0035-7096-0035-7133,p.0035-7111.

¹⁰ Berikoff:0042-6041-0042-6047,p.0042-6045.

¹¹ Berikoff:0042-6041-0042-6047,p.0042-6047;Forand:0042-5954-0042-5979,p.0042-5972.

¹² HRAT:0035-1707-0035-1711,p.0035-1711;ECMM Report(28.08.95):R026-5638-R026-5652,p.R026-5644;HRAT(11.09.95):R089-9374-R089-9376,.R089-9376. *See also* WS:0069-3305-0069-3314;WS:0050-8236-0050-8241.

¹³ Berikoff 0042-6041-0042-6047,p.0042-6044;WS:0041-3836-0041-3850,p.0041-3839;WS:0046-0577-0046-0599,p.0046-0586.

unopposed,¹⁴ and began looting extensively.¹⁵ Elsewhere advancing soldiers of both the 4th and 7th Brigades ransacked and burnt homes,¹⁶ threatened Serb civilians and took them to collection centres or the UN compound.¹⁷ Civilians and surrendered ARSK soldiers were murdered by HV soldiers or Special Police in many places on these four days, including in Kovačić,¹⁸ Đurići,¹⁹ Žagrović,²⁰ Šarena Jezera,²¹ Uzdolje,²² Oraovac,²³ Knin,²⁴ Golubić²⁵ and Očestovo.²⁶ Reports by both Government²⁷ and Non-Government Organisations²⁸ refer to the killings of predominantly elderly men and women in over 60 villages during the first week of Operation Storm. Gotovina's units were in or in the vicinity of these villages when the killings occurred.²⁹

13. This campaign continued until there was nothing left to loot and most Serb homes had been damaged or destroyed.³⁰ Situation reports created by international organisations on the ground—including the European Community Monitoring Mission (“ECMM”), United Nations Military Observers (“UNMO”), Human Rights Action Team (“HRAT”) and United Nations Civilian Police (“UNCivPol”)—all reflect the daily systematic

¹⁴ Dijkstra:0039-3052-0039-3055,p.0039-3054.

¹⁵ Forand:0042-5964-0042-5979,p.0042-5973;Marker-Hansen0038-9345-0038-9355,p.0038-9347-0038-9348.

¹⁶ ECMM SitRep(06.08.95)0052-6825-0052-6826;UNMO Report(06.08.95)0050-9562-0050-9570,p.0050-9562,0050-9569;Boucher:0089-8380-0089-8390,p.0089-8386-0089-8387;Dawes0042-3180-0042-3191,p.0042-3188;Liborius:0427-7142-0427-4155,p.0424-7144;WS:045-7335-0045-7348,p.0045-7340;WS:0279-1504-0279-1507,p.0279-1505.

¹⁷ Berikoff:0064-5523-0064-5587,p.0064-5536-0064-5537;WS:0279-1517-0279-1521,p.0279-1519;WS:0279-1351-0279-1355,p.0279-1352-0279-1354;WS:0342-3240-0342-3245,p.0342-3242-0342-3243;WS:0359-4871-0359-4877,p.0359-4873;WS:0059-8548-0059-8552,p.0059-8549;WS:0059-8523-0059-8529,p.0059-8525;WS:0279-1367-0279-1370,p.0279-1369.

¹⁸ See *infra* Scheduled Killing One.

¹⁹ See *infra* Scheduled Killing Two.

²⁰ See *infra* Scheduled Killing Three.

²¹ See *infra* Scheduled Killing Six.

²² See *infra* Scheduled Killing Seven.

²³ See *infra* Scheduled Killing Ten.

²⁴ WS:0050-8248-0050-8256,p.0050-8251-0050-8253;Protocol:0213-7827-0213-7830;Protocol:0213-7823-0213-7826.WS:0045-7335-0045-7348,p.0045-7340.

²⁵ WS:0279-1551-0279-1555,p.0279-1552;Protocol:0213-7827-0213-7830;Protocol:0213-7823-0213-7826.WS:0342-3240-0342-3245,p.0342-3242-0342-3243;WS:0279-1351-0279-1355,p.0279-1353.

²⁶ Croatian Government Exhumation Protocols:0356-4203-0356-4207;0213-7893-0213-7895;0213-7917-0213-7919;0213-7875-0213-7877;0213-7896-0213-7898.

²⁷ Croatian Helsinki Committee:0333-5790-0333-5944; “Exodus” Report:0290-7166-0290-7312.

²⁸ Analysis of attack operation Kozjak-95(15.08.1995):0352-6974-0352-6977;Gotovina Report to Červenko(04.08.1995):0352-6852-0352-6853;Gotovina Report to Main Staff(04.08.1995):0352-6858-0352-6861;Gotovina Report to Červenko(05.08.1995):0352-6863-0352-6866;Gotovina Order (05.08.1995):0279-8908-0279-8909;Gotovina Report(06.08.1995):0352-6878-0352-6880;Report from Gotovina to Červenko(06.08.1995):0279-9013-0279-9014;Gotovina Report to Červenko(07.08.1995):0352-6895-0352-6896;Gotovina Report to Červenko(08.08.1995):0352-6925-0352-6927;Gotovina Report to Červenko(09.08.1995):0352-6838-0352-6940.

²⁹ ECMM Report 0038-8688-0038-8856,pp.0038-8696-0038-8697;UNMO report 0037-7298-0037-7321,pp.7298-7299.

destruction, burning and looting.³¹ The relatively few remaining Serbs became desperate to leave and large convoys of buses transported Croatian Serbs, many from collection centers, to Serbia.³²

14. Many Serbs thought that their flight would only be temporary but soon found, in spite of their desire to return, that it would be impossible to resume life back in the Krajina.³³ Those held or sheltering in the UN Compound³⁴ or other collection facilities³⁵ knew that if they stepped outside there was a high likelihood they would be killed or otherwise harmed. Those steadfastly remaining in their hamlets also accepted this risk. The Serbs who wished to return and whose houses remained habitable (or who were willing to rebuild their house), were prevented from doing so by intentionally-created obstacles. Legal and bureaucratic hurdles to reclaiming property, coupled with the physical danger of returning, effectively sealed off the Serb population from the Krajina permanently.³⁶
15. Ultimately, the effort to force and keep out Serbs was successful: in November 1995, three months after Operation Storm commenced, UNMO reported that just 3,034 Serbs—out of the approximately 90,000 before Storm—remained in former Sector South.³⁷

(B) Joint Criminal Enterprise

(a) Objective of the common criminal purpose

16. On 31 July 1995, President Tuđman, the Supreme Commander of the Croatian military forces, met with Gotovina, Markač and other political and military leaders on the island of Brijuni to discuss the imminent attack in the Krajina. As stated by Tuđman, one objective of such an attack was to achieve the flight of Serb civilians:

³¹ See e.g. ECMM Report (21.11.95),0038-8688-0038-8856,p.0038-8694;Letter from Forand to Čermak (11.08.95) 0090-1650-0090-1650;HRAT Report (13.08.95) R090-6301-R090-6302,p. R090-6301;UNMO Report 0088-4843-0088-4863;UNCivPol Report (21.08.95) R090-0130-R090-0133,p.R090-0137.

³² ECMM Report (15.09.95) R026-6320-R026-6322,p.R026-6320;WS: 0279-1517-0279-1521,(0279-1519);WS:0279-1351-0279-1355,(0279-1354);WS:0342-3240-0342-3245,(0342-3243).

³³ ECMM Report (26.08.95) 0046-5923-0046-5933,pp.0046-5923-0046-5924;Mauro:0093-4963-0090-4970,p.0093-4967.

³⁴ 0607-1976-0607-2010.

³⁵ Including facilities in the following locations: Secondary School in Knin; Sisak; Sinj; Šibenik; Zadar; Ivanić Grad; Karlovac; Zagreb; Novska; and Gospić:0607-1967-0607-1968;0607-1972-0607-1973;0607-2669-0607-2677;0424-7701-0424-7709.

³⁶ Eg. Law on lease of flats (27.9.1995)R090-8603-R090-8606/R090-8607-R090-8608(terminating tenancy rights);Decree on Return of Refugees and Displaced Persons to the Liberated Areas(10.10.1995) 0096-7981-0096-7986/R090-4711-R090-4713(full rights to “the Croatian citizens-refugees from Serb-occupied areas in BH,and from Serbia and Montenegro” to reside in the abandoned Serb properties.)

³⁷ UNMO Report (04.11.95) 0037-7298-0037-7321,p. 0037-7300.

...it is important that those civilians set out, and then the army will follow them, and when the columns set out, they will have a psychological impact on each other.³⁸

Earlier in the meeting he stressed that:

[w]e have to inflict such blows that the Serbs will to all practical purposes disappear.³⁹

Gotovina, the commander responsible for implementing the Supreme Commander's objectives, stated in the same vein:

A large number of *civilians are already evacuating* Knin and heading towards Banja Luka and Belgrade. That means that if we continue this *pressure*, probably for some time to come, there won't be so many civilians just those who have to stay, who have no possibility of leaving.⁴⁰

17. On 2 August 1995, Gotovina defined expressly the nature of the "pressure" to be applied on the civilian population, issuing an order to target "...the towns of Drvar, Knin, Benkovac, Obrovac and Gračac with artillery fire."⁴¹
18. The objective of removing Serbs from the Krajina reflected a longstanding interest by President Tuđman in ethnic homogeneity. Beyond the enmity towards Serbs built up during the years of war, President Tuđman viewed ethnic diversity as a historical problem that could be solved, for example, by relocation of populations. It was understood by Tuđman and his closest collaborators on the one hand, and some of his Serbian counterparts on the other, that exchanges of population should be undertaken in the interests of both sides. In January 1992, Bosnian Serb politician Nikola Koljević presented Tuđman with a plan for swapping populations. Tuđman acknowledged that "...we should be forthcoming with respect to territorial delimitation, and that is acceptable because in this regard history shows that not only was such understanding necessary, but *also population exchanges and so forth...*" He later added that "Whenever national problems so conceived emerged as they did with us, that was resolved, from World War I and World War II, that was brought to a conclusion by exchanges [of populations]."⁴²
19. The Croatian leadership found a sympathetic ear for the ethnic reconfiguration of former Yugoslavia in Slobodan Milošević. In 1994, when discussing what to do with

³⁸ Presidential Transcript(31.7.1995):0304-9043-0304-9075,p.15

³⁹ Presidential Transcript(31.7.1995):0304-9043-0304-9075,p.2()

⁴⁰ Presidential Transcript(31.7.1995):0304-9043-0304-9075,p.15 (emphasis added)

⁴¹ Gotovina's *Attachment for the Artillery*(2.8.1995):0342-2548-0342-2551,p.0342-2550.

⁴² Presidential Transcript(8.01.1992):0150-9173-0150-9240,pp.33,42,68 (emphasis added).

the Serb population of Croatia, Tuđman said that he had signed an agreement on voluntary resettlement with Čosić and Milošević, and that if it came to mutual diplomatic recognition between Serbia and Croatia, the Serbs who did not want to live in Croatia would simply leave.⁴³ On 29 August 1995, Tuđman's aide and one-time Prime Minister Hrvoje Šarinić similarly recounted a conversation he had had with Milošević:

... I'll tell you something against my own personal ethics, but as soon as there... are fewer Serbs in Croatia and Croats in Serbia, the better our future relations will be. An autonomous region within the Republic of Croatia would be a potential Trojan horse of Serbian politics. He says, "what about it?" And I say, Mr. President... what will happen if we leave the situation like this? We can not do that. Then I told him about the four and a half million who resettled after the Second World War, and *I said we don't have to use big words like ethnic cleansing*, people move in order to create a normal situation in which we can trade and so on...⁴⁴

20. The determination to ensure that Croatian territories were sufficiently Croatian also was reflected in Tuđman's rejection of territorial acquisitions that would unbalance the intended demographics. He rejected potential agreements granting the Croatian Posavina region in northern Bosnia to Croatia. Tuđman observed that if Croatia took back the Posavina, it also would have to take back 300,000 Serb refugees into Croatia, which he was unwilling to do. Tuđman added that instead, Croats from the Posavina should be granted land in Western Slavonia, from where Serbs had fled in large numbers in the wake of Operation Flash.⁴⁵ As Prime Minister Valentić stated after Flash, "The Serb problem in Western Slavonia has been solved. There's no more than a thousand of them including old women and the elderly, and there are no more than 300 to 400 people who are political factors."⁴⁶
21. Tuđman later admonished his advisors that a global return of Serb refugees was unacceptable, and that even the return of only 150,000 Serbs to Croatia would be problematic.⁴⁷ He reminded them of the 300,000 Serbs that would have returned if Croatia had gained control of the Posavina region at Dayton, and further indicated that allowing Serbs back was equivalent to giving away territory: "so if you want Bosanska Posavina back, go ahead and give back Western Slavonia, go ahead and give back

⁴³ Presidential Transcript(17.11.1994):0186-9463-0186-9542.

⁴⁴ Presidential Transcript(29.08.1992):0155-5683-0155-5705,p.0155-5697(emphasis added). Šarinić repeated this just over a week later, see Presidential Transcript(11.9.1995):0155-5637-0155-5664.

⁴⁵ Presidential Transcript(18.9.1995):0186-4132-0186-4151.

⁴⁶ Presidential Transcript(12.5.1995):0308-7149-0308-7178,p.0308-7164.

⁴⁷ Presidential Transcript(28.9.1995):0132-6100-0132-6150,p.0132-6130.

everything you've taken. You have to look at the problem of Bosanska Posavina in that context."⁴⁸

22. Apart from ideological objections, the return of hundreds of thousands of Serbs to the voting rolls of Croatia represented a damaging political issue for Tuđman and the HDZ. In the summer of 1992, under heavy diplomatic pressure, the Croatian government passed its constitutional laws on minorities. This pledged the Republic of Croatia to setting aside seats in the parliament in numbers proportional to the percentage of any minority constituting over 8% of the total population.⁴⁹ Thus, if re-integration of the UNPA Sectors had led to a restoration of the 1991 situation, the Serbian minority in Croatia would be guaranteed 12% of the seats in the Sabor, making them a critical swing factor between the HDZ and Croatian opposition parties.
23. By mid-August 1995, however, Valentić advised Tuđman that there was no need to conduct a census to determine the minority list because "there is not more than 2% of Serb in Croatia, 2 to 3%." Admitting this fact was, however, he added, potentially damaging because "somebody will try to accuse you for ethnical cleansing."⁵⁰ In any event, as Tuđman himself would later note, "...when we passed the decision to conduct the population census, *we wanted to determine the number of Serbs who would leave.* Since we currently know that 98% of them have left this area, it means that the census is not required at this point."⁵¹
24. While exchange of populations was one manner of addressing demographic concerns, the use of force in retaking occupied territories, like in Flash, was another. By late July 1995, the shock of the Srebrenica massacre had reduced international pressures against Croatia to a minimum and set the stage for final military action to create the envisioned "clean" Croatian state. The reduction of the Serb population in the Krajina also represented a perceived tactic to destroy the morale of Serb fighters. Tuđman was aware that once the civilian population came under attack and started to flee, the Serb fighters would follow.⁵²
25. Once the vast majority of the Serb population had fled, Tuđman and the Croatian leadership attempted to ensure that they could not return. Apart from the deterrent impact of the systematic burning and looting of Serb homes and the physical dangers

⁴⁸ Presidential Transcript(24.11.1995):0132-5384-0132-5418

⁴⁹ Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia (3.6.1992):0091-7508-0091-7524/0091-7508-0091-7524-ET.

⁵⁰ Presidential Transcript(17.8.1995):0186-4210-0186-4261,p.7.

⁵¹ Presidential Transcript(12.12.1995):0155-8046-0155-8109;12/12/95,p.27.

faced by Serbs, even those prepared to brave these risks faced legal and bureaucratic hurdles placed in their paths by Croatian officialdom. A decree on the “Temporary Takeover and Administration of Specific Property” was enacted, requiring that the owner return to Croatia to reclaim his property within a period of 30 days.⁵³ Although the deadline was later extended under political pressure, the requirement to return by the end of 1995 imposed “a virtually insurmountable obstacle.”⁵⁴

26. These obstacles served to cement what had been achieved. As Tuđman’s advisor Šarinić noted in late August 1995, “we should be inspired by the way it is in Western Slavonia. It was very positive for us, because no one came back.”⁵⁵ Thus, when a Tuđman advisor suggested that “we should bring Croats back here urgently and this area should be colonised with Croats and we should by no means let more than 10% of Serbs be here again,” Tuđman’s response was clear: “Not even 10%.”⁵⁶

(b) Implementation of the common criminal purpose

(i) Shelling of civilian areas

27. As noted above, President Tuđman, Gotovina, Markač and others met on 31 July 1995 to discuss and finalise the upcoming operation.
28. Following discussions regarding the operational plan for the attack, Tuđman observed that the general offensive would create great panic in Knin and that therefore forces should be “directly engaged in the direction of Knin.” Tuđman told the group to “remember how many Croatian villages and towns had been destroyed” and reminded them that this hadn’t happened to Knin yet, although the current situation provided “very good justification for this action.” Accordingly, “we have the pretext to strike, if you can with artillery, you can...for complete demoralisation.”⁵⁷
29. Gotovina immediately assured Tuđman that indeed they could. “Mr. President, at this moment we completely control Knin with our hardware. That’s not a problem, if there is an order to strike at Knin, we will destroy it in its entirety in a few hours.”⁵⁸

⁵² Presidential Transcript(31.7.1995):0304-9043-0304-9075,p.2.

⁵³ See,e.g.,ECMM(Zagreb)Report(20.09.95):R026-7459-R026-7462,p.R026-7460.

⁵⁴ UNSC Report S/1995/105(21.12.95),p.9.

⁵⁵ Presidential Transcript(30.08.95):0187-0475-0187-0543,p.25.

⁵⁶ Presidential Transcript (22.08.95),p.10:0186-4152-0186-4209;(26.9.1995):0187-0150-0187-0278,p.56:(“Purpose does exist for Gračac. The purpose is to bring people there,to settle there,to get married,and so on. (That’s it.) To change the demographic picture,that is to.../sic/ For,Gračac is also empty,and.../sic/...demographic picture.”).

⁵⁷ Presidential Transcript(31.7.1995):0304-9043-0304-9075/BCS:0132-4986-0132-5049,p.0304-9052.

⁵⁸ Presidential Transcript(31.7.1995):0304-9043-0304-9075/BCS:0132-4986-0132-5049,p.0304-9052.

30. The order was reflected in Gotovina's Attack Order of 2 August 1995, which in part ordered the artillery to support the attack by shelling a number of specific targets (the enemy's first line, ZM /command post/, communications centres and artillery firing positions) "and by targeting the towns of Drvar, Knin, Benkovac, Obrovac and Gračac with artillery fire."⁵⁹
31. In accordance with Gotovina's order, Knin, Benkovac,⁶⁰ Obrovac,⁶¹ Gračac,⁶² and many other towns, villages and hamlets, including Kistanje,⁶³ Uzdojje,⁶⁴ Kovačić,⁶⁵ Plavno,⁶⁶ Polača⁶⁷ and Buković⁶⁸ were struck repeatedly with artillery over two days despite having few or, as in almost all cases, no identifiable military targets.⁶⁹ Residential areas of these towns, villages and hamlets were struck as part of an indiscriminate shelling campaign to achieve "complete demoralisation." Weaponry employed included multiple rocket launchers (MRLs or MBRLs),⁷⁰ an indiscriminate artillery weapon designed for open field battle and inappropriate for use in populated civilian areas.⁷¹
32. The shelling of civilian areas, as reflected above, was purposeful and directed. Apart from its wide scope, which belies inadvertence, Gotovina assured his commander-in-chief that he would hit his selected targets. At the planning meeting, Tuđman expressed concern about the possibility of inadvertently hitting the UNCRO/UNPROFOR camp in Knin and the obvious negative political consequences. Gotovina reassured Tuđman that he knew where everything was and that the fire would be precise: "At this moment, we can engage in extremely precise operations at Knin, systematically, without aiming at the barracks in which UNCRO is located. (We have all the photographs, and know exactly....) At this moment, all of our weapons are guided, directly guided."⁷²

⁵⁹ *Operations Order (1.8.1995):0279-8576-0279-8591*,p. 12.*See also*,*Attack Order (2.8.1995):0342-2520-0342-2538*,p.14;*Artillery Attachment: 0342-2548-0342-2551*,p.3.

⁶⁰ WS:0060-6202-0060-6207,p.0606-6204.

⁶¹ WS:0606-6224-0606-6230,p.0606-6225.

⁶² WS:0606-6193-0606-6197,p.0606-6194.

⁶³ WS:0279-1517-0279-1521,p.0279-1518.

⁶⁴ WS:0045-7325-0045-7328,p.0045-7326.

⁶⁵ WS:0059-8548-0059-8552,p.0059-8549;WS:0607-1569-0607-1572,p.0607-1570.

⁶⁶ WS:0279-1504-0279-1507,p.0279-1505.

⁶⁷ WS:0607-1556-0607-1561,p.0607-1557.

⁶⁸ WS:0050-8225-0050-8231,p.0050-8226.

⁶⁹ WS:0607-1539-0607-1547,p.0607-1549.

⁷⁰ *Attack Order(1.8.1995):0342-2548-0342-2551;Crater Analysis(17.08.95):0038-7820-0038-7823*,p.0038-7822;*Leslie:0039-3016-0039-3024*,p.0039-3018-0039-3019;*Dangerfield 0038-7797-0038-7806*,pp.0038-7803-0038-7804;*Hill :0057-7638-0057-7744*,p.0057-7648;*Williams: 0042-5930-0042-5938*,p.0042-5933.

⁷¹ *Hill:0057-7638-0057-7745*,pp.0057-7652-0057-7653;*Dangerfield 0038-7797-0038-7806*,p.0038-7804;*Crater Analysis(17-08-95):0038-7820-0038-7823*,p.0038-7822.

⁷² *Presidential Transcript(31.7.1995):0304-9043-0304-9075/BCS:0132-4986-0132-5049*,p.0304-9057.

33. The effect on the civilian population was as planned at the 31 July 1995 meeting. Terrified civilians fled the areas for safety, individually and en masse.
34. The first protest against the attack on civilian targets was forwarded by General Mrkšić to the Zagreb UNPROFOR Headquarters as early as 0630hrs,⁷³ and in the afternoon the UN Commander Forand directed a protest letter to Gotovina.⁷⁴ Even after civilians began fleeing the shelling in large numbers, and after the warning by General Forand, Gotovina continued the shelling with renewed intensity on the next morning.⁷⁵
35. On 5 August 1995, the Croatian Ministry of Defense confirmed that the operation was a success: “the majority of town (Knin, Gračac, Plaški, Petrinje, Dubica) were directly threatened, which caused a large-scale (organized or spontaneous) moving out of civilians...”⁷⁶ Gotovina thus implemented what Tuđman had stressed, “inflict such blows that the Serbs will to all practical purposes disappear”.⁷⁷ As Gotovina had assured Tuđman, the remaining civilians were “just those who have to stay, who have no possibility of leaving.”⁷⁸

(ii) Psychological Operations

36. As stated previously, the population of Knin was expected to flee as a result of the shelling of civilian areas. This process was facilitated by the use of psychological operations, which included false broadcasts via local radio stations⁷⁹ and the dissemination of false leaflets (purporting to be from the RSK) urging Serbs to flee.⁸⁰ Messages were also couched as humanitarian gestures in order to simultaneously play to the international community while pushing frightened civilians out of the Krajina. As Defense Minister Šušak pointed out on 31 July, “We would point out the routes which they could use to pull out and formulate them in such a manner as to double the confusion as it is.” Tuđman observed that such messages could show that Serbs were withdrawing while simultaneously appealing to them not to withdraw—“This means giving them a way out, while pretending to guarantee civil rights, etc.”⁸¹

⁷³ Mrkšić Protest Letter(4.8.1995):0308-2028-0308-2028.

⁷⁴ Forand Protest Letter to Gotovina (4.8.1995):0090-1642-0090-1642;Tymchuk:0061-7872-0061-7893,p.0068-4736;Leslie:0088-4720-0088-4769;0088-4771-0088-4782.

⁷⁵ Leslie:0039-3016-0039-3024,p.0039-3018;Berikoff:0042-5991-0042-5995,p.0042-5992.

⁷⁶ MOD Intelligence Report(05.08.95);p.4;0463-3220-0463-3224.

⁷⁷ Presidential Transcript(31.7.1995):0304-9043-0304-9075,p.2.

⁷⁸ Presidential Transcript(31.7.1995):0304-9043-0304-9075,p.2.

⁷⁹ 0294-9079-0294-9095,p.0294-9079,WS:0606-6198-0606-6201,p.0606-6199.

⁸⁰ MUP Report(5.8.1995):0349-3906-0349-3906.

⁸¹ Presidential Transcript;31/07/95;p.29;0304-9043-0304-9075.

(iii) Persecutory Killings, Burning, Looting, Detentions and Harassment

37. The HV and the Special Police entered the largely abandoned towns and villages. The few remaining Serbs, disproportionately comprised of the elderly or infirm, were subjected to brutal mistreatment. Individually and in cooperation, Gotovina, Čermak, and Markač drew on their available resources to carry out *čišćenje* operations.⁸²
38. First, although the vast majority of Serbs escaped with their lives, a striking number of Serb civilians were killed (or disappeared never to be seen again) during the shelling or after Croatian forces entered towns and villages.⁸³ Estimates from groups as disparate as the Krajina Serb NGO Veritas and the Croatian government reflect the large-scale killing. The former concluded that 1594 Serbs were killed or disappeared, of which 10 were children and 358 were women,⁸⁴ while the latter acknowledged that across the whole Krajina, 911 persons were killed, more than half of whom it admits were civilians.
39. According to information derived from Croatian government protocols concerning individuals buried after Storm commenced, 336 persons known or considered to be civilians by the Croatian authorities were killed. However, if persons of supposedly unknown status who are females are considered, the figure increases to 574. If, in addition, persons of unknown status who are over 60 years old are added, the figure rises to over 750 killed. This figure, in a relatively small geographic area with a population under 100,000 reflects the atmosphere of death that pervaded this region in the wake of Operation Storm.⁸⁵
40. Those who stayed behind and survived witnessed the destruction of their community by the Croatian military. The destruction began as soon as Croat forces entered towns and

⁸² Markač (6.9.1995):0349-3590-0349-3590;Markač Report(22.8.1995):0361-1295-0361-0296(meeting of Gotovina,Cermak and Markač);Červenko Order(21.8.1995):0361-1282-0361-1284;Čermak Response(25.8.1995):0361-1312-0361-1313.

⁸³ Baccard:0345-5351-0345-5467,p.0345-5449-0345-5467.

⁸⁴ "Exodus"Report:0290-7166-02907312,p.0290-7309.

⁸⁵ It is also instructive that some persons found in uniform and therefore designated as "military" were last seen in the custody of the HV or were killed execution-style. See,e.g.,WS:0059-8549-0059-8552;Death Report of Nenad Dujković 0602-8228-0602-8229;Autopsy Report of Nenad Dujković X010-3079-X010-3097; WS:0059-8523-0059-8529;Death Report of Ilija Šarac 0469-3821-0469-3822;Autopsy Report of Ilija Šarac X010-3207-X010-3225.;Report of Republic of Croatia on Implementation of Security Council Resolution 1019(1995) 0059-8465-0059-8491,p.0059-8467-0059-8468;HRAT report re 182 dead bodies brought to attention of UN personnel in former Sector South,of which only 17 were males wearing military uniforms, and of those 17,at least six were killed in an unlawful manner-0038-5334-0038-5345(0038-5337,0038-5338,0038-5342).

villages and, in a matter of a few weeks, most Serb homes had been damaged or destroyed.⁸⁶ According to ECMM monitors on 26 August 1995, the

[R]ough estimate is that between 60-80% of the property in former UN Sector South have been fully or partly destroyed. The burnings were to a large extent carried out by uniformed HV soldiers under command inside areas where access was strictly controlled by HV Military and Croatian Civil Police.⁸⁷

Croatian forces entering towns, villages and hamlets plundered and destroyed houses, farms and other property, by setting fire to hay stacks, killing, stealing or removing livestock, polluting wells and waterways and stealing or removing fire-wood stored for the oncoming winter.⁸⁸ International observers witnessed the destruction of whole towns.⁸⁹ As one observed, “We went through Kistanje. Totally destroyed...Still burning, nothing there, no people. Just soldiers. No animals. Nothing but, I’ve got here, a lot of smell, strong smell of bodies.”⁹⁰

41. Looting of Serb property took place on “an enormous scale” and United Nations officials considered that “virtually every abandoned Serb property” was looted.⁹¹ It was not necessary that the houses be “abandoned”—homes still occupied by Serbs were looted by Croatian forces as well.⁹² It was enough that a particular house belonged to a Serb. Houses marked as “Croatian household” by Croatian authorities or Croatian civilians were spared looting and destruction.⁹³ Serb occupants were harassed and mistreated, their livestock killed or stolen, their worldly goods stripped, their wells poisoned, and their capacity and will to remain diminished to the breaking point.⁹⁴
42. The looting, like the burning of Serb homes, was systematic. International monitors consistently noted the systematic or organised nature of these illegal activities.⁹⁵ The same houses were looted several times, to the point that by October the looting decreased because “there was nothing left to loot.”⁹⁶ In some instances, Serb prisoners

⁸⁶ Forand letter to Gotovina:R003-8165-R003-8167

⁸⁷ ECMM report(26.08.95):0046-5923-0046-5923,p.5923;Liborius:0424-7142-0424-7155,p.0424-7146;Berikoff:0064-5523-0064-5587,p.0064-5571.

⁸⁸ Liborius,*id*:0051-1342-0051-1342/BCS??(UNCivPol Knin Report,06/11/95).

⁸⁹ *See, e.g.*, Forand:0042-5964-0042-0042-5976,pp.0042-5370-0042-5371.

⁹⁰ Hill:0057-7633-0057-7744,p.0057-7689-0057-7690.

⁹¹ UNSC Report:S/1995/1051,p.5.

⁹² WS:0060-5001-0060-5005;WS:0279-1628-0279-1630.

⁹³ Dawes:0042-3180-0042-3191,p.0042-3188;Berikoff:0064-5523-0064-5587,p.0064-5556;Hill:0057-7633-0057-7744;p.0057-7670.

⁹⁴ Liborius:0424-7142-0424-7155,p.0424-7146-0424-7147;ECMM Report (26.08.95) 0046-5923-0046-5933,p.0046-5923.

⁹⁵ ECMM Report (26.08.95) 0046-5923-0046-5933,p.0046-5923,0046-5933 (Annex B).

⁹⁶ UNMO Report:0037-7298-0037-7321,p.0037-7298.

were even forced to assist in the systematic collection and distribution of looted goods to soldier's apartments.⁹⁷

43. Serbs who had been driven from their homes either by shelling or during *čišćenje* operations by Croatian forces were taken to collection centres, while their "abandoned" homes were looted and destroyed.⁹⁸ In the centres, they became even more aware of the systematic abuse of Serbs. In the face of what they had experienced and what awaited them, only small remnants of the Serbian community remained in Croatia.

(iv) The Special Police

44. These illegal activities were not limited to members of the Croatian armed forces. The Special Police involved in Operation Storm also participated, under the command of Markač, in the systematic destruction, plunder, killing, and ill-treatment of the Serb population. In addition, they were often the forces in the vicinity of killings.
45. For example, immediately after the Special Police forces established their headquarters in Gračac on 5 August 1995,⁹⁹ at least nine elderly Serb civilians were killed or disappeared in the town.¹⁰⁰ Between 5 and 7 August 1995 the Special Police forces were in the vicinity of Kijani when fourteen Serb civilians were killed or disappeared¹⁰¹ and an elderly female in the nearby Ivanići was shot dead.¹⁰² On 5th August 1995 a unit of the Special Police was near Grab¹⁰³ when two very elderly Serb civilians were shot dead.¹⁰⁴ On 7 August 1995, the Special Police "liberated" Mazin¹⁰⁵ and seven elderly Serb civilians were killed in Mazin;¹⁰⁶ one elderly female died from massive trauma to

⁹⁷ WS:0050-8165-0050-8171,pp.0050-8169-0050-8170;WS:0050-8248-0050-8256,p.0050-8253.

⁹⁸ WS:0279-1517-0279-1521,p.0279-1519;WS:0279-1351-0279-1355,p.0279-1354;WS:0342-3240-0342-3245,p.0342-3243.

⁹⁹ SP Report:0349-3596-0349-3646,p.18.

¹⁰⁰ WS:0345-5879-0345-5880 (Đekić,Stevan;Graovac,Dušan);0356-4203-0356-4207(Banjanin,Marija;Đekić,Stevan;Drobac, Vojislav;Tojagić,Milka);Croatian Helsinki Committee (8.4.199):0113-8666-0113-8760,p.8680. (Kosovac,Nikola)p. 8704. (Ivanić,Ana;Stojsavljević,Mara;Veselinović,Ljuban);"Exodus"Report:0290-7166-0290-7312pp.7283,7301,7305.

¹⁰¹ 0605-3053-0605-3059,p.19;0361-1058-0361-1060,p.1;0605-2579-0605-2580,p.2;SP Report:0349-3596-0349-3646,p.22-24;0155-9006-0155-9050,p.34;0361-1081-0361-1084,p.1;0309-0459-0309-0467,0309-0464-0309-0465;0279-9037; Croatian Helsinki Committee:0113-8666-011-8760,pp.8680,8681(Bolta,Dana;Bolta,Sava;Jelača,Branko;Jelača,Marija;Jelača,Milica;Jelača,Smilja;Jelača,Ana;Kesić,Dušan;Kolundžić,Mileva;Sovilj,Danica;Sovilj,Mara;Sovilj,Mira;Sovilj,Rade;Sovilj,Vlado,).

¹⁰² UN Restricted Incident Report dated 19 August 1995,0035-2415-0035-2415;Ana Ivanići

¹⁰³ SJP Report(19.08.1995):0605-2579-0605-2580,p.8680.

¹⁰⁴ Croatian MUP List of Deceased:0184-8758-0184-8781,p. 8780(Čića,Sava)

¹⁰⁵ SP Report:349-3596-0349-3646,p.12;0309-0459-0309-0467,0309-0464-0309-0465.

¹⁰⁶ Končar,Nikola,Death Report. 0345-5895-0345-5896 (date that Death Reports are written is not clear.). Bajić,Pera;Bajić,Pera Ž. Luke,"Exodus"Report. 0290-7166-0290-7312,p.7273. Kočar,Đuro,Croatian Helsinki Committee for Human Rights Report,dated 08 April 1999. 0113-8666-0113-8760,pp.8682.

Vojnović,Ilija,A List of Missing Persons from the Republic of Serbian Krajina,from August 1995 to end

her limbs.¹⁰⁷ On 7th August 1995 the Special Police “liberated” Donji Lapac¹⁰⁸ and nine Serb civilians disappeared.¹⁰⁹ In Obljaj near the centre of Donji Lapac, three elderly Serb women were killed.¹¹⁰ On 7 August 1995, Special Police units were also in Dnopolje, three kilometres north-west of Donji Lapac. Four elderly Serb civilians from neighbouring Birovača, (approximately one kilometre north of Donji Lapac centre, between Dnopolje and Donji Lapac) went missing in the aftermath of Operation Storm.¹¹¹ The bodies of two of the three victims were exhumed from Gračac cemetery in 2004. The death certificate for one victim indicating death was caused by a gunshot to the head and body.¹¹² On 27 August 1995 the Special Police were in Golubić,¹¹³ and four unidentified elderly persons were killed in Golubić that day.¹¹⁴

(v) *Obstacles to Return*

46. In order to ensure that the Serbs who had fled could not return, laws and policies were changed to expropriate and transfer Serb property to Croats.¹¹⁵ At the same time, the Croatian Government moved Croat civilians from other parts of the former Yugoslavia, including those who had migrated overseas, into the areas left vacant by the fleeing Serb population.¹¹⁶ These laws included the “Law on the Temporary Take over and Administration of Specified Property” of 27 September 1995, which—coupled with

of 1996. 0328-1768-0328-1836,p.1777. Zorić,Jela,Death Report,0345-5919-0345-5920.
 Zorić,Špiro,Death Report,0345-5921-0345-5922.
¹⁰⁷ Zorić,Jela,Death Report: 0345-5919-0345-5920,p. 5919,“vulnera explosiva extremitatum.”
¹⁰⁸ SP Report:0349-3596-0349-3646,p. 12; WS:0362-1719-0362-1727,p.1723; 0309-0459-0309-0467,0309-0464-0309-0465.
¹⁰⁹ “Exodus”Report:0290-7166-0290-7312,Đerić,Dara,p. 7280;Đerić,Dragana,p. 7281;Đerić,Ljiljana,p. 7281;Đerić,Predrag,p. 7281;Bursać,Milica,p. 7276;Divjak,Boja,p. 7278;Divjak,Joka,p. 7278;Ivanišević,Slavko,p. 7283;Zagorac,Boško,p. 7308.
¹¹⁰ Divjak,Boja;Divjak,Milka;Divjak,Soka,Croatian Helsinki Committee for Human Rights Report,dated 08 April 1999. 0113-8666-0113-8760,p. 8673;Croatian Response to Requests for Assistance,0342-3735-0342-3737,p. 3735. Death Report for Divjak,Boja: 0345-5927-0345-5928. Death Report for Divjak,Milka: 0345-5931-0345-5932. Death report for Divjak,Soka: 0345-5929-0345-5930; Divjak,Boja,Death Report: 0345-5927-0345-5928. Divjak,Milka,Death Report: 0345-5931-0345-5932.
¹¹¹ Mrdjem,Milan;Obradović,Dane. Croatian Helsinki Committee for Human Rights Report,dated 08 April 1999. 0113-8666-0113-8760,p. 8669. Death Report for Obradović,Dane: 0359-6821-0359-6821. Mrda,Mile, “Exodus”Report:0290-7166-0290-7312 p. 7293. Gračac,Knin,Korenica Exhumation,0364-1118-0364-1148,p. 1112-1142. Death Report for Mrda,Mile: 0364-1118-0364-1148,p. 1142. Tišma,Sava, “Exodus”Report:0290-7166-0290-7312 p.7303.
¹¹² Mrda,Mile,Death Report: 0364-1142-0364-1142.
¹¹³ 0361-1320-0361-1323,p.1,Report on completion of assignment on 27th August 1995 from Markač to Červenko
¹¹⁴ HRAT (24-27.8.1995):0035-1695-0035-1698,p.0035-1696.
¹¹⁵ WS:0041-3797-0041-3807,p.0041-3803;Refugee Census:R011-9123-R011-9125
¹¹⁶ Presidential Transcript(26/09/1995),p.56;Mauro:0093-4963-0093-4970;Presidential Transcript(22.09.1995): 0186-4152-0186-4209:(Discussion between President and Radić)

other procedural obstacles—resulted in “effectively creating a mass confiscation policy for Serbian origin Croatian citizens.”¹¹⁷

47. A further series of laws were enacted to seal off the Serb population from the Krajina permanently.¹¹⁸ These legislative and administrative measures together with other arbitrary steps taken by the Croatian Government, such as refusing entry to the Serb civilians at the borders, prevented the Serb population from returning to the Krajina and ensured that the new demographic picture created by Operation Storm would not be undone.¹¹⁹

(c) Other JCE participants

48. The Indictment pleads two alternative legal characterisations of the JCE.
49. According to the first legal characterisation, the core JCE was limited to the three accused and the following high-ranking officials:
- Franjo Tuđman, the President of the Republic of Croatia;
 - Gojko Šušak, the Minister of Defence of the Republic of Croatia;
 - Janko Bobetko, the Chief of the Main Staff of the HV until 17 July 1995, when he retired; and
 - Zvonimir Červenko, the Chief of the Main Staff of the HV from his appointment on 17 July 1995.
50. According to this characterisation, it is not necessary for the physical perpetrators who carried out the *actus reus* of one or more of the crimes charged to be members of the JCE.¹²⁰ The acts of these physical perpetrators can be attributed to the JCE through indirect perpetration or through an additional JCE formed between one or more JCE members and the physical perpetrators. Where a JCE member uses another person to commit a crime, the physical perpetrator’s crime may be attributed to the JCE through indirect perpetration. Likewise, when a JCE member acts jointly with others to commit a crime (thereby forming an additional “vertical” JCE), then these crimes can be attributed the members of the original JCE.

¹¹⁷ The US and Croatia, A documentary History: 0606-9466-0606-9966, p.244.

¹¹⁸ Eg. R090-8603-R090-8606 (“Law on Lease of Flats in the Liberated Territory”, 27/09/1995, which effectively terminated the “tenancy rights” of the Serb population who had lived in state-owned properties and fled during operation Storm;” 0096-7981-0096-7986/R090-4711-R090-4713 (Decree on Return of Refugees and Displaced Persons to the Liberated Areas, 10/10/1995, which gave full rights to “the Croatian citizens-refugees from Serb-occupied areas in BH, and from Serbia and Montenegro” to reside in the abandoned Serb properties.)

¹¹⁹ Memo to UNHCHR (26.09.1995): R089-8668-R089-8672.

¹²⁰ The Appeals Chamber has implicitly confirmed that JCE liability may exist in circumstances where the physical perpetrator(s) of a crime are not members of the JCE. See Stakić Appeal Judgement, §§63–98.

51. In the alternative, the Prosecution also pleads a broader characterisation of the JCE which includes the core participants as well as the physical perpetrators and others who facilitated the crimes or who otherwise acted in furtherance of the JCE. Given the breadth of the crimes, it is impossible to list the exact identities of all members of this broader JCE with precision, but the additional members have been identified in the Indictment by group or class. This JCE specifically includes the subordinates of all core members of the JCE such as officers and members of the HV; officers, officials, and members of the Croatian government and political structures; leaders and members of the HDZ; special police, civilian police, and other Republic of Croatia security and or intelligence services. Further particulars about the identity of these additional members are available in the description of particular crimes and in the disclosure materials relating to specific events.

(C) Gotovina

52. As described above, Gotovina was instrumental in the planning and execution of the crimes in the indictment. He discussed with Tudman, his commander-in-chief, the nature and purpose of the shelling of civilian areas and ordered its execution. Gotovina was the Commander of the Split Military District of the HV (Split MD) from October 1992 to March 1996 and was in overall operational command of Operation Storm in the southern portion of the Krajina region.¹²¹ He issued combat orders, which his subordinates implemented,¹²² and controlled operations and troops through an intact chain of command.¹²³ He possessed effective control over HV soldiers and military police within his area of responsibility.¹²⁴

This issue is currently under appeal, *see Prosecutor v. Limaj et al*, Prosecution Appeal Brief, §§2.270–2.278.

¹²¹ Attack Order(1.8.1995):0279-8576-0279-8591; Operation Analysis Report(15.8.1995)0352-6974-0352-6978.

¹²² Attack Order(1.8.1995):0279-8576-0279-8591; subsequent order of subordinate commander(03.08.1995): 0279-8819-0279-8826-ET; Order (8.8.1995)0279-9024-0279-9026-ET; Gotovina Report:0361-1254-0361-1258; Operational Diary:0155-8825-0155-8924; Orders for post-combat *čišćenje* operations: (5.8.1995):0279-8908-0279-8909-; Main Staff Report(9.8.1995):0361-1151-0361-1153; Order (20.8.1995):0358-3442-0358-3445; Order (20.9.1995):L009-5179-L009-5181.

¹²³ WS:0342-3200-0342-3211. Report(15.8.1995):0352-6974-0352-6977;0352-7099-0352-7114. Order establishing garrisons(16.02.93):0150-1733-0150-1738/0306-2609-0306-2612; Gotovina Order (6.10.1995):0211-7667-0211-7668/L008-7747-L008-7750.

¹²⁴ *See* Indictment Annex A. Order establishing garrisons(16.02.93):0150-1733-0150-1738/0306-2609-0306-2612 While this particular order makes no reference to the municipalities of Drniš, Oklaj, Donji Lapac and Gračac, there are other orders and reports which establish that personnel attached to the Split MD were deployed within those municipalities during operation Storm. *See e.g.*, 0155-8925-0155-8941;0464-9733-0464-9735;0035-3066-0035-3093;0352-7008-0352-7007;0279-8908-0279-8909;R090-0097-R090-0114;Hill:0051-7638-0051-7744;Antilla:0054-8131-0054-8136.

53. Gotovina commanded troops during the course of their systematic burning and looting of Serb homes and property and during their widespread attacks, including killings, against Serb civilians. Actions committed by members of a hierarchical organisation give rise to an inference that the actions in question were ordered. When these actions are committed by many members of the organisation, that inference grows even stronger. And where, as here, these actions are widespread, systematic, and continuing not only for days but for weeks, the circumstances can give rise to no other conclusion than that they were ordered from the top, in this case by Gotovina.
54. That conclusion is rendered further inescapable by the action -- or inaction -- by Gotovina in the face of that campaign. As described in detail below, he was aware that crimes were likely to occur, that they in fact occurred, and that they were continuing to occur. He possessed the ability to take effective measures to stop these crimes but failed to do so. Gotovina's intent regarding the campaign is reflected not in his issuance of orders prohibiting the campaign,¹²⁵ but in his failure to implement them, particularly in light of the ongoing unlawful acts of his subordinates.
55. Prior to the operation, Gotovina was aware of the substantial likelihood of crimes being committed by his subordinate personnel. The same HV units deployed in Operation Storm, in particular the 4th and 7th Guards Brigades, had extensively looted and burned Serb property during operation "Summer 95" from 25 to 30 July 1995 in the area adjacent to the Knin municipality.¹²⁶ Gotovina had been duly informed of these actions.¹²⁷
56. Gotovina also knew that particular personnel deployed in Operation Storm were from the Krajina area and, thus, more likely to engage in retributive and illegal activity.¹²⁸ However, once the operation was underway, instead of taking additional measures to effectively address these risks and control their behaviour, Gotovina turned to their personal motives as a way to justify his own inaction. When the Commander of the UN barracks in Knin, General Forand, asked Gotovina directly why he did not put an end to the looting and burning, Gotovina replied that "he could not control some of these that

¹²⁵ Security Measures Plan(2.8.1995):0279-8738-0279-8745.

¹²⁶ Attack Order(Summer)(25.7.1995):0357-7773-0357-7792;Operational Diary:0155-8825-0155-8924,pp.42,45-56.

¹²⁷ Operational Diary:0155-8825-0155-8924,pp.42,46-49.

¹²⁸ Presidential Transcript(31.7.1995): 0304-9043-0304-9075,p.10 (Gotovina:"The forces heading towards Knin are 400 good infantrymen from the 3rd Battalion,the 126th Regiment,who are all from this area and they know the area through and through. They have reason to fight here and at this moment it is difficult to keep them on a leash.")

were going on and it was a way for his people (military and civilian) to get even, to revenge themselves".¹²⁹

57. Gotovina was informed of the widespread killing, looting and burning being committed by his subordinates. He received extensive information from the representatives of international organisations monitoring the situation.¹³⁰ General Forand informed Gotovina as early as 5 August of his concerns about, among other things, the "significant amount of destruction and looting."¹³¹ Gotovina also received information through the monitoring and communication systems in place and intelligence operations within the Split MD.¹³² His *Attack Order* of 1 August 1995 required all units to submit daily reports "every six hours with the situation at 0600 hrs, 1200 hrs, 1800 hrs, and 2400 hrs" in addition to which "interim" and "special" reports were also to be sent as the situation required.¹³³ The reporting mechanism was employed during and after the Operation.¹³⁴
58. On 5 August 1995 Gotovina set up his HQ in the town of Knin.¹³⁵ At this time the commission of crimes and their consequences in Knin were readily observable.¹³⁶ In addition, Gotovina was also made aware of the crimes through extensive media coverage of the conflict.¹³⁷
59. Gotovina was aware of the negative international repercussions which could result from the criminality of his subordinates.¹³⁸ Anticipating publicity upon the arrival of the President and Minister of Defence on the 6 August 1995, he stated that "the road and the town must be neat".¹³⁹ Gotovina's restricted the movement of UN personnel in Knin,

¹²⁹ Forand :0053-0939-0053-0967,p.0957.

¹³⁰ See,e.g.,Forand:0053-0903-0053-0967,pp.18-19.Marker-Hansen:0055-9649-0055-9653,p.4;Leslie:0039-3016-0039-3024,pp0039-3019,0039-3022;Liborius: 0424-7142-0424-7155,p.3;Forand Protest Letter (5.8.1995):0063-3697-0063-3698.

¹³¹ R003-8165-R003-8165.

¹³² WS:0342-3200-0342-3211,p.5;Operational Diary:0155-8825-0155-8924,pp.91,95,101,108,112,116-118.
¹³³ Attack Order:0279-8576-0279-8591,p.17.

¹³⁴ Daily reports in compliance(4.8.1995):0279-8859-0279-8860;(5.8.1995):0279-8938-0279-8939;Daily Operation Reports (06.08.95):0279-9001-0279-9002;(07.08.95):0279-9030-0279-9031;Report to Main Staff (15.8.1995)0352-6974-0352-6977("reporting by subordinate units was regular and accurate").

¹³⁵ Operational Diary:0155-8825-0155-8924,pp. 94;Tymchuk:0061-7872-0061-7893;Leslie:0088-4720-0088-4769;0088-4771-0088-4782.

¹³⁶ Forand: 0042-5964-0042-5979,0053-0939-0053-0967,pp.10,15,18;Tymchuck Statement;Liborius:0424-7142-0424-7155;ECMM Report(18.8.1995):0052-6838-0052-6839.

¹³⁷ Forand: 0053-0939-0053-0967,p.10;ECMM Report:R027-4483-R027-4489,p.R027-4487 (16.8.1995-Tudman's spokesperson publicly stated that "uncontrollable troops and civilians" were responsible for methodically destroying the Krajina Serbs homes).

¹³⁸ Warning (12.8.1995):0306-1654-0306-1655. On 12 August 1995,the HV Commander for Political Affairs copied Gotovina on a message warning about international sensitivity to the crimes taking place.

¹³⁹ Operational Diary:0155-8825-0155-8924,p. 83.

detaining them in the UN compound and preventing observation of the results of the attack and the ensuing crimes by his troops.¹⁴⁰

60. In response to protests Gotovina deflected responsibility and obfuscated. He ignored demands for prevention,¹⁴¹ denied allegations, and minimized or sought to justify the crimes committed.¹⁴² On one occasion he threatened to “execute” Alun Roberts, one of the more vocal UN observers.¹⁴³
61. Gotovina was under a duty to take necessary and reasonable measures to prevent the crimes. These measures included:
- Ordering that the crimes be stopped;
 - Signalling a clear departure from past tolerance of criminality by informing all subordinates that allegations of criminality would be investigated and prosecuted;
 - Implementing orders to obey the law and ensuring compliance with them;¹⁴⁴
 - Imposing immediate disciplinary measures on soldiers who did not obey the order to stop criminal activity, pending further investigation and possible criminal sanctions;
 - Utilizing the military police to its full capacity to prevent crimes;¹⁴⁵
 - Seeking assistance from other leaders, including the government and police, to enforce the orders.
62. Gotovina issued a number of orders between 4 August 1995 and 18 August 1995 that criminal activities cease and that disciplinary measures be taken, yet he failed to implement these orders to rein in the widespread unlawful acts of his subordinates. For example, Gotovina issued various general orders relating to burning, looting and lack of discipline and was consistently informed that the breaches were nevertheless continuing.¹⁴⁶ Further, he failed to impose disciplinary sanctions, failed to utilise the

¹⁴⁰ Letter of permission for movement:0306-2608-0306-2608.

¹⁴¹ Leslie:0088-4771-0088-4782,p.4.

¹⁴² Forand:0053-0903-0053-0967,p.19;Liborius:0055-0939-0055-9660,p.3;ECMMReport(27-28.10.1995):0052-6863-0052-6864;ECMMReport(20.9.1995):0055-9661-0055-9662,p.1;ECMMReport(17-23.9.1995)R026-7251-R026-7253,p.R026-7252.

¹⁴³ Leslie:0088-4720-00884769,p.28.

¹⁴⁴ Forand:0053-0939-0053-0967,p.19.

¹⁴⁵ WS:0359-9856-0359-9909;WS:0356-7809-0356-7821;Operational Diary:0155-8825-0155-8924,p.107;Attack Order:0279-8576-0279-8591;Laušić Order(5.8.1995):0279-9687-0279-9689.

¹⁴⁶ **Example 1:** Order Knin must not be burned and destroyed (4.8.1995):0155-8825-0155-8924(BCS)/0155-8825-0155-8924(ET),p.79;Reported that after the Split MD personnel entered Knin the “devastation of property” was “catastrophic”(6.8.1995):11-9380-0211-9382(BCS)/L0096-6666-L0096-6670(ENG).

Example 2: Gotovina asserted he would not “tolerate the lack of discipline”(7.8.1995);Reported that there are attempts at random plunder and burning of buildings(9.8.1995):0359-9962-0359-9965(BCS)/0359-9962-0359-9965-;**Example 3:**Order prohibiting arbitrary movement of HV members and demanding that burning and other illegal acts be prevented(10.8.1995):0213-046100213-0461;Report that “unit commanders lost control over their units which resulted in a large number of burned houses and

military police to their full capacity and failed to seek adequate assistance from other organs to enforce the orders.

63. After two weeks of criminal acts by the Croatian forces, the international repercussions raised alarm bells in Zagreb. On 18th August 1995 Mate Laušić forwarded a letter to Gotovina and others wherein he referred to protests from “foreign ambassadors about the inappropriate conduct of HV soldiers on liberated territory” and observed that:

“ . . . houses are being torched, the mobile property of others is being unlawfully carted away and other unlawful actions by HV soldiers and civilians wearing HV uniforms are occurring on a daily basis.”¹⁴⁷

64. Also on 18 August 1995 Joško Morić, Assistant Minister of the MUP, observed that:

The torching of houses and illegal taking away of people’s movable property has assumed such proportions that it is inflicting political damage on the Republic of Croatia, both in the country and abroad.¹⁴⁸

Morić’s solution was to grant an amnesty to those that committed the crimes before the 18th of August 1995 and proclaim that the civilian police would arrest all persons committing these crimes whether they were in uniform or not.

65. Gotovina was obliged to take pro-active measures and call for assistance from other organs including the MUP to enforce discipline and ensure security. Indicative of his priorities and his lack of attention or concern about the ongoing criminality was his request to Mladen Markač on 18 August 1995, the same day as the Laušić and Morić reports, that a battalion be detached from the Special Unit of the MUP and sent to the Split MD. He did not request that this unit be engaged for the purpose of providing security or enforcing discipline, but rather to carry out čišćenje operations.¹⁴⁹
66. Gotovina could have taken necessary and reasonable measures to prevent the crimes. There were military police units subordinated to his command, which he could have used to control discipline amongst his personnel and to prevent crimes.¹⁵⁰ Selected

many instances of looting, in particular in the area of Đevrske, Kistanje and Drniš.”(11.8.1995):0463-2895-0463-2899; Commanders warned that the inappropriate conduct of HV members could result in the international community taking measures “which would have unforeseeable consequences for our State” and demanded that the commander immediately prevent the “continued torching and destruction of facilities and property throughout the entire liberated territory” and, inter alia, “inappropriate conduct towards civilians and prisoners of war, and especially towards members and soldiers of the “Peace Forces”(12.8.1995):0095-5567-0095-5568(BCS)/0306-1654-0306-1654(ENG); **Example 4:** Gotovina stated that “It is forbidden to burn down houses” (16.8.1995):0155-8825-0155-8924(BCS)/0155-8825-0155-8924-ET; Laušić Report (18.8.1995):0349-3801-0349-3802; Morić Report (18.8.1995):0361-0732-0361-0733.

¹⁴⁷ Laušić Report (18.8.1995):0349-3801-0349-3802.

¹⁴⁸ Order(18.8.1995):0361-0732-0361-0733.

¹⁴⁹ Order(18.8.1995):0104-6317-0104-6317.

¹⁵⁰ WS:0359-9856-0359-9909; WS:0356-7809-0356-7821; Laušić Order(2.8.1995) 0279-9680-0279-9683.

structures of political importance, however, were protected.¹⁵¹ Gotovina could and should have used his powers to equally protect Serb civilian homes, property and lives.

67. Notwithstanding his ability to punish his subordinates and his knowledge of unlawful acts from his subordinate personnel against civilians and civilian property in the course of and the aftermath of operations Storm, Gotovina failed to punish the perpetrators. Necessary and reasonable measures that could have been taken by Gotovina include:

- Investigating the allegations using military police or others at his disposal;¹⁵²
- Notifying appropriate military and civilian prosecution authorities, such as the Military Prosecutor's Office,¹⁵³ of the crimes and results of any investigation;¹⁵⁴
- Imposing immediate disciplinary measures or disciplinary sentences on suspected subordinates to prevent further crimes;¹⁵⁵

68. Instead, Gotovina failed to take adequate measures to have the widespread crimes investigated or prosecuted. On the contrary subordinates identified as having committed crimes were commended and decorated.¹⁵⁶ On 16th August 1995, only two days before Laušić and Morić reported that unlawful actions by HV soldiers were being committed on a “daily basis”¹⁵⁷ and on a large scale,¹⁵⁸ Gotovina declared that all members of the units of the Croatian Army who participated in Operation Storm, but for those absent from the units, were eligible to receive medals.¹⁵⁹ Furthermore, on 15th August 1995 in his analysis of the operation he stated that military discipline during the “preparation, course and conclusion of combat operations” was “exceptionally high” and that “command and control of units was uninterrupted and at the required level”.¹⁶⁰

¹⁵¹ Liborius:0038-9356-0038-9360.

¹⁵² Forand:0053-0939-0053-0967,pp.0053-0953-0053-0954,p.0053-0965.

¹⁵³ Official Gazette 67/91:0607-0362-0607-0363.

¹⁵⁴ WS:0349-5574-0349-5583;Discipline Report:0354-2834-0354-2835;Elleby:0052-5188-0052-5192.

¹⁵⁵ Code on Military Discipline (Official Gazette 24/92):0088-3706-0088-3720(ET). *See also*,Establishment of Military Disciplinary Courts (Official Gazette 62/91): 0607-0365-0607-0365(including detention in military custody for up to 30 days).

¹⁵⁶ Report to Main Staff (15.8.1995)0352-6974-0352-6977;L009-6122-L009-6123 (Gotovina order dated 27 October 1995,summoning officers,including Ademi and Čermak,for medals). Operational Diary:0155-8825-0155-8924,pp.101,103,113,116(commendations of units committing crimes juxtaposed with references to burning);0079-8270-0079-8272

¹⁵⁷ 0349-3801-0349-3802

¹⁵⁸ Morić stated that the crimes were occurring in “such proportions that it is inflicting political damage”,0361-0732-0361-0733

¹⁵⁹ 0079-8270-0079-8272;Furthermore,Gotovina himself on 16th August 1995 simultaneously observed that the issue of the burning of houses had to be “solved urgently”,BCS 0155-8825-0155-8924;Eng ET 0155-8825-0155-8924,Operational Diary:0155-8825-0155-8924,Brigadier General Rahim ADEMI,COS Split MD,25 Jul -14 Sep 95,at Eng page 108.

¹⁶⁰ BCS 0352-6974-0352-6977;Eng 0352-6974-0352-6977/Draft translation,*Analysis of attack operation KOZJAK-95*. Colonel General Ante GOTOVINA,Commander of the Split MD,15 Aug 95

69. As commander of the Military District and the most senior military officer in his area of responsibility, Gotovina was responsible for ensuring that all breaches and violations of military discipline—including criminal acts—were punished.¹⁶¹ There was a working Military Disciplinary¹⁶² and Military Court¹⁶³ structure through which breaches of military discipline and criminal offences could have been processed. Gotovina had the authority to mete out all disciplinary measures provided for under the Code.¹⁶⁴ He was ultimately responsible for all matters relating to military activity, military discipline and defence of the territory that fell within his geographical area of responsibility. This responsibility extended even in relation to outside units temporarily attached to his command for operational purposes.¹⁶⁵
70. Gotovina possessed the means to exercise this authority. The 72nd and 73rd Military Police Battalions were subordinated to Gotovina during the course of the operation.¹⁶⁶ A report filed by the 72nd Military Police Crime Department on 22 September 1995 summarises the investigations conducted in the areas of Obrovac, Benkovac, Drniš and Knin and records that thirty-one HV members were charged with criminal offences and thirty-two disciplinary charges were filed.¹⁶⁷ Military Police criminal reports reveal that the criminal charges relevant to conduct during the operation were limited to the crime of looting.¹⁶⁸ A report of the 73rd Battalion of the Military Police dated 31 August 1995 covering “all aspects of work and engagements” of the Battalion for the period 25 July 1995 to 25 August 1995 does not refer to any disciplinary or criminal investigations

¹⁶¹ Article 3, items 6 and 7 & Article 62 of the Military Discipline Code, describes the conduct contrary to military regulations, and crimes for which proceeding are initiated *ex officio* as violations of military discipline. 0088-3706-0088-3720

¹⁶² Code of Military Conduct, Chapter I, II, and III: 0088-3706-0088-3720

¹⁶³ Decree on the organization, Work and Jurisdiction of Judicial Authorities in the case of war ... Official Gazette 67/91, 25/92 and 81/92” by which *inter alia* military courts were established in zones of operation 0606-9377-0606-9380; 0355-6445-0355-6448; see also Decree on the organization, Work and Jurisdiction of Prosecutor’s offices; Official Gazette 67/91 0607-0362-0607-0363; Applicable laws: Basic Criminal Law - consolidated text, Official Gazette 31/93 0606-8886-0606-8939; Criminal Law – consolidated text, Official Gazette 32/93 0606-8940-0606-9000; Criminal Procedural Code – consolidated text, Official Gazette 34/93 0606-9117-0606-9242

¹⁶⁴ Article 22 Military Discipline Code, 0088-3706-0088-3720.

¹⁶⁵ WS:0342-03200-0342-3211, p.0342-3208.

¹⁶⁶ WS:0359-9856-0359-9909; WS:0356-7809-0356-7821; Laušić Order (2.8.1995): 0279-9680-0279-9683; Order (5.8.1995): 0279-9687-0279-9689. WS:0342-3200-0342-3211, p.3208.

¹⁶⁷ Military Police Report (22.9.1995): 0354-6062-0354-6063.

¹⁶⁸ 0463-5283-0463-5284; 0463-3738-0463-3740; 0463-3735-0463-3737; 0463-3732-0463-3734; 0463-3729-0463-3731; 0463-3725-0463-3728; 0463-3719-0463-3721; 0463-3716-0463-3718; 0463-3722-0463-3724; 0463-3713-0463-3715; 0463-3710-0463-3712; 0463-3708-0463-3709; 0463-3696-0463-3698; 0463-3689-0463-3691; 0463-3692-0463-3695; 0463-3685-0463-3688; 0463-3682-0463-3684; 0463-3676-0463-3678; 0463-3679-0463-3681; 0463-3673-0463-3675; 0463-3670-0463-3672; 0463-3667-0463-3669; 0463-3664-0463-3666.

conducted by this Battalion.¹⁶⁹ Further, the report does not reflect necessary attention to the wave of ongoing criminality.

71. Rather than disciplining his subordinates for the widespread crimes committed against Serbs, Gotovina chose to discipline his subordinates for offences against fellow soldiers and minor infractions such as absences, fights and other improper behaviour.¹⁷⁰ For example, on one occasion Gotovina implemented the full range of disciplinary measures available to him in the case of a soldier killing another soldier.¹⁷¹

(D) Čermak

72. On 5 August 1995, President Tudman appointed Čermak to the position of Commander of the Knin Garrison.¹⁷² Colonel-General Čermak was the principal liaison between the Croatian government and the international community and was widely perceived as the Military Governor of Knin.¹⁷³
73. Čermak was of the same military rank as Gotovina. He was responsible, along with Gotovina and Markač, for the realisation of orders for *čišćenje* operations.¹⁷⁴ On 25 August 1995 Čermak reported to Červenko that the Knin Garrison and the Split MD Command were “in constant co-ordination,” and that there was therefore no need for him to repeat the intelligence assessment submitted by the SMD Intelligence Chief, which was the same as his.¹⁷⁵ Thus, before the joint special forces carried out a survey of the territory in the region of Gračac, Ubđina and Sveti Rok, in anticipation of the forthcoming *čišćenje* operation Čermak met with Gotovina and Markač, and Markač duly reported this meeting to the Main Staff.¹⁷⁶

¹⁶⁹ 0279-9598-0279-9611. *See also*, Weekly Reports (24.8.2995):0354-5476-0354-5476;(14.9.1995):0354-5488-0354-5488);(18.10.1995):0354-5492-0354-5494 (recording that no relevant criminal charges were submitted and no cases of violation of military discipline were registered).

¹⁷⁰ *See, e.g.* Letter from Split Military District to VP1114 Split(25.09.95):0294-4796-0294-4796; Letter from 4 Guard br to MD Split(19.09.95):0294-4797-0294-4797;set of Disciplinary orders imposed by 4th G.br (Apr-Sep 1995): 0294-4798-0294-4798; Also see statistics set out in Report on Disciplinary Measures and Sanctions for the third quarter 1995: 0354-2830-0354-2837 (4 crimes listed);0354-2838-0354-2841(3 crimes listed);0354-2842-0354-2845 (0 crimes listed);0354-2846-0354-2849 (7 crimes listed).

¹⁷¹ 0279-4651-0279-4652;0279-4655-0279-4655;0279-4656-0279-4656;0279-4653-0279-4648-0279-4649;0279-4646-0279-4647;0279-4645-0279-4645;0279-4630-0279-4631.

¹⁷² Order of appointment (5.8.1995):0306-1921-0306-1921/0219-5223-0219-5223;Order (5.8.1995):0206-8322-0206-8322. Order of Main Staff:0306-2609-0306-2616:(The Knin Garrison encompassed the municipalities of Civljane,Erwnik,Kijevo,Kistanje,Knin,Nadvoda and Orlić.)

¹⁷³ *See, e.g.*, UNCRO(5.8.1995):R003-8165-R003-8167;ECMM(13.8.1995):0051-1078-0051-1081,p.0051-1078.

¹⁷⁴ Order of Main Staff(21 Aug. 1995):0361-1282-0361-1284).

¹⁷⁵ Čermak Report to Main Staff(29 Aug. 1995):0361-1312-0361-1313.

¹⁷⁶ Report to Main Staff(22 Aug. 1995):0361-1295-0361-1296).

74. Čermak exercised effective control over HV units operating in the Knin Garrison area including a Military Police company.¹⁷⁷ As Garrison Commander, Čermak possessed the material ability to prevent, punish, or initiate measures leading to proceedings against his subordinates. Among other duties, he was required to discipline and supervise the conduct of military personnel in the Garrison area; organise duty services in the Garrison; and establish cooperation and coordination between or among the Garrison and area police forces, for the purposes of establishing and maintaining law and order.¹⁷⁸
75. He issued orders to the HV, including the Military Police, and to the civilian authorities.¹⁷⁹ Pursuant to the Organisational order of the MOD and Main Staff regarding work, order and discipline of the Garrisons, Čermak was required to establish and maintain law and order within the Garrison and to discipline members of the HV present in the Garrison when necessary.¹⁸⁰
76. Čermak had actual knowledge that crimes had been committed, were about to be committed, or were being committed within the area of his Garrison command. The unlawful acts of his subordinates were so notorious that they could not have escaped Čermak's attention, irrespective of any notice provided by international observers. Čermak held daily briefings at the Garrison's headquarters, attended by representatives of the civilian police, the military police, civilian authorities and others employed at the Garrison. The purpose of these meetings was to update Čermak on the situation within his area of responsibility. Čermak was also on notice of the crimes of his subordinates through meetings and discussions with Gotovina, Markač, and Jarnjak, the Minister of the Interior.¹⁸¹

¹⁷⁷ Croatian "Rules of Armed Forces: Garrisons:L010-5187-L010-5199/0214-7985-0214-8004,para.52("The garrison commander is responsible for billeting,order,discipline and service in the garrison. All units and institutions within the garrison are subordinate to the garrison commanders as regards the issues of order, discipline and service"). Organisational Order of the MOD and Main Staff regarding Work, Order and Discipline of the Garrisons(4.9.1993):0306-6795-0306-6804;WS:0359-89856-0359-9909,p.52.

¹⁷⁸ Čermak Order relocating Knin police:0303-9096-0303-9096. Croatian Rules of Armed Forces:L010-5187-L010-5199/0214-7985-0214-8004. *See also*,0062-1167-0062-1281,pp. 21–22;Čermak Orders to civilian/military police including (0107-8342-0107-8342;0107-8335-0107-8335;0150-1746-0150-1746,0150-1755-0150-1755;0150-1758-0150-1758);Statements of Forand,Tymchuk:0061-7872-0061-7893,Almstrom:R012-5871-R012-5993;WS:0213-2009-0213-2017;Leslie,Flynn:R006-9733-R006-9770;Liborius:0095-5576-0095-5580;Čermak letter to Forand:0107-8345-1070-8345);Presidential Transcript(23.3.1999):0187-5681-0187-5701.

¹⁷⁹ *See, e.g.*, Čermak orders:0150-1747-0150-1747,0150-1750-0150-1750,0095-5493-0095-5493,0150-1757-0150-1757,0107-8338-0107-8338,0107-8333-0107-8333.

¹⁸⁰ Organisational Order of the MOD and Main Staff regarding Work, Order and Discipline of the Garrisons:0306-6795-0306-6804.

¹⁸¹ Čermak 1998-Interview: 0062-1167-0062-1281,p.0062-1196-0062-1197;Čermak 2001-Interview, 0206-2100-0206-2287,pp.48-50;R027-4483-R027-4489.

77. Čermak was personally designated by Tudman to represent the Croatian Government in its relations with the UN, other international organisations, and the media. Throughout the course and aftermath of Operation Storm, Čermak was personally and regularly notified by senior UN officials and members of the international observation teams that his subordinates were committing crimes against civilians and civilian property.¹⁸² All UN and ECMM complaints were passed onto Čermak or his deputy verbally, and all international reports were copied to him.¹⁸³
78. Čermak met regularly with representatives of the various international organisations to discuss the ongoing problems.¹⁸⁴ He addressed their concerns with deflections and obfuscation.¹⁸⁵ Many letters of protests were ignored.¹⁸⁶ He repeatedly assuaged the internationals that the Croatian authorities would respond, investigate, and stop crimes; but his promises remained unfulfilled.¹⁸⁷ Instead, Čermak restricted international access to critical areas, shielding the perpetrators from detection and his government from further criticism.¹⁸⁸ In one instance, Čermak conceded that the situation was a “shame on Croatia.”¹⁸⁹
79. Čermak presented a public face of rectitude whilst knowing that vast criminality was continuing beyond the view of international observers.¹⁹⁰ He ingratiated himself with some victims and observers,¹⁹¹ but failed to use the powers at his disposal to prevent the crimes or punish those who were committing them.
80. By virtue of both his military position and rank his overall political authority in the area, Čermak possessed enormous power to respond effectively to the widespread attack on Serb civilians and property. As a primary face of Croatian authority, he was in a position to initiate effective measures to address these crimes, either directly or via the Supreme Commander who had sent him. Instead of using his position to protect the

¹⁸² See e.g. Leslie:0088-4711-0088-4782, Liborius:0424-7142-0424-7155, p.7150.

¹⁸³ Hicks Statement:0211-4396-0211-6602. Tymchuk:0061-7872-0061-7893; 0061-7872-0061-7893, p.0061-7875. Forand Protest Letter:0034-1843-0034-1844. .

¹⁸⁴ ECMM (17.08.95)R026-8540-R026-8542,R026-8540.ECMM (03.08.95) 0052-6857-0052-6858,0052-6857;ECMM(08.08.95) 0052-6832-0052-6834,0052-6832;ECMM(12.09.95) 0051-1131-0051-1132,0051-1131.

¹⁸⁵ Čermak 2001-Interview:0206-2100-0206-2287.

¹⁸⁶ WS:0219-5038-0219-5048,p.0219-5047;Čermak Letter to Forand(3.9.1995):0090-1673-0090-1673;Liborius:0424-7142-0424-7155,p.7150.

¹⁸⁷ See, e.g., HRAT(24-27.8.1995):0035-1695-0035-1698;HRAT(7.9.1995)0035-1724-0035-1725.

¹⁸⁸ See, e.g., UNCIVPOL Report (27.8.1995-3.9.1995):R090-0115-R090-0121.

¹⁸⁹ HRAT(7.9.1995):0035-1724-0035-1725.

¹⁹⁰ Interview with UNTV:R001-1522;Guarantee to Serb population:0306-2723-0306-2723.

¹⁹¹ See e.g. Al-Alfi Letter to Čermak(22.11.1995):L002-1132-L002-1132;L002-1145-L002-1145.

victims of the destructive campaign against Serbs, he used it to protect Croatia's public image.

81. Čermak's failure to respond permitted the crimes to continue with impunity. In his position of superior authority, Čermak should have taken necessary and reasonable measures to prevent his subordinates from committing crimes, including:
- Ordering subordinates to cease committing crimes;
 - Deploying the military police and the civilian police to enforce the law and stop crimes within the garrison area;
 - Using the military police and the civilian police to stop criminal activity of subordinates;
 - Allowing UN and other monitoring agencies full access to areas under his control to ensure effective monitoring of subordinate criminality.
82. Instead, Čermak restricted the movement of international monitoring agencies in the Knin garrison area during Operation Storm, which enabled his subordinates to perpetrate crimes without international detection or intervention.¹⁹² A relevant UNCIVPOL report observes that "the HV command's orders to restrict UN movement indicate its support of the activity that will consequently be obscured from UN observation."¹⁹³ Despite repeated demands, the movement of ECMM monitors, UN troops and other international observers was restricted from 4 to 8 August 1995 and throughout the critical period.¹⁹⁴
83. Knowing that his subordinates had committed crimes, Čermak also failed to punish his subordinates or to initiate measures leading to proceedings against them.¹⁹⁵ Necessary and reasonable measures that could have been taken by Čermak include:
- Investigating the allegations using military police or civilian police;¹⁹⁶
 - Notifying appropriate military and civilian prosecution authorities, such as the Military Prosecutor's Office or the Military Courts,¹⁹⁷ of the crimes and results of any investigation;¹⁹⁸
 - Imposing immediate disciplinary measures or disciplinary sentences on suspected subordinates to prevent further crimes.¹⁹⁹

¹⁹² Čermak, Letter (30.8.1995):L002-8663-L002-8663(justifying ROM as safety precaution).

¹⁹³ UNCIVPOL Report (27.8.1995-3.9.1995):R090-0115-R090-0121.

¹⁹⁴ See, e.g., Forand protests to Čermak:0090-1669-0090-1670;Report(31.08.95):0035-1539-0035-1541,0035-1540;Report(01.09.95):0035-1542-0035-1543,p.0035-1543;Forand Protest to Čermak(01.09.95):0090-1667-0090-1667;Čermak letter to Forand allowing FOM(08.08.95):0206-8325-0206-8326.Tymchuk:0061-7872-0061-7893,pp.6,11.

¹⁹⁵ Forand:0053-0939-0053-0967,pp.0053-0953-0053-0954,p.0053-0965.

¹⁹⁶ Forand:0053-0939-0053-0967,pp.0053-0953-0053-0954,p.0053-0965.

¹⁹⁷ Official Gazette 67/91:0607-0362-0607-0363; 25/92:0606-9376-0606-9376;81/92:0606-9374-0606-9374.

¹⁹⁸ WS:0349-5574-0349-5583; Discipline Report:0354-2834-0354-2835;Elleby:0052-5188-0052-5192.

84. Čermak failed to order either the Military Police or the civilian police to conduct investigations of crimes of murder, inhumane acts, plunder, or arson committed by military personnel within his garrison district. Čermak personally visited Grubori the day after the killings there and then participated in covering up the crimes by spreading false information.²⁰⁰
85. In contrast, when General Forand complained on 9 August 1995 about HV soldiers stealing UN vehicles,²⁰¹ Čermak took immediate action. First he established a joint Military Police and civilian police team to find the vehicles and ordered them to report immediately on the results of their search.²⁰² After a further protest from Forand on 11 August 1995, Čermak ordered the formation of teams from the MUP in Knin and the Military Police to find and return the misappropriated vehicles.²⁰³ When these orders did not produce the desired results, Čermak reported the matter to the Main Staff, asking them to “urgently return the above-mentioned equipment and to prevent the occurrence of similar acts.”²⁰⁴

(E) Markač

86. At all relevant times, Mladen Markač was the Assistant Minister for the Interior for the Special Police sector.²⁰⁵ As such, he was the Commander of all members of the Special Police who were involved in Operation Storm and the continuing related operations and actions in the region. In addition to Special Police units from various District Police Administrations throughout Croatia, the Special Police force included special purpose units, such as the Lučko Anti-Terrorist Unit, the Special Police logistics department and a Ministry of Interior communications company.²⁰⁶ HV rocket and artillery units attached to Markač’s forces for operational purposes were also subordinated to his command.²⁰⁷

¹⁹⁹ Code on Military Discipline (Official Gazette 24/92):0088-3706-0088-3720; Decision on Establishment of Military Disciplinary Courts (Official Gazette 62/91):0607-0365-0607-0365(including detention in military custody for up to 30 days).

²⁰⁰ Letter to ICRC re:Grubori(30.8.1995):0107-8364-0107-8364;Letter to UNCRO:L002-8664-L002-8665;Amnesty Report:0206-4249-0206-4278,p.8;WS:0211-0491-0211-0514,pp.14-16;Report (26.8.1995):0095-5559-0095-5560.

²⁰¹ Forand Letter to Čermak(9.8.1995):0107-8383-0107-8383.

²⁰² Order(9.8.1995):0306-2577-0306-2577.

²⁰³ Order (12.8.1995):0306-2598-0306-2599.

²⁰⁴ Report (12.8.1995):L003-0718-L0030719

²⁰⁵ WS:0349-5594-0349-5607,p.3.

²⁰⁶ See,e.g.,0354-9959-0355-0034 (organisational chart of the Ministry of the Interior);WS:V000-5307,pp.58-59.

²⁰⁷ SP Report:0349-3596-0349-3646,p.6;WS: V000-5307,pp.59-60.

87. During operation Storm, the Special Police sector of the Ministry of Interior (MUP) was subordinated to the HV Main Staff for operational purposes.²⁰⁸ General Zvonimir Červenko, the Chief of the Main Staff of the HV, ordered the deployment of Special Police forces under Markač's command, and made Markač "personally responsible" for the portion of Storm to be carried out by Special Police forces,²⁰⁹ Markač was further ordered to coordinate operations with the Split Military District Commander, Gotovina and the Gospić Military District Commander, Norac.²¹⁰ Prior to the launch of Storm, Markač summoned his operational commanders and issued the orders relating to the operation in person.²¹¹
88. As noted above, the Special Police forces played a crucial role in the *čišćenje* activities that followed Operation Storm.²¹² Markač commanded and controlled these operations in co-ordination with Gotovina and Čermak. For example, on 7th August 1995 Gotovina in his daily report to Červenko refers to the 4th Guards Brigade linking up with the MUP special unit in Otrić²¹³ and on 21 August 1995 in the course of conducting investigations for planned *čišćenje* operations²¹⁴ Markač met with Čermak and Gotovina.²¹⁵
89. Markač had effective control over the Special Police deployed in Operation Storm and the related actions. He issued various orders, including orders relating to combat and *čišćenje* operations, which were implemented by his subordinate personnel.²¹⁶ In relation to large *čišćenje* operations, Markač was personally involved in briefing the subordinate personnel.²¹⁷ Markač also reported on tasks completed by his units up the chain of command and to other members of the JCE.²¹⁸
90. Markač possessed the material ability to prevent crimes and to punish his subordinates for crimes committed during operation Storm and continuing related operations and actions in the region. He had a functioning intact chain of command and a regular reporting conduit from ground level.²¹⁹ During the relevant period, discipline of the

²⁰⁸ Order:0466-5278-0466-5280(26.06.1995);SP Report:0349-3596-0349-3646.

²⁰⁹ 0357-6094-0357-6094;Order(29.7.1995):0361-0948-0361-0950,p.2.

²¹⁰ 0361-0948-0361-0950.

²¹¹ WS:0349-5594-0349-5607,p.4-5.

²¹² See above, para.44&45.

²¹³ 0352-6895-0352-6896

²¹⁴ 0361-1282-0361-1284

²¹⁵ 0361-1295-0361-1296

²¹⁶ See, e.g., SP Report:0349-3596-0349-3646,pp.11.

²¹⁷ WS:0349-5594-0349-5607,p.8

²¹⁸ Reports(22.08.1995):0361-1295-0361-1296;(29.08.1995):0361-1335-0361-1337;(29.08.1995): 0361-1307-0361-1309.

²¹⁹ SP Report:0349-3596-0349-3646;WS:V000-5307,p.92.

Special Police forces was “entirely under the Special Police authority.”²²⁰ The head of the Inner Control Branch of the special police which was in charge of discipline reported directly to Markač.²²¹ Breaches of discipline were reported directly to Markač orally or in writing,²²² and where disciplinary measures were initiated, the results, including court decisions, were formally conveyed to him.²²³ Additionally, the Criminal Police contacted Markač during the course of investigations relating to crimes committed by Special Police Personnel.²²⁴ Markač had the authority to suspend any subordinate personnel while such criminal police investigations or prosecutions were proceeding.²²⁵

91. Markač received information relating to crimes committed by his subordinates through an effective and efficient reporting mechanism.²²⁶ In the course of the operation, the subordinate commanders reported to the Special Police command “every hour.”²²⁷ The unit commanders submitted operational reports to Markač after each operation.
92. Reporting systems were in place to ensure that breaches of police discipline or violations of Croatian Criminal Law were brought to his attention.²²⁸ Each Special Police Unit included a representative of the Inner Control Branch who was responsible for recording and reporting breaches of discipline.²²⁹
93. In addition, Markač received intelligence reports directly from various other sources, such as the HV, the fundamental police (civilian police), and other Croatian intelligence services.²³⁰ Chiefs of Police Administration and Police Coordinators conveyed information to him while regular police criminal reports were sent to him from various police administrations.²³¹
94. Markač had first hand knowledge of crimes committed by his subordinates in Donji Lapac and Grubori. Markač arrived in Donji Lapac soon after it had been burned.²³² On 26 August 1995, the day immediately following the “Grubori killings” committed by his

²²⁰ WS:0349-5594-0349-5607p.7.

²²¹ WS:0349-5584-0349-5593,pp.3-4.

²²² WS:0349-5584-0349-5593,pp.3-4.

²²³ WS:0349-5584-0349-5593,pp.3-4. *See also*, Markač Order re: an investigation(28.07.1995):0606-1269-0606-1269.

²²⁴ WS:0349-5584-0349-5593,p.4.

²²⁵ WS:0349-5584-0349-5593,p.4.

²²⁶ WS:0349-5594-0349-5607,pp.3,12 .

²²⁷ WS:V000-5307,p.92.

²²⁸ WS:0349-5584-0349-5593.

²²⁹ WS:0349-5584-0349-5593,pp.3-4

²³⁰ WS:0349-5594-0349-5607,p.8;Markač Interview:V000-4333-V000-4333,p.8.

²³¹ WS:0349-5584-0349-5593,p.8.

²³² WS: 0362-1719-0362-1727,p.7.

units, Markač was informed by a Special Police commander that a subordinate unit had been involved in burning houses during another *čišćenje* operation.²³³ Further, Markač had the opportunity to personally observe the immediate aftermath of the attack on Gračac where he set up his headquarters on 5 August 1995.²³⁴ As noted above, from that date on, the Special Police forces under Markač's command left a trail of death and destruction wherever they went. The damage to homes in the area, the flight of Serb civilians, the killing of civilians, and other crimes were widely reported both by international observers in the area and the media.²³⁵

95. Markač was also aware of crimes committed by Special Police members during previous military operations such as Medak Pocket.²³⁶ In these previous operations, the same subordinates engaged in Storm and related operations, such as the Lučko Unit, were known to have committed serious crimes against Serb civilians such as murder, without being punished.²³⁷
96. In his position of superior authority, Markač should have taken necessary and reasonable measures to prevent his subordinates from committing crimes. These measures included:
- Ordering subordinates to cease committing crimes;
 - Ordering the Special Police Inner Control Branch to reinforce their activity to maintain discipline and order;
 - Alerting the civilian crime police to enforce the law and stop crimes;
 - Using the civilian crime police to stop criminal activity of subordinates;
 - Warning subordinates about the penal consequences of failing to respect the law;
 - Withdrawal of suspect units or suspension of individual personnel pending investigation.

²³³ WS:0349-5594-0349-5607,pp.10-11;WS:AV00-2126,pp.39-42.

²³⁴ SP Report:0349-3596-0349-3646,p.18; War Dairy:0155-9006-0155-9050,p.29.

²³⁵ WS:0362-1719-0362-1727(Donji Lapac);Vanderostyne:0423-3003-0423-3016(Gračac);ICRC letter(29.08.1995):0107-8362-0107-8363(Plavno Valley);UNCIVPOL(26.8.1995:R090-3292-R090-3292;Berikoff:0064-5523-0064-5587;Berikoff Journal:0053-0590-0053-0606;WS:0349-5584-0349-5593;Hill:0035-5922-0035-5923,p.0035-5923;HRAT Report(25.9.1995):0063-3666-0063-3667;Forand:0042-5964-0042-5979,0053-0939-0053-0967.0053-0967.

²³⁶ WS:0349-5594-0349-5607,p.4.

²³⁷ WS:0349-5594-0349-5607,p.4.

97. However, notwithstanding his knowledge that crimes were being (or were about to be) committed by his subordinates, Markač did nothing to prevent the crimes. Even when specifically informed of the propensity of particular subordinate commanders to commit crimes, he failed to act to prevent possible foreseeable consequences.²³⁸ Knowing that his subordinates were committing crimes, he also failed to issue any orders to stop criminal activity or to apprehend the perpetrators.
98. On the contrary, Markač openly condoned his subordinates' conduct. For example, when Markač and Minister of Interior, Jarnjak, arrived in Donji Lapac, which had been completely destroyed by members of the Special Police,²³⁹ they commended them for a "job well done."²⁴⁰
99. Having knowledge of the presence of a large number of elderly civilians in the Plavno Valley,²⁴¹ Markač failed to take any specific precautions to ensure their safety during the *čišćenje* operation on 25 August 1995. In this operation, Special Police forces killed five elderly civilian residents in Grubori and destroyed the hamlet. Again, Markač failed to prevent these crimes committed by his subordinates, and the same units continued to commit crimes, including on the very next day.²⁴² These crimes could have been prevented if the individuals involved had been appropriately punished for prior crimes.
100. In addition, not only did Markač fail to prevent the crimes committed by his subordinates, once on notice of these crimes, he failed to take the necessary and reasonable measures to punish his subordinates or to initiate measures leading to proceedings against them. Necessary and reasonable measures that Markač could have been taken include:
- Investigating the allegations using civilian crime police or others at his disposal;²⁴³
 - Notifying appropriate civilian prosecution authorities, such as the Croatian Prosecutor's Office or Courts, of the crimes and results of any investigation;²⁴⁴
 - Imposing immediate disciplinary measures or disciplinary sentences on suspected subordinates to prevent further crimes;²⁴⁵

²³⁸ WS:350-7998-0350-8008.

²³⁹ Presidential Transcript(26.9.1995):0187-0150-0187-0278,p.53-54(Šušak:"President,Donji Lapac as such does not exist. There is only its name on the map. Everything is destroyed,everything").

²⁴⁰ WS:0362-1719-0362-1727.

²⁴¹ WS:0350-7998-0350-8008,p.8

²⁴² WS: 0349-5594-0349-5607.

²⁴³ Forand:0053-0939-0053-0967,0053-0953-0053-0954,p.0053-0965.

²⁴⁴ WS:0349-5594-0349-5607,para.72.

²⁴⁵ WS:0349-5594-0349-5607,para.72.

- Handing over suspected perpetrators to Criminal Police;²⁴⁶
- Immediate suspension of the members concerned or withdrawal of units²⁴⁷

101. However, no Special Police member was investigated or prosecuted for any crime relating to the killing of civilians, the destruction of houses or the looting of property during or in the aftermath of operation Storm.²⁴⁸
102. After learning of the killings and destruction in Grubori, Markač failed to punish his subordinates who were involved in the crimes. He did not so much as question the senior officers who led the operation on the incident.²⁴⁹ Instead, he participated in falsifying an investigation in order to cover-up the crimes.²⁵⁰ Although the killings were reported to the Fundamental Police in Knin, no serious investigation was initiated, with no member of the Special Police being charged to date.²⁵¹ International observers repeatedly asked for an investigation, but received no adequate response from either Markač or Čermak²⁵².
103. The very same unit involved in the Grubori killings was also involved in committing crimes against civilians in Ramljane during *čišćenje* activities on 26 August 1995. Being present at the scene immediately after the incident and having been informed of the details of the crimes Markač yet again failed to punish his subordinates. Despite being faced with the fact that the very same unit committed crimes against civilians on two consecutive days, the only “punishment” branded by Markač was to send the unit back to Zagreb without taking any disciplinary measures, initiating any investigation, or otherwise punishing of the perpetrators.²⁵³
104. Significantly, rather than punish his subordinates for crimes committed, Markač openly congratulated them.²⁵⁴ Further, in the “Analysis of the progress of operation Storm” submitted to Markač’s superior command, the HV Main Staff, it was reported that the

²⁴⁶ WS:0350-7998-0350-8008,p.9.

²⁴⁷ WS: 0349-5584-0349-5593,p. 4.

²⁴⁸ WS:0349-5594-0349-5607,paras.75,80.

²⁴⁹ WS: V000-5307; WS:0350-7998-0350-8008,para.67:(Grubori came up in meetings,but Markač did not discuss).

²⁵⁰ Report:0219-5184-0219-5185;WS:V000-4124-V000-4126;V000-5274-V000-5275;V000-5276-V000-5276; WS:0350-7998-0350-8008,para.60.

²⁵¹ WS:T000-3275-T000-3275.

²⁵² Rehn:0424-7162-0424-7170;Čermak Letter to Burger (30.8.1995):0107-8364-0107-8364-ET;Čermak Letter to Burger (11.10.1995):L004-2317-L004-2319;Markač Letter to Jarnjak (13.03.1996):0350-0555-0350-0556.

²⁵³ WS:0349-5594-0349-5607,p. 11;WS:AV00-2126,pp.39-42.

²⁵⁴ WS: 0362-1719-0362-1727.

tasks assigned to the Special Police forces during operation Storm and the related continuing operations and action, were carried out “successfully and effectively”.²⁵⁵

(F) Counts

(1) General Requirements of Article 3

105. An armed conflict between the HV and the ARSK, backed by the JNA, existed throughout the indictment period.²⁵⁶ The armed conflict was initiated in 1991, when the Croatian government commenced various operations to re-take part of the territory claimed by the Serb-backed RSK. Hostilities continued between the HV and the RSK—and between Croatia and Serbia more broadly—throughout the entire period.
106. From 1991 onwards, a pattern of protracted armed conflict existed between these well-organized parties.²⁵⁷ The intensity of the conflict varied, but was sufficiently high to distinguish the homeland war from “banditry, unorganized and short-lived insurrections, terrorist activities or civil unrest.”²⁵⁸ The events of July to September 1995 must be viewed in the context of the broader conflict in the former Yugoslavia and the repeated Croatian offensives, in particular, Winter 94, Flash, Jump 1, Jump 2, Summer 95, Maestral and Southern Sweep.
107. The state of armed conflict continued throughout the state of Croatia beyond the completion of Operation Storm and the cessation of hostilities until the conclusion of a peaceful settlement was achieved.²⁵⁹ Even after the major part of Operation Storm was completed, armed conflict between the HV and ARSK continued. The ARSK launched counter-attacks, for example in the Grahovo area on 12 August 1995. Because the ARSK continued to pose a threat to the borders of Croatia, the HV in coordination with Muslim-led BiH government forces (ABiH) and the Bosnian Croat forces (HVO) launched the large scale Maestral offensive from 8 to 15 September 1995 to secure the borders and to capture Serb-held areas in Western BiH.²⁶⁰ This was followed by the Južni Potez (Southern Sweep) offensive, which was conducted from 8 to 15 October

²⁵⁵ SP Report:0349-3596-0349-3646,p.28.

²⁵⁶ *Tadić* Jurisdiction AD,para.70,*Limaj* TJ,para.84,*Orić* TJ para.254.

²⁵⁷ *Tadić* TJ,para.562;*Čelebići* TJ para.184;*Limaj* TJ,para.89. Commentary to Geneva Convention III,pp. 35-36.

²⁵⁸ *Tadić* TJ,para.565-567,*Čelebići* TJ,para.188-190;*Rutaganda* TJ,para.93 *Hadžihasanović* TJ para.23 *Limaj*,TJ,paras.171-172.

²⁵⁹ *Tadić* Jurisdiction AD,para.70;*Kunarac* AJ para.57;*Kunarac* TJ para.568;*Vasiljević* TJ para.25;*Limaj* TJ para.84;*Orić* TJ para.255.

1995 in western BiH.²⁶¹ This offensive was followed first by border monitoring operations by the HV, including Split MD forces, to secure the “liberated” territory.

108. Subsequently, peace negotiations were initiated in Dayton and with the local Croatian Serb authorities in Eastern Slavonia, Baranja and Western Srem (SBWS). The peaceful settlement of the armed conflict was finally reached with the Basic Agreement concluded between the Government of the Republic of Croatia and the local Croatian Serb authorities in Eastern Slavonia on 12 November 1995 (“Erdut Agreement”),²⁶² which set up the UNTAES transitional authority in SBWS. This laid the foundation for the re-establishment of Croatian rule over this final disputed portion of Croatia, a process which was finalized in 1997.
109. The acts of the accused were closely related to the armed conflict.²⁶³ All of the crimes charged in the Indictment were geographically and temporally linked to the armed conflict between the HV and the ASRK and, specifically, to Operation Storm. The accused were key participants in Operation Storm and, together with their subordinates, committed crimes that corresponded to both the overarching goal of the military operation and the criminal purpose of the JCE—regaining the Krajina territory and forcibly removing Serbs from it.

(2) General Requirements of Article 5

110. As required under Article 5 of the Statute, each of the crimes against humanity charged in the Indictment were committed in armed conflict and formed part of a widespread or systematic attack directed against the Serb civilian population of the southern portion of the Krajina region. The requirement that the attack is “directed against any civilian population” requires that the attack was *primarily* directed at a civilian population.²⁶⁴ Deportation, forcible transfer, murder, inhumane acts, shelling of civilian areas, widespread looting and burning of civilian property, discriminatory statutory amendments and other discriminatory actions against Serbs show that the attack was directed against the civilian population.

²⁶⁰ *Offensives and Operations of HV & HVO*(1996):0249-8948-0249-9106(BCS),pp.R004-7402-R004-7410,0294-9019-0294-9034.

²⁶¹ *Offensives and Operations of HV & HVO*(1996) :0249-8948-0249-9106(BCS),pp.0294-9035-0294-9044.
²⁶² Erdut Agreement:0606-9466-0606-9966,p.0606-9762.

²⁶³ *Tadić* Appeal Decision on Jurisdiction,paras,67,70;*Kunarac* AJ,para.55,58,60,64;*Rutaganda* AJ,paras.569-571;*Stakić* AJ,para.342;*Krajišnik* TJ,paras 844,846.

²⁶⁴ *Kunarac* AJ,para.91.

111. The attack was both widespread and systematic. It was organised at the highest levels of the Croatian government and military and was repeated in a pattern affecting virtually all Serb civilians in the region.
112. The acts of the accused formed part of the attack. As described in the JCE section of this brief, the accused were key members of a JCE, the purpose of which was to remove the Serb population from the Krajina. The accused planned and implemented the attack against the civilian population and were the primary participants in it. They were aware that their acts formed part of the attack.

(3) Counts 2 and 3: Deportation and Forcible Transfer

113. The accused are individually and jointly criminally responsible for the deportation and forcible transfer of Serb civilians from the southern Krajina to BH and Serbia from the end of July 1995 until 30 September 1995.
114. Almost the entire Serb civilian population was forcibly displaced through fear, threat of force, shelling, forced expulsion, or other forms of coercion from their homes to other areas within Croatia or across the *de jure* state border to BH and Serbia without grounds permitted under international law.²⁶⁵ Serb civilians left the Krajina involuntarily. In light of the coercive circumstances—which included shelling of civilian areas, threats, fear of violence, duress, psychological oppression, killings, inhumane acts, manipulation of the press and information available to civilians, knowledge of past misconduct of Croatian authorities, and persecution of Serbs—the Serb civilians had no genuine choice in their displacement.²⁶⁶ Serb civilians did not leave their homes voluntarily, rather they were reacting to a certainty that their survival depended on their flight.
115. In other instances, Serb civilians were arrested by Croatian Army soldiers, civilian police, military police, and Special Police and taken or forced to go to “collection centres” located throughout the region. From these collection centres, civilians were systematically transferred out of Croatia.
116. Even if any of the Serb civilians left willingly, their expulsion was rendered involuntary by the subsequent violence, looting, burning of homes, expropriations of property, transfer of ownership to incoming Croats, and other forms of discrimination. As a result,

²⁶⁵ Stakić AJ, para.278,317.

²⁶⁶ Stakić AJ, para.266,279–283,317; Krnojelac AJ, para.475.

displaced Serbs could not return to their homes, or were too afraid to return, and their displacement was thus rendered involuntary.

117. None of the exceptions in the Geneva Conventions that permit involuntary removal on humanitarian grounds—Article 49 of Geneva Convention IV and Article 17 of Additional Protocol II—apply in this case. The purpose of the displacement of the civilian population was to remove the Krajina Serbs from Croatia and/or to prevent or discourage them from returning, and was in no way humanitarian.
118. During the period of the indictment almost the entire Serb population, numbering around 200,000, fled the Krajina.²⁶⁷ Around 78,000 fled Sector South in total.²⁶⁸ Only between 1,400 and 3,800 Serbs remained in Sector South.²⁶⁹ The percentage of the Serb population in the area dropped dramatically from significant percentages according to the 1991 census to as little as 3.5% by 2001.²⁷⁰

(4) Count 4: Plunder

119. From 4 August 1995 until 30 September 1995, soldiers, civilian police, military police and Special Police intentionally and unlawfully appropriated private property belonging to Serb civilians. The systematic pattern of appropriation and destruction of personal property had serious consequences for the victims, many of whom lost all their belongings, and on the civilian population was a whole.²⁷¹
120. Examples of the systematic plunder include:
- **Benkovac**—Soldiers²⁷² carried out systematic theft of Serb property.²⁷³ Detainees were forced to assist.²⁷⁴ Civilian theft was tolerated by the authorities. Checkpoints were set up outside Benkovac to prevent internationals from entering the town.²⁷⁵
 - **Donji Lapac**—Soldiers and Special Police carried out systematic theft of Serb property.²⁷⁶
 - **Drniš**--Soldiers plundered Serb homes and livestock.²⁷⁷

²⁶⁷ 0343-8940-0343-8971;0432-6749-0462-6807;0339-4588-0339-4619;0400-0837-0400-0845,p.0400-0843;0035-7096-00357133;0206-4249-0206-4278;0046-6939-0046-6983.

²⁶⁸ 0042-5964-0042-5979(Forand as per UN figures) .

²⁶⁹ 0054-8183-0054-8189,R090-6184-R090-6210.

²⁷⁰ 0600-3808-0600-3816,p.9.

²⁷¹ *Kordić* Appeal Judgement,paras.82-84,424-426. *Hadžihasanović* Trial Judgement para.55-56; *Čelibići* Trial Judgement,para.590;endorsed in *Blaškić* Trial Judgement,para.184; *Jelisić* Trial Judgement,para.48

²⁷² All references to "Soldiers" include all HV military personnel such as Military Police.

²⁷³ ECMM(8.08.1995):0052-6832-0052-6834,0052-6833.

²⁷⁴ WS: 0050-8165-0050-8171,p.0050-8168

²⁷⁵ Morneau:0042-3192-0042-3197,p.0042-3195.

²⁷⁶ ECMM:R026-6087-R026-6101,p.R026-6087;Hill:57-7638-0057-7744,p.0057-7703.

²⁷⁷ Hill:0057-7638-0057-7744,p.0057-7667;Boucher:0089-8380-0089-8390,p.0089-8387.

- **Ervenik**—Soldiers plundered Serb homes and livestock.²⁷⁸
- **Gračac**—Special police and soldiers robbed Serb houses.²⁷⁹
- **Kistanje**—Soldiers extensively looted Serb houses.²⁸⁰ Civilians participated in the looting with impunity.²⁸¹
- **Knin**—Soldiers, Special Police and civilian police participated in frequent theft of Serb property.²⁸² Detainees were forced to participate.²⁸³ Civilians looted with impunity.²⁸⁴
- **Lišane Ostrovičke**—Soldiers appropriated Serb property.²⁸⁵
- **Nadvoda**—Soldiers looted Serb homes.²⁸⁶
- **Obrovac**—Soldiers participated in plunder on a large scale.²⁸⁷
- **Oklaj**—Soldiers stole Serb property and farm equipment.²⁸⁸
- **Orlić**—Soldiers and Special Police looted homes. military and Special Police would visit Orlić daily and loot houses²⁸⁹

(5) Count 5: Wanton Destruction

121. Throughout Sector South, soldiers, police, and special police burned and destroyed homes and buildings, particularly those owned by Serbs. This destruction of property was perpetrated on a large scale, was not justified by military necessity, and was committed with the intent to destroy the property in question or in reckless disregard of the likelihood of destruction.²⁹⁰
122. Wanton destruction occurred throughout Sector South.²⁹¹ Examples of destruction in the charged municipalities include:
- **Benkovac**- Soldiers burned Serb homes and property.²⁹²
 - **Civljane**- Soldiers and Special Police destroyed the Serb village of Cetina, where 95% of structures burned and the Orthodox Church vandalised.²⁹³ In Civljane, approximately 50% of the buildings were destroyed or damaged.²⁹⁴

²⁷⁸ Romashev:S0051-8225-0051-8231,p.0051-1339. WS:0069-3288-0069-3292 p.0069-3289.
²⁷⁹ WS:0107-6892-0107-6903,0107-6897;Vanderostyne 0423-3003-0423-3106,0423-3011.
²⁸⁰ Dawes:0042-3180-0042-3191,0042-3188;WS:0069-3305-0069-3314,p.0069-3309.
²⁸¹ SRSB Weekly Report:0060-4854-0060-3581,p.0048-3579.
²⁸² Elleby:0052-5188-0052-5192,p.0052-5190;ECMM(7.8.1995)0052-6829-0052-6831,p.0052-6830.
²⁸³ WS:0050-8248-0050-8256,0050-8253.
²⁸⁴ WS:0046-0577-0046-0599,0046-0590.
²⁸⁵ WS:0279-1297-0279-1302,0279-1298.
²⁸⁶ Mauro:0093-4963-0093-4970,0043-4968;Flynn:R006-9733-R006-9770,R006-9763.
²⁸⁷ ECMM (08.08.95) 0052-6832-0052-6834,0052-6833;HRAT(23.08.1995):R090-6524-R090-6523,p.R090-6523.
²⁸⁸ Berikoff:0053-0588-0053-0589,0053-0589.
²⁸⁹ Romashev:0051-1334-0051-1341,p.0051-1339.
²⁹⁰ *Kordić* Appeal Judgement,para.74,affirming the *Kordić* Trial Judgement,para.347.
²⁹¹ ECMM Report:0038-8688-0038-8856,Annex I.
²⁹² HRAT(15.08.95):0035-1659-0035-1660,0035-1659;Flynn:R006-9733-R006-9770,p.R006-9749.

- **Donji Lapac**—Soldiers and Special Police destroyed or damaged almost all buildings in this predominantly Serb area.²⁹⁵
- **Drniš**- Soldiers destroyed the majority of Serb houses in the municipality.²⁹⁶ While the town of Drniš was spared extensive damage, hamlets and villages throughout the municipality were decimated.
- **Ervenik**—Soldiers burned Serb homes throughout the municipality.²⁹⁷
- **Gračac**—Soldiers and Special Police worked together and independently to burn houses, causing extensive destruction.²⁹⁸
- **Kistanje**- Soldiers and Special Police caused extensive destruction with some Serb villages completely destroyed.²⁹⁹
- **Knin**—Soldiers, Special Police, and civilian police destroyed and damaged Serb homes throughout the area.³⁰⁰
- **Lišane Ostrovičke** –Soldiers destroyed or damaged 89% of buildings in this predominately Serb area; in some villages all houses were burned.³⁰¹
- **Lisičić**- Soldiers wiped out almost all Serb homes in the area.³⁰²
- **Nadvoda**—Soldiers destroyed many Serb homes in the municipality with some areas being “totally burnt”.³⁰³
- **Obrovac**—Soldiers specifically targeted Serb homes for destruction.³⁰⁴
- **Oklaj**—Soldiers totally destroyed the Serb village of Oklaj and many surrounding hamlets.³⁰⁵
- **Orlić**- Soldiers and Special Police burned Serb buildings throughout the municipality.³⁰⁶

(6) Counts 6 and 7: Murder

123. From the beginning of Operation Storm to 30 September 1995, hundreds of civilians, persons taking no active part in the hostilities, were killed by Croatian soldiers, military police, and Special Police, and other subordinates of the accused with intent to kill or to

²⁹³ HRAT(2-4.09.95):0054-8147-0054-8150,0054-8149.

²⁹⁴ ECMM:0034-1798-0034-1869,0034-1804.

²⁹⁵ ECMM:R026-6087-R026-6101,R026-6087.

²⁹⁶ Berikoff 0064-5523-0064-5587,0064-5541;HRAT(12.10.95):R090-6354-R090-6357,R090 6357.

²⁹⁷ Romashev:051-8225-0051-8231,0051-1339;ECMM:1798-0034-1869,0034-1805.

²⁹⁸ WS:0041-3839-0041-3859,p.0041-3843.ECMM Report:R026-6087-R026-6101,p.R026-6097.

²⁹⁹ Hill Statement,p,0057-76;ECMM Report:0040-4418-0040-4423,p.0040-4420.

³⁰⁰ ECMM(9.8.95):0055-9673-0055-9674;HRAT(17.8.95)0060-4839-0060-4841,0060-4840.

³⁰¹ WS:0279-1297-0279-1302,0279-1298.

³⁰² ECMM:0040-4418-0040-4423,0040-4422;UNMO(28.08.1995)0035-3289-0035-3321,0035-3304.

³⁰³ Marti:0035-2439-0035-2444,0035-2440.

³⁰⁴ ECMM(22.8.95):R026-8542-R026-8544;Flynn:R006-9733-R006-9770,R006-9763.

³⁰⁵ Berikoff :0064-5523-0064-5587,p.0064-5554.

³⁰⁶ Romashev:0051-1334-0051-1341,p.0051-1339;ECMM:0034-1798-0034-1869,p.0034-1803.

inflict grievous bodily harm or serious injury, in the knowledge and with the acceptance that the act or omission was more likely than not to cause death.³⁰⁷

124. The accused are criminally responsible for murders committed in the following places, including the scheduled killings:

Donji Lapac

- **Scheduled Killing 10:** On 7 August 1995, Special Police shot and killed four Serb civilians.³⁰⁸

Drniš

Ervenik

- **Scheduled Killing 9:** On 18 August 1995, soldiers killed Marta Vujnović, a Serb civilian.³⁰⁹
- **Other killings:** On 7 August 1995, Soldiers killed Stana Popović and her disabled son, Mirko Popović.³¹⁰

Gračac

Kistanje

- **Scheduled Killing 8:** On or about 10 August 1995, Soldiers killed Danica Šarić and threw her body in a village well. On or about 18 August 1995, soldiers shot Uroš Šarić and Uroš Ognjenović.³¹¹
- **Other Killings:** On 27 of August 1995, Soldiers killed seven Serb civilians newar were killed in Gošić.³¹²

Knin

- **Scheduled Killing 1:** On 5 August 1995, Soldiers shot and killed 3 Serb civilians who were fleeing from Polača in a tractor.³¹³
- **Scheduled Killing 2:** On 6 August 1995 in Đurici, three soldiers forced Sava Đurić, an elderly Serb civilian, into his burning home and burned him alive.³¹⁴
- **Scheduled Killing 3:** Between 5 and 12 August 1995 in Žagrović, five Serb civilians were killed.³¹⁵
- **Scheduled Killing 4:** On 25 August 1995, the Special Police killed 5 Serb civilians in in Grubori.³¹⁶

³⁰⁷ *Kvočka* AJ, para 261; *Čelebići* AJ, paras 422-423; *Brđjanin* TJ, para.381; *Orić* TJ para 346.

³⁰⁸ See Annex F

³⁰⁹ WS:0069-3288-0069-3292, p.3288-3289-3288-3290; WS:0362-3551-0362-3555, pp.0362-3552-0362-3553; WS:0362-3547-0362-3550, 0362-3548; Romashev:0037-9689-0037-9701, p.0037-9692.

³¹⁰ WS:0069-3275-0069-3283.

³¹¹ WS:0069-3305-0069-3314, pp.0069-3311-0069-3312; WS:0069-3315-0069-3322, pp.0069-3320-0069-3321; Antilla:0038-7824-0038-7896, p.0038-7838; "Exodus" Report:0065-0026-0065-0026, p.129.

³¹² WS:0279-1297-0279-1302.

³¹³ See Annex A.

³¹⁴ WS:0361-9435-0361-9439, pp.0361-9436-0361-9437; WS:0279-1504-0279-1507, p.0279-1505; WS:0059-8510-0059-8514, pp.0059-8511-0059-8513.

³¹⁵ See Annex B.

- **Other killings:** On 5 August 1995, Soldiers executed 6 surrendered ARSK members in a tunnel at the crossroads of Biskupija and Civljani roads.³¹⁷ On 5 August 1995, soldiers took Serb civilian Nenad Djukovic and Dragan ??? from a home in Knin and killed them.³¹⁸ On 5 August 1995, soldiers took Ijija Šarac into custody and killed him.³¹⁹

Orlić

- **Scheduled Killing 5:** On or about 13 Aug 95, Soldiers shot and killed Tode Marić, a Serb civilian.³²⁰
- **Scheduled Killing 6:** On 5 August 1995, soldiers executed Miloš Borjan, a Serb civilian, and six surrendered RSK soldiers near ear Šarena Jezera in Vrbnik³²¹
- **Scheduled Killing 7:** On 6 August 1995, a soldier killed 7 elderly Serb civilians in Uzdolje³²²

(7) Counts 8 and 9: Inhumane Acts and Cruel Treatment

125. From the beginning of Operation Storm to 30 September 1995, hundreds of civilians, persons taking no active part in the hostilities, were subjected to inhumane acts and cruel treatment by the accused and subordinates of the accused with intent or indirect intent.³²³ The inhumane acts and cruel treatment included: serious injuring of civilians during shelling attacks;³²⁴ inhumane conditions of detention and ill treatment in detention;³²⁵ wounding; disappearances; and other serious violations of human dignity:

- In Benkovac, surrendered soldiers were detained, beaten during interrogations and forced to carry out labour.³²⁶
- Soldiers visited the home of an elderly Serb man in Palanka. They ransacked his house and then tied the man to a tree and lit a fire beneath his feet.³²⁷

³¹⁶ See Annex C.

³¹⁷ WS: 0050-8248-0050-8256

³¹⁸ WS: 0059-8548-0059-8552; Death Report(Nenad Dujković):0602-8228-0602-8229; Autopsy Report(Nenad Dujković):X010-3079-X010-3097.

³¹⁹ WS:0059-8523-0059-8529; Death Report(Ilija Šarac):0469-3821-0469-3822; Autopsy Report(Ilija Šarac):X010-3207-X010-3225.

³²⁰ WS:0279-1593-0279-1596, pp.0279-1514-0279-1515; WS:0279-1631-0279-1634, pp.0279-1632-0279-1633; Romashev:0051-1334-0051-1341, p1338.

³²¹ See Annex D.

³²² See Annex E.

³²³ Čelibići AJ, para.424. Hadžihasanović TJ para.32; Simić TJ para.74; Krnojelac TJ para.130-131; Orić TJ para.350; Jelisić TJ, para.41; Čelebići TJ, para.525,536; Blaškić TJ, para.186. Strugar TJ, para.261.; Orić TJ para.354 Hadžihasanović TJ para.33.

³²⁴ Strugar TJ, paras.262-276.

³²⁵ Čelibići TJ, para.1119. Hadžihasanović TJ para.1612.

³²⁶ WS:0050-8165-0050-8171, p.0050-8168.

³²⁷ WS:0069-3300-0069-3304, p.0069-3303.

- In Kakanj Croatian soldiers harassed, shot and wounded two Serb civilian men.³²⁸
- Civilians were wounded in the indiscriminate shelling of Knin and other villages.³²⁹
- In Kovačić several civilians suffered bullet wounds when Croatian soldiers opened fire on a tractor carrying 22 fleeing civilians.³³⁰
- In August and September, 1995, elderly Serb civilians who were given special passes to go back to their homes returned to the UN compound and reported that they had been beaten by Croatian military. Some had broken bones as a result of these beatings.³³¹
- Serb civilian men and women fleeing at the beginning of Operation Storm were arrested at gun-point by Croatian soldiers and detained in the basement of a house overnight before forcibly transferring them to collection centres. Soldiers constantly threatened the detainees.³³²
- In Knin, Serb civilians and surrendered RSK soldiers were detained in Croatian barracks and collection centres where they were regularly beaten and forced to work.³³³
- The brothers and husbands of Serb families were taken away by Croatian soldiers. Relatives waited years to discover the fate of these men.³³⁴
- Advancing Croatian troops forced an elderly Serb woman to strip to her underwear and “play” basketball in the front yard of her house with her neighbour who had been stripped completely naked.³³⁵
- Soldiers regularly visited Vrbnik and harassed elderly Serb civilians. On one occasion an elderly Serb civilian was forced to act as human test for “booby traps” in a house soldiers wanted to loot.³³⁶ On another occasion soldiers set fire to the skirt and bedroom floor of a disabled elderly Serb woman.³³⁷
- In Uzdolje, Croatian soldiers placed an elderly Serb civilian against a wall, threatened him and shot bullets around his body.³³⁸

³²⁸ WS:0069-3305-0069-3314,p.0069-3311;WS:0069-3315-0069-3322,pp.0069-3320-0069-3321.

³²⁹ WS:0045-7409-0045-7413,p.0045-7412;WS:0059-8492-0059-8498,p.0059-8494;WS:0041-3752-0041-3759,p.0041-3757;WS:0045-9870-0045-9881;p.0045-9877.

³³⁰ WS:0102-8959-0102-8963,p.0102-8960;WS:0359-4871-0359-4877,p.0359-4873;WS:0102-8964-0102-8970,pp.0102-8965-0102-8966.

³³¹ WS:0607-1562-0607-1568,p.0607-1566.

³³² WS:0279-1351-0279-1355,pp.0279-1352-0279-1354;WS:0279-1517-0279-1521,pp.0279-1518-0279-1519;WS:0342-3240-0342-3245,pp.0342-3242-0342-3243.

³³³ WS:0359-4871-0359-4877,p.0359-4874;WS:0050-8248-0050-8256,pp.0050-8253;WS:0279-1367-0279-1370,p.0279-1369.

³³⁴ WS:0059-8548-0059-8552,p.0059-9549;WS:0059-8523-0059-8529,pp.0059-8525.

³³⁵ WS:0279-1564-0279-1567,p.0279-1565.

³³⁶ WS:0085-0590-0085-0595,p.0085-0593.

³³⁷ WS:0085-0590-0085-0595,p.0085-0594.

³³⁸ WS:0060-5001-0060-5005,p.0060-5002.

(8) Count 1: Persecution

126. The accused are individually and jointly criminally responsible for the persecutions of Serb civilians from the southern Krajina from July 1995 to 30 September 1995. During this time period, hundreds of civilians, persons taking no active part in the hostilities, were subject to persecutions on political, racial and/or religious grounds by the accused and subordinates of the accused. The accused and the subordinates of the accused each held the specific intent to discriminate on political, racial and/or religious grounds.³³⁹ These persecutions, which constitute a crime of equal gravity to the enumerated Article 5 crimes,³⁴⁰ included:

- Forcible displacement, including deportation and forcible transfer³⁴¹
- Destruction and burning of Serb homes and businesses³⁴²
- Plunder and looting of public or private Serb property³⁴³
- Murder³⁴⁴
- Other inhumane acts, including the shelling of civilians and cruel treatment³⁴⁵
- Unlawful attacks on civilians and civilian objects³⁴⁶
- Imposition of restrictive and discriminatory measures, including the imposition of discriminatory laws³⁴⁷
- Discriminatory expropriation of property³⁴⁸
- Unlawful detentions³⁴⁹
- Disappearances

(9) Modes of liability**(a) Joint criminal enterprise**

127. The three accused have been charged for their actions and omissions described in the Indictment, the disclosure materials, and this brief and accompanying annexes, pursuant to Articles 7(1) and 7(3).

³³⁹ *Blaškić* AJ, para. 131, 165; *Krnojelac* AJ paras 184-185; *Vasiljević* AJ, para. 113; *Stakić* AJ para 327; *Krajišnik* TJ, paras 734.

³⁴⁰ *Krnojelac* AJ paras 199, 221; *Naletilić* AJ, para. 574; *Blaškić* AJ, para. 135; *Krajišnik* TJ, para. 740.

³⁴¹ *Blaškić* AJ, para. 153; *Krnojelac* AJ, para. 222; *Naletilić* AJ, paras. 153-154; *Krajišnik* TJ, paras. 749, 807-809.

³⁴² *Blaškić* AJ, paras. 146, 149; *Kordić* AJ, para. 108; *Krajišnik* TJ, paras. 774, 775.

³⁴³ *Blaškić* AJ, para. 146; *Kordić* AJ, paras. 109, 672; *Krajišnik* TJ, paras. 768, 770-772, 774, 824.

³⁴⁴ *Blaškić* AJ, para. 143; *Krajišnik* TJ, paras. 736.

³⁴⁵ *Blaškić* AJ, para. 155; *Čelibići* AJ, paras. 424, 426.

³⁴⁶ *Kordić* AJ, paras 104, 105; *Blaškić* AJ, paras. 156, 159; *Kupreškić* TJ, para. 631.

³⁴⁷ *Kupreškić* TJ, para. 615(c); *Simić* TJ, para. 57, 58; *Krajišnik* TJ, paras. 784-90.

³⁴⁸ *Krajišnik* TJ, paras. 821-824.

³⁴⁹ *Simić* AJ, paras. 116, 117; *Simić* TJ, paras. 994, 995.

128. They are responsible as co-perpetrators in a category 1 JCE for contributing to the common purpose of ridding Croatian territory of its Serb population as set out in paragraph 12 of the Indictment. Each of the accused made a substantial contribution to this common goal, devoting their resources and personnel to this shared objective. The common plan included criminal acts directed at the expulsion of the Serb population, such as shelling the civilian population, persecutions, murder, inhumane acts and cruel treatment, plunder, and wanton destruction.
129. Persecutions, murder, inhumane acts and cruel treatment, plunder and wanton destruction were at least a foreseeable consequence of common purpose, pursuant to a category 3 JCE.

(b) Ordering, instigating, abetting

130. The three Accused ordered others to commit the crimes charged in the Indictment. In particular, Gotovina is responsible pursuant to Article 7(1) for ordering attacks on civilians and civilian objects as a means to commit the crimes of persecution, deportation, forcible transfer, inhumane acts, and cruel treatment.³⁵⁰

(c) Planning, Instigating, aiding and abetting

131. Through their acts and omissions, including their persistent failure to fulfil their duties as superiors, the three Accused also planned, instigated, and aided and abetted the crimes charged in the Indictment. They assisted, encouraged, provided means and matériel, protected the perpetrators from detection, shielded them from punishment, and lent other forms of moral support which made a substantial contribution to the perpetration of the crime.³⁵¹ They made this contribution knowing that it would assist in the commission of the crimes.³⁵²

(d) Superior Responsibility

132. Knowing that subordinates under their effective control were committing or participating in crimes charged in the Indictment, each of the three Accused failed to take the necessary and reasonable measures to prevent or punish them.

Word Count: 14,739

³⁵⁰ *Galić* AJ, para.176.

³⁵¹ *Simić* AJ, para.85; *Galić* AJ, paras.175-176.

³⁵² *Simić* AJ, para.86.

ANNEX A: Scheduled Killing One

Milan (Mile) DRAGIČEVIĆ

- Body Location Place and Date and Buried: No information.
- Location and Date Found in Grave: Knin Exhumation Site, 28/05/01.¹
- Date Missing/Killed: 5 August 1995 at Kovačić in Knin.²
- Cause of Death: Gunshot injuries to legs.³
- Documents: Identification / Death report.⁴

Nikola DRAGIČEVIĆ

- Body Location Place and Date and Buried: No information.
- Location and Date Found in Grave: Knin Exhumation Site, 30/04/01.⁵
- Date/Place Missing/Killed: 5 August 1995 at Kovačić in Knin.⁶
- Cause of Death: Gunshot injury to the chest.⁷
- Documents: Identification / Death report.⁸

Sava ČEKO

- Body Location Place and Date and Buried: No information.
- Location and Date Found in Grave: Knin Exhumation Site, 01/05/2001.⁹
- Date/Place Missing/Killed: 5 August 1995 at Kovačić in Knin.¹⁰

¹ Exhumation and Mortuary Evidence Sheets for KN02-077B:X009-9891-X009-9897,p.X009-9891.

² WS:0102-8964-0102-8970, 0361-9385-0361-9389; WS:0102-8959-0102-8963, 0361-9390-0361-9395; WS:0359-4871-0359-4877; WS:0041-3836-0041-3850,p.0041-3839.

³ Autopsy Report (Dr. John Clark):X009-6426-X009-6444,p.X009-6426; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,p.0345-5358.

⁴ Identification and Death Report:0149-8862-0149-9019,p.0149-8865,p.0149-8904-0149-8905.

⁵ Exhumation and Mortuary Evidence Sheets for KN03-108B:X010-0214-X010-0220,p.X010-0214.

⁶ WS:0102-8964-0102-8970, 0361-9385-0361-9389; WS:0102-8959-0102-8963,0361-9390-0361-9395; WS:0359-4871-0359-4877; WS:0041-3836-0041-3850,p.0041-3839.

⁷ Autopsy Report (Dr. Jiri Fialka):X009-7522-X009-7539,p.X009-7522; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,p.0345-5359.

⁸ Identification and Death Report:0149-8862-0149-9019,p.0149-8865,p.0149-8902-0149-8903.

⁹ Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993,p.0213-1984; Exhumation and Mortuary Evidence Sheets for KN03-115 B:X010-0243-X010-0249,p.X010-0243.

- Cause of Death: Gunshot injury to the chest.¹¹
- Documents: Identification / Death report.¹²

¹⁰ WS:0102-8964-0102-8970, 0361-9385-0361-9389; WS:0102-8959-0102-8963, 0361-9390-0361-9395; WS:0359-4871-0359-4877; WS:0041-3836-0041-3850,0041-3839.

¹¹ Autopsy Report (Dr. John Clark):X009-7606-X009-7621,p.X009-7606; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,p.0345-5358.

¹² Identification and Death Report:0149-8862-0149-9019,p.0149-8865; p.0149-8885-0149-8886.

ANNEX B: Scheduled Killing Three

Dmitar RAŠOU

- Body Location Place and Date and Buried: Located at Rašule, house no.304 on 09/09/1995, buried at Knin cemetery.¹
- Location and Date Found in Grave: Knin Exhumation Site, 15/06/2001.²
- Date Killed: 5 August 1995 at Zagrović in Knin.³
- Cause of Death: Gunshot injury to chest.⁴
- Documents: Identification of KN01/298B as Dmitar RAŠOU, Death Report.⁵

Ilija PETKO

- Body Location Place and Date and Buried: Located at Rašule, house no. 304 on 09/09/1995, buried at Knin cemetery.⁶
- Location and Date Found in Grave: Knin Exhumation Site, on 15/06/2001.⁷
- Date Killed: 5 August 1995 at Zagrović in Knin.⁸
- Cause of Death: Gunshot injury to chest.⁹
- Documents: Identification of KN01/297B as Ilija PETKO¹⁰, Death Report.¹¹

¹ Croatian Police Protocol:0213-7930-0213-7932; Croatian Police Photo: 0213-7932.

² Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993, X018-7401-X018-7405,p.X018-7403; Exhumation and Mortuary Evidence Sheets for KN01-298B:X009-9107-X009-9114,p.X009-9107.

³ WS:0050-8236-0050-8241, 0362-3556-0362-3559; List of Murders Committed Since 4/8/95 dated 19/9/95:0034-1798-0034-1869,p.0034-1849; Veritas Exodus:0290-7166-0290-7312,p.132.

⁴ Autopsy Report of KN01/298B (Dr. John Clark):X010-1899-X010-1914,p.X010-1899; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,p.0345-5365,p.0345-5366.

⁵ Identification and Death Report:0149-8862-0149-9019,p.0149-8866,p.0149-8986-0149-8987.

⁶ Croatian Police Protocol:0213-7933-0213-7935.

⁷ Report by Forensic Anthropologist (Pablo Baraybar):X018-7401-X018-7405,p.X018-7403; Exhumation and Mortuary Evidence Sheets for KN01-297 B:X009-9102-X009-9106,p.X009-9102.

⁸ WS:0050-8236-0050-8241,p.0362-3556-0362-3559; List of Murders Committed Since 4/8/95 dated 19/9/95:0034-1798-0034-1869,p.0034-1849; Veritas Exodus:0290-7166-0290-7312,p.132.

⁹ Autopsy Report of KN01/297B (Dr. John Clark):X010-1881-X010-1898,p.X010-1881; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,p.0345-5363-0345-5364.

¹⁰ A list of 482 bodies (ID No. 605 NN, civil, male, located at Rašule no. 304):0184-8758-0184-8781,p.0184-8775.

¹¹ Identification and Death Report:0149-8862-0149-9019,p.0149-8966-0149-8967.

Milka (Milica) PETKO

- Body Location Place and Date and Buried: Located in Zagrović, Knin on 12 August 1995, buried at Knin cemetery.¹²
- Location and Date Found in Grave: Knin Exhumation Site, on 24/04/2001.¹³
- Date Killed: 5 August 1995 at Zagrović in Knin.¹⁴
- Cause of Death: Gunshot injury to chest.¹⁵
- Documents: Identification of KN01/212B as Milica PETKO¹⁶ and Death Report.¹⁷

¹² Croatian Police Protocol:0213-7288-0213-7290.

¹³ Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993; Exhumation and Mortuary Evidence Sheets for KN01-212B:X009-8762-X009-8766,pp.X009-8762-X009-8764.

¹⁴ WS:0050-8236-0050-8241,p.0362-3556-0362-3559; List of Murders Committed Since 4/8/95 dated 19/9/95:0034-1798-0034-1869,p.0034-1849; Veritas Exodus:0290-7166-0290-7312,p.132.

¹⁵ Autopsy Report of KN01/212B (Dr. John Clark):X010-0745-X010-0759,p.X010-0745; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,p.0345-5364.

¹⁶ A list of 482 bodies, Croatian ID No. 426 NN, civil, female, located at Žagrović (metal tag 426) ERN0184-8758-0184-8781,p.0184-8766.

¹⁷ Identification and Death Report:0149-8862-0149-9019,p.0149-8964-0149-8965.

ANNEX C: Scheduled Killing Four

Đuro KARANOVIĆ

- Body Location Place and Date and Buried: Located in Plavno on 27 August 1995, buried at Knin cemetery.¹
- Location and Date Found in Grave: Knin Exhumation Site, 14/06/2001.²
- Date Missing/Killed: 25 August 1995 in Plavno, Grubori, Knin.³
- Cause of Death: Gunshot injuries to chest.⁴
- Documents: Identification of KN01/244B as Đuro KARANOVIĆ.⁵ Death Report.⁶

Jovo GRUBOR

- Body Location Place and Date and Buried: Located in Plavno on 27 August 1995, buried at Knin cemetery.⁷
- Location and Date Found in Grave: Knin Exhumation Site, KN01, 14/06/2001.⁸
- Date Missing/Killed: 25 August 1995 in Plavno, Grubori, Knin.⁹
- Cause of Death: Gunshot injuries to trunk.¹⁰

¹ Croatian Protocol:0213-7338-0213-7341, p.0213-7341.

² Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993, X018-7401-X018-7405,p.X018-7401; Exhumation Evidence Sheets for KN01-244B:X009-8856-X009-8860,p.X009-8856.

³ WS:0059-8515-0059-8522; WS:0050-8198-0050-8204; Flynn:R006-9733-R006-9770,pp.R006-9757-R006-9762; WS:0039-5225-0039-5275,pp.0039-5234-0039-5235, 0041-3836-0041-3850, p.0041-3846; Romashev:0051-1334-0051-1341,p.0051-3339.

⁴ Autopsy Report (Dr. John CLARK):X010-1017-X010-1037; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,pp.0345-5395-0345-5396.

⁵ A list of 482 bodies (ID No. 541, Đuro KARANOVIĆ):0184-8758-0184-8781,p.0184-8772.

⁶ Identification and Death Report:0149-8862-0149-9019,p.0149-8865,pp.0149-8924-0149-8925.

⁷ Croatian Protocol:0213-7326-0213-7329,p.0213-7329.

⁸ Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993, X018-7401-X018-7405,p.X018-7401; Exhumation Evidence Sheets for KN01-241B:X009-8841-X009-8845,p.X009-8841.

⁹ WS:0059-8515-0059-8522; WS:0050-8198-0050-8204; Flynn:R006-9733-R006-9770,pp.R006-9757-R006-9762; WS:0039-5225-0039-5275,pp.0039-5234-0039-5235, 0041-3836-0041-3850, p.0041-3846; Romashev:0051-1334-0051-1341,p.0051-3339.

¹⁰ Autopsy Report (Dr. John Clark):X010-0965-X010-0981,p.X010-0965; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,pp.0345-5387-0345-5389.

- Documents: Identification of KN01/241B as Jovo GRUBOR.¹¹ Death Report.¹²

Marija GRUBOR

- Body Location Place and Date and Buried: Located in Plavno on 27 August 1995, buried at Knin cemetery.¹³
- Location and Date Found in Grave: Knin Exhumation Site, KN01, 4/06/2001.¹⁴
- Date Missing/Killed: 25 August 1995 in Plavno, Grubori, Knin.¹⁵
- Cause of Death: Gunshot injuries to head and trunk.¹⁶
- Documents: Identification of KN01/243B as Marija GRUBOR.¹⁷ Death Report.¹⁸

Mika (Milica) GRUBOR

- Body Location Place and Date and Buried: Located in Plavno on 27 August 1995, buried at Knin cemetery.¹⁹
- Location and Date Found in Grave: Knin Exhumation Site, KN01, 14/06/2001.²⁰
- Date Missing/Killed: 25 August 1995 in Plavno, Grubori, Knin.²¹

¹¹ A list of 482 bodies (ID No. 539, Jovo Grubor):0184-8758-0184-8781,p.0184-8772.

¹² Identification and Death Report:0149-8862-0149-9019,p.0149-8865,pp.0149-8912-0149-8913.
¹³ Croatian Protocol:0213-7334-0213-7337.

¹⁴ Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993, X018-7401-X018-7405,p.X018-7401; Exhumation Evidence Sheets for KN01-243B:X009-8851-X009-8855,p.X009-8851.

¹⁵ WS:0059-8515-0059-8522; WS:0050-8198-0050-8204; Flynn:R006-9733-R006-9770,pp.R006-9757-R006-9762; WS:0039-5225-0039-5275,pp.0039-5234-0039-5235, 0041-3836-0041-3850, p.0041-3846; Romashev:0051-1334-0051-1341,p.0051-3339.

¹⁶ Autopsy Report (Dr. John Clark):X010-1001-X010-1016; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,pp.0345-5390-0345-5391.

¹⁷ A list of 482 bodies (ID No. 538, Marija Grubor):0184-8758-0184-8781,p.0184-8772.

¹⁸ Identification and Death Report:0149-8862-0149-9019,p.0149-8865,pp.0149-8916-0149-8917.

¹⁹ Croatian Protocol:0213-7330-0213-7333.

²⁰ Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993,X018-7401-X018-7405,p.X018-7401; Exhumation Evidence Sheets for KN01-242B:X009-8846-X009-8850,p.X009-8846

²¹ WS:0059-8515-0059-8522; WS:0050-8198-0050-8204; Flynn:R006-9733-R006-9770,pp.R006-9757-R006-9762; WS:0039-5225-0039-5275,pp.0039-5234-0039-5235, 0041-3836-0041-3850, p.0041-3846; Romashev:0051-1334-0051-1341,p.0051-3339.

- Cause of Death: Gunshot injuries to trunk. Artefacts (KN01/242B/2, KN01/242B/3).²²
- Documents: Identification of KN01/242B as Mika GRUBOR,²³ Death Report.²⁴

Miloš GRUBOR

- Body Location Place and Date and Buried: Located in Plavno on 27 August 1995, buried at Knin cemetery.²⁵
- Location and Date Found in Grave: Knin Exhumation Site, KN01, 14/06/2001.²⁶
- Date Missing/Killed: 25 August 1995 in Plavno, Grubori, Knin.²⁷
- Cause of Death: Gunshot wounds to head and chest. Artifact: spent 7.62 x 39 shell case (KN01/245B/1).²⁸
- Documents: Identification of KN01/245B as Miloš GRUBOR,²⁹ Death Report.³⁰

²² Autopsy Report (Dr. John Clark):X010-0982-X010-1000,p.X010-0982; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,pp.0345-5392-0345-5393.

²³ A list of 482 bodies (ID No. 540, Mika Grubor):0184-8758-0184-8781,p.0184-8772.

²⁴ Identification and Death Report:0149-8862-0149-9019,p0149-8865,pp.0149-8914-0149-8915.

²⁵ Croatian Protocol:0213-7342-0213-7345.

²⁶ Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993, X018-7401-X018-7405,p.X018-7401; Exhumation Evidence Sheets for KN01-245 B:X009-8861-X009-8865,p.X009-8861.

²⁷ WS:0059-8515-0059-8522; WS:0050-8198-0050-8204; Flynn:R006-9733-R006-9770,pp.R006-9757-R006-9762; WS:0039-5225-0039-5275,pp.0039-5234-0039-5235, 0041-3836-0041-3850, p.0041-3846; Romassev:0051-1334-0051-1341,p.0051-3339.

²⁸ Autopsy Report (Dr. De Mendonca):X010-1038-X010-1056,p.X010-1038; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,pp.0345-5393-0345-5395.

²⁹ A list of 482 bodies (ID No. 537, Miloš Grubor):0184-8758-0184-8781,p.0184-8772.

³⁰ Identification and Death Report:0149-8862-0149-9019,p.0149-8865 and 0149-8918-0149-8919.

ANNEX D: Scheduled Killing Six

Miloš BORJAN

- Body Location Place and Date Found and Buried: Located in Knin on 09 August 1995, buried at Knin cemetery.¹
- Location and Date Found in Grave: Knin Exhumation Site, KN03, 05/05 2001.²
- Date Missing/Killed: 05 August 1995 in Vrbnik, Orlic.³
- Cause of Death: Gunshot injuries to head and torso.⁴
- Documents: Identification/_Death report.⁵

6 Unidentified Males

- Date Killed: 05 August 1995 in Vrbnik, Orlic.⁶

¹ Croatian Protocol:0213-7582-0213-7584.

² Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993,p.0213-1989; Exhumation Evidence Sheets for KN03-153 B:X010-0366-X010-0370,p.X010-0366.

³ WS:0045-7325-0045-7328,0279-1708-0279-1711; WS:0279-1418-0279-1423,0279-1413-0279-1416; Mauro:0093-4963-0093-4970; HRAT Report:0035-1663-0035-1664; Veritas Exodus:0290-7166-0290-7312,p.110; Questionnaire:0209-3626-0209-3629

⁴ Autopsy Report (Dr. J. Berent):X009-7971-X009-7986,p.X009-7971.

⁵ Identification and Death Report:0469-3789-0469-3830,pp.0469-3797-0469-3798.

⁶ WS:0045-7325-0045-7328,0279-1708-0279-1711; WS:0279-1418-0279-1423,0279-1413-0279-1416; Mauro:0093-4963-0093-4970; HRAT Report:0035-1663-0035-1664

ANNEX E: Scheduled Killing Seven

Djuka BERIĆ

- Body Location Place and Date and Buried: Located in Kosovo on 10 August 1995, buried at Knin cemetery.¹
- Location and Date Found in Grave: Knin Exhumation Site, 6/05/2001.²
- Date Killed: 06 August 1995 in Uzdolje, Orlić.³
- Cause of Death: Multiple gunshot injuries.⁴
- Documents: Identification/Death report.⁵

Jandrija ŠARE

- Body Location Place and Date and Buried: Located in Kosovo on 10 August 1995, buried at Knin cemetery.⁶
- Location and Date Found in Grave: Knin Exhumation Site, discovered and lifted on 16/05/2001.⁷
- Date Killed: 06 August 1995 in Uzdolje, Orlić.⁸
- Cause of Death: Gunshot injury to pelvis, chest and leg.⁹
- Documents: Identification/Death report.¹⁰

¹ Croatian Protocol:0213-7682-0213-7684.

² Report by Forensic Anthropologist (Pablo Baraybar) 0213-1964-0213-1993; Exhumation Evidence Sheets for KN04-65 B:X010-0567-X010-0571,p.X010-0567.

³ WS:0059-8530-0059-8538; WS:0060-5001-0060-5005; WS:0041-3836-0041-3850; Veritas Exodus:0290-7166-0290-7312,p.109.

⁴ Autopsy Report (Dr. Jiri Falka):X009-8672-X009-8689,p.X009-8672; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,pp.0345-5366-0345-5369.

⁵ Identification and Death Report:0327-2429-0327-2432,p.0327-2432; 0309-2249-0309-2252,p.0309-2252.

⁶ Croatian Protocol:0213-7261-0213-7261.

⁷ Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993; Exhumation Evidence Sheets for KN04-60B: X010-0542-X010-0546,p.X010-0542.

⁸ WS:0059-8530-0059-8538; WS:0060-5001-0060-5005; WS:0041-3836-0041-3850; Veritas Exodus:0290-7166-0290-7312,p.109.

⁹ Autopsy Report (Dr. Jiri Failka):X009-8580-X009-8598,p.X009-8580; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,pp.0345-5375-0345-5377.

¹⁰ Identification and Death Report:0327-2429-0327-2432,p.0327-2432,pp.0327-2413-0327-2414.

Janja BERIĆ

- Body Location Place and Date and Buried: Located in Kosovo on 10 August 1995, buried at Knin cemetery.¹¹
- Location and Date Found in Grave: Knin Exhumation Site, 17/05/2001.¹²
- Date Killed: 06 August 1995 in Uzdolje, Orlić.¹³
- Cause of Death: Gunshot injuries to pelvis and legs. Sharp pointed bullet (KN04/062B/2).¹⁴
- Documents: Identification/Death report.¹⁵

Krstan ŠARE (KN04/059B)

- Body Location Place and Date and Buried: Located in Kosovo on 10 August 1995, buried at Knin cemetery.¹⁶
- Location and Date Found in Grave: Knin Exhumation Site, 16/05/2001.¹⁷
- Date Killed: 06 August 1995 in Uzdolje, Orlić.¹⁸
- Cause of Death: Gunshot injuries to head and trunk.¹⁹
- Documents: Identification/Death report.²⁰

¹¹ Croatian Protocol:0213-7503-0213-7505.

¹² Report by Forensic Anthropologist (Pablo Baraybar) 0213-1964-0213-1993; Exhumation Evidence Sheets for KN04-62B: X010-0552-X010-0556,p.X010-0552.

¹³ WS:0059-8530-0059-8538; WS:0060-5001-0060-5005; WS:0041-3836-0041-3850; Veritas Exodus:0290-7166-0290-7312,p.109.

¹⁴ Autopsy Report (Dr. John CLARK):X009-8619-X009-8635,p.X009-8619; Autopsy Report Analysis (Dr. Eric BACCARD):0345-5351-0345-5467,pp.0345-5369-0345-5371.

¹⁵ Identification and Death Report: 0327-2429-0327-2432, p.0327-2432, pp.0327-2423-0327-2424.

¹⁶ Croatian Protocol:0213-7512-0213-7514.

¹⁷ Report by Forensic Anthropologist (Pablo Baraybar) 0213-1964-0213-1993; Exhumation Evidence Sheets for KN04-59B: X010-0537-X010-0541,p.X010-0537.

¹⁸ WS:0059-8530-0059-8538; WS:0060-5001-0060-5005; WS:0041-3836-0041-3850; Veritas Exodus:0290-7166-0290-7312,p.109.

¹⁹ Autopsy Report (Dr. John CLARK):X009-8562-X009-8579,p.X009-8562; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467, pp.0345-5377-0345-5381.

²⁰ Identification and Death Report:0327-2429-0327-2432, p.0327-2432, pp.0327-2415-0327-2416.

Milica ŠARE

- Body Location Place and Date and Buried: Located in Kosovo on 10 August 1995, buried at Knin cemetery.²¹
- Location and Date Found in Grave: Knin Exhumation Site, 17/05/2001.²²
- Date Killed: 06 August 1995 in Uzdolje, Orlić.²³
- Cause of Death: Gunshot injury to head.²⁴
- Documents: Identification/Death report.²⁵

Miloš ČOSIĆ

- Body Location Place and Date and Buried: Located in Kosovo on 10 August 1995, buried at Knin cemetery.²⁶
- Location and Date Found in Grave: Knin Exhumation Site, 16/05/2001.²⁷
- Date Killed: 06 August 1995 in Uzdolje, Orlić.²⁸
- Cause of Death: Gunshot injury to leg.²⁹
- Documents: Identification/Death report.³⁰

Stevo BERIĆ

²¹ Croatian Protocol:0213-7506-0213-7508.

²² Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993; Exhumation Evidence Sheets for KN04-63B:X010-0557-X010-0561,p.X010-0557.

²³ WS:0059-8530-0059-8538; WS:0060-5001-0060-5005; WS:0041-3836-0041-3850; Veritas Exodus:0290-7166-0290-7312,p.109.

²⁴ Autopsy Report (Dr. John Clark) X009-8636-X009-8653, p.X009-8636; Autopsy Report Analysis (Dr. Eric Baccard) 0345-5351-0345-5467,pp.0345-5381-0345-5385.

²⁵ Identification and Death Report:0327-2429-0327-2432,p.0327-2432, pp.0327-2411-0327-2412.

²⁶ Croatian Protocol:0213-7497-0213-7499

²⁷ Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993; Exhumation Evidence Sheets for KN04-66B:X010-0572-X010-0576,p.X010-0572.

²⁸ WS:0059-8530-0059-8538; WS:0060-5001-0060-5005; WS:0041-3836-0041-3850; Veritas Exodus:0290-7166-0290-7312,p.109.

²⁹ Autopsy Report (Dr. Jiri Failka):X009-8690-X009-8707,p.X009-8690; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,pp.0345-5374-0345-5375.

³⁰ Identification and Death Report:0327-2429-0327-2432,p. 0327-2432,pp.0327-2419-0327-2420.

- Body Location Place and Date and Buried: Located in Kosovo on 10 August 1995, buried at Knin cemetery.³¹
- Location and Date Found in Grave: Knin Exhumation Site, 16/05/2001.³²
- Date Killed: 06 August 1995 in Uzdolje, Orlic.³³
- Cause of Death: Gunshot to the thorax.³⁴
- Documents: Identification/Death report.³⁵

³¹ Croatian Protocol: 0213-7509-0213-7511.

³² Report by Forensic Anthropologist (Pablo Baraybar):0213-1964-0213-1993; Exhumation Evidence Sheets for KN04-61B:X010-0547-X010-0551,p.X010-0547.

³³ WS:0059-8530-0059-8538; WS:0060-5001-0060-5005; WS:0041-3836-0041-3850; Veritas Exodus:0290-7166-0290-7312,p.109.

³⁴ Autopsy Report (Dr. J, Berrent):X009-8599-X009-8618,p.X009-8599; Autopsy Report Analysis (Dr. Eric Baccard):0345-5351-0345-5467,pp.0345-5371-0345-5374.

³⁵ Identification and Death Report:0327-2429-0327-2432,p.0327-2432,pp.0327-2425-0327-2426.

ANNEX F: Scheduled Killing Ten

Marko ILIĆ

- Body Location Place and Date and Buried: Located in Oraovac, Donji Lapac on 04 September 1995, buried at Gračac cemetery.¹
- Location and Date Found in Grave: Gračac Exhumation Site, 24/05/2002.²
- Date Killed: 07 August 1995 in Oraovac, Donji Lapac.³
- Cause of Death: Gunshot injury to head.⁴
- Documents: Identification/Death report.⁵

Rade BIBIĆ

- Body Location Place and Date and Buried: Located in Oraovac, Donji Lapac on 04 September 1995, buried at Gračac cemetery.⁶
- Location and Date Found in Grave: Gračac Exhumation Site, 27/05/2002.⁷
- Date Killed: 07 August 1995 in Oraovac, Donji Lapac.⁸
- Cause of Death: Gunshot injury to head.⁹
- Documents: Identification/Death Report.¹⁰

¹ Croatian Protocol: X016-3586-X016-3587,pp.X016-3586-X016-3587

² Report by Archaeologist (Derek Congram):0184-7153-0184-7194; Exhumation Site Note:X016-3575-X016-3601,p.X016-3584

³ WS:0365-3521-0365-3529, 0085-0613-0085-0616; Croatian Helsinki Committee Report:0333-5790-0333-5944,p.0333-5850, 0113-8666-0113-8760,p.0113-8673; Veritas Exodus:0290-7166-0290-7312,p.118.

⁴ Autopsy Report (Vedrana Petrovecki):X016-3575-X016-3601,p.X016-3575,p.X016-3593; Autopsy Report Analysis (Dr. Eric Baccard):0345-5468-0345-5604,pp.0345-5419-0345-5420.

⁵ Identification and Death Report:0340-5257-0340-5262,p.0340-5261,pp.0345-5891-0345-5892.

⁶ Croatian Protocol:X016-3654-X016-3681,pp. X016-3667-X016-3667.

⁷ Report by Archaeologist (Derek Congram):0184-7153-0184-7194.

⁸ WS:0365-3521-0365-3529, 0085-0613-0085-0616 Croatian Helsinki Committee Report:0333-5790-0333-5944,p.0333-5850, 0113-8666-0113-8760,p.0113-8673; Veritas Exodus:0290-7166-0290-7312,p.118.

⁹ Autopsy Report (Anto Blazanović):X016-3654-X016-3681,p.X016-3654,p.X016-3673; Autopsy Report Analysis (Dr. Eric Baccard):0345-5468-0345-5604,pp.0345-5424-0345-5425.

¹⁰ Identification and Death:0340-5257-0340-5262,p.0340-5261, pp.0345-5867-0345-5868.

Stevo AJDUKOVIĆ

- Body Location Place and Date and Buried: Located in Oraovac, Donji Lapac on 04 September 1995, buried at Gračac cemetery.¹¹
- Location and Date Found in Grave: Gračac Exhumation Site, G03, discovered and lifted on 27/05/2002.¹²
- Date Killed: 07 August 1995 in Oraovac, Donji Lapac.¹³
- Cause of Death: Probably explosive injuries to the head and trunk.¹⁴
- Documents: Death report.¹⁵

Ruža BIBIĆ

- Date Killed: 07 August 1995 in Oraovac, Donji Lapac¹⁶

¹¹ Croatian Protocol:X016-3627-X016-3653, pp.X016-3639-X016-3639.

¹² Report by Archaeologist (Derek Congram):0184-7153-0184-7194.

¹³ WS:0365-3521-0365-3529, 0085-0613-0085-0616 Croatian Helsinki Committee Report:0333-5790-0333-5944,p.0333-5850, 0113-8666-0113-8760,p.0113-8673; Veritas Exodus:0290-7166-0290-7312,p.118.

¹⁴ Autopsy Report (Dr. Davor STRINOVIĆ):X016-3627-X016-3653, p.X016-3627,p.X016-3645; Autopsy Report Analysis (Dr. Eric Baccard):0345-5468-0345-5604,pp.0345-5422-0345-5424.

¹⁵ Identification and Death Report:0340-5257-0340-5262,p.0340-5261,pp. 0345-5863-0345-5864.

¹⁶ WS:0365-3521-0365-3529, 0085-0613-0085-0616; Croatian Helsinki Committee Report:0333-5790-0333-5944,p.0333-5850, 0113-8666-0113-8760,p.0113-8673; Veritas Exodus:0290-7166-0290-7312,p.118.

Prosecution's Glossary

| Abbreviation used in Pre-Trial Brief | Full citation |
|---|--|
| ABiH | Army of the Republic of Bosnia and Herzegovina |
| AD | Appeals Decision |
| ARSK | Srpska Vojska Krajina. RSK military force, Serbian Army of Krajina |
| AJ | Appeals Judgement |
| Additional Protocol II | Additional Protocol II to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I) of 8 June 1977 |
| BiH or BH | Bosnia and Herzegovina |
| CANBat | Canadian Battalion of UN peacekeeping force |
| Croatia | Republic of Croatia |
| ECMM | European Community Monitor Mission |
| Geneva Convention IV | Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949 |
| HDZ | Croatian Democratic Union |
| HQ | Headquarters |
| HRAT | Human Rights Action Team (UN) |
| HV | Army of the Republic of Croatia |
| HVO | Croatian Defence Council (army of the Bosnian Croats) |
| JCE | Joint criminal enterprise |
| JNA | Yugoslav People's Army (Army of the Socialist Federal Republic of Yugoslavia) |
| JORBat | Jordanian Battalion of UN peacekeeping force |
| KENBat | Kenyan Battalion of UN peacekeeping force |
| MD | Military District |
| MOD | Minister or Ministry of Defence |
| MRL or MBRL | Multiple rocket launchers |
| MUP | Ministry of the Interior Police |
| NGO | Non-governmental organisation |
| para. | paragraph |

| | |
|------------|---|
| paras. | paragraphs |
| p. | page |
| pp. | pages |
| ROM | Restriction of Movement |
| RSK | Republic of Serbian Krajina |
| Rules | Rules of Procedure and Evidence |
| SBWS | Eastern Slavonia, Baranja and Western Srem |
| SIS | HVO Security and Information Service |
| SMD | Split Military District |
| Statute | Statute of the International Criminal Tribunal for the Former Yugoslavia established by the Security Council Resolution 827 (1993) |
| TJ | Trial Judgement |
| UN | United Nations |
| UNCivPol | United Nations Civilian Police |
| UNCRO | United Nations peace-keeping force |
| UNMO | United Nations Military Observers |
| UNSC | United Nations Security Council |
| UNPROFOR | United Nations Protection Forces |
| Vance Plan | Vance-Owen Peace Plan, Reproduced in pp.13-44 of the Report of the Secretary-General on Activities of the International Conference on the former Yugoslavia, 2 February 1993, (S/23221) |
| WS | Witness Statement |